HC-KAR
CNR: KAHC010045642019

NC: 2026:KHC:64249-DB
CRL.A No. 333 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 333 OF 2019 (374(Cr.PC) / 415(BNSS)-)

BETWEEN:

UMESHA M
S/O. MAHADEVAIAH,
AGED ABOUT 26 YEARS
R/O. CHANDAGALU VILLAGE,
MANDYA TALUK,
MANDYA DISTRICT – 571401.

...APPELLANT

(BY SRI. AHAMED S N.,ADVOCATE)

AND:

STATE OF KARNATAKA
BY MANDYA RURAL POLICE STATION,
MANDYA DISTRICT,
THROUGH THE SPP,
HIGH COURT BUILDING,
BANGALORE 560001

...RESPONDENT

(BY SMT. SOWMYA R.,HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PLEASED TO SET ASIDE THE ORDER DATED 14.01.2019, PASSED BY THE PRINCIPAL SESSIONS JUDGE AT MANDYA IN S.C.NO.2/2016,

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

CONVICTING THE APPELLANT FOR THE OFFENCE P/U/S 302 AND 201 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.11.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B.PRAMOD)

This criminal appeal is preferred by the appellant-accused, being aggrieved by the judgment of conviction and order of sentence dated 14.01.2019 passed by the learned Principal District and Sessions Judge, Mandya, in S.C.No.2/2016, whereby the appellant was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (for short, 'IPC'), and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- for the offence punishable under Section 302 IPC, and rigorous imprisonment for seven years and

to pay a fine of Rs.25,000/- for the offence punishable under Section 201 IPC.

2. Heard Sri.Ahmed S N, learned counsel appearing for the appellant and Smt. Sowmya R, learned HCGP appearing for the respondent-State. Perused the entire material available on record.

3. The factual matrix of the case is that a complaint at Ex.P21 lodged by PW-6, a relative of the deceased, Prathima. According to the complainant, the deceased was working at Matha Nursing Home, Mandya, and ordinarily used to leave for work at about 9.30 a.m. and return home at about 7.30 p.m. However, on 13.06.2015, she did not return home after completing her work. Her mother, Chikkamma, informed the complainant that the deceased had not returned home and that her mobile phone was switched off. Upon enquiry at the nursing home, the mother of the deceased was informed that Prathima had completed her work and left the

hospital. Thereafter, the family members searched for her, but without success.

4. On 14.06.2015, at about 9.00 a.m., while PW-6 was proceeding from his village towards Mandya on his motorcycle, he was informed by certain persons near Thandasanahalli that the dead body of a woman was lying in the V.C. Canal near Yeliyur Circle. PW-6 proceeded to the spot and noticed the dead body lying face down in the canal, with injuries on the head and a vanity bag lying nearby. Upon turning the body, he identified the deceased as Prathima. The vanity bag contained photographs and letters. Suspecting that an unknown person had murdered Prathima and thrown her body into the canal, PW-6 lodged the complaint.

5. After investigation, the police filed a charge-sheet against the accused for the offences punishable under Sections 302 and 201 IPC charges were framed against him for the said offences. The accused pleaded not

guilty and claimed to be tried. In order to establish its case, the prosecution examined 20 witnesses as PWs.1 to 20, marked 54 documents as Exs.P1 to P54 and produced 15 material objects as M.Os.1 to 15.

6. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), wherein he denied the incriminating circumstances appearing against him. The accused did not adduce any defence evidence. Upon appreciation of the oral and documentary evidence, the learned Trial Court convicted and sentenced the accused as stated above. Aggrieved thereby, the accused has preferred the present appeal.

7. Learned counsel appearing for the appellant-accused contended that the impugned judgment of conviction and order of sentence are contrary to the evidence on record and the settled principles governing cases based on circumstantial evidence. It is submitted

that the prosecution has failed to establish the alleged harassment of the deceased by the accused, the alleged complaint lodged by PW-1, the custody and use of the vehicle bearing registration No.KA-11-A3-100 by the accused, or his presence at the alleged places of occurrence.

8. It is further contended that the owner of the vehicle has not supported the prosecution case and that the witnesses to the seizure mahazars have not satisfactorily corroborated the alleged recoveries pursuant to the voluntary statement of the accused. The prosecution has also failed to establish the circumstance of the deceased having been last seen in the company of the accused. The non-examination of material witnesses, absence of independent corroboration and failure to establish the connecting circumstances render the prosecution case doubtful. It is therefore submitted that the chain of circumstantial evidence is incomplete and that the accused is entitled to an acquittal.

9. Per contra, learned Additional State Public Prosecutor-II appearing for the respondent-State sought to justify the judgment of conviction and order of sentence passed by the learned Trial Court.

10. It is the case of the prosecution that the deceased was acquainted with the accused and that the accused intended to marry her. Since the deceased refused to marry him, the accused developed hostility towards her and allegedly threatened the deceased and her family members. It is further alleged that on 13.06.2015, after the deceased left her workplace, the accused took her in the vehicle bearing registration No.KA-11-A3-100, committed her murder by strangulating her with a kerchief and thereafter threw her dead body into the V.C. Canal.

11. The prosecution seeks to establish the guilt of the accused through circumstantial evidence, namely, motive arising out of the refusal of marriage, the alleged

last-seen circumstance, recovery of the vehicle, seizure of mobile phones and SIM cards, the voluntary statement of the accused and the discoveries allegedly made pursuant thereto. Reliance is also placed upon the medical evidence to establish that the death of the deceased was homicidal.

12. Having heard learned counsel appearing for the parties and upon re-appreciation of the oral and documentary evidence on record, the following point arises for consideration:

> *"Whether the judgment of conviction and order of sentence passed by the learned Principal District and Sessions Judge, Mandya, in S.C.No.2/2016, convicting the appellant-accused for the offences punishable under Sections 302 and 201 IPC, call for interference by this Court?"*

13. Before considering the rival submissions, it is necessary to examine the material evidence adduced by the prosecution and ascertain whether the circumstances relied upon have been established beyond reasonable doubt.

14. PW-1, the mother of the deceased**,** has deposed that the accused had been residing in the same village for the past twenty years and was engaged in driving a tempo and selling tender coconuts. She has stated that the accused used to follow the deceased and persistently insist that she marry him, threatening to kill her if she refused. The accused continued to harass and pressurise the deceased to marry him, and his conduct had become a matter of discussion among the villagers.

15. PW-1 has further deposed that, as the accused continued to follow and harass the deceased despite her unwillingness to marry him, she lodged a complaint before the Shivalli Police Station. Pursuant to the complaint, the police summoned the accused and his parents to the Police Station and questioned the accused. At the Police Station, the accused assured the police that he would neither follow the deceased nor insist upon marrying her.

16. She has further stated that thereafter, CW-11, the father of the accused, approached her at her residence and requested that the deceased be given in marriage to the accused, to which she initially agreed. However, upon learning that the accused had bad antecedents and was associating with another girl, she declined the marriage proposal. Thereafter, the accused allegedly started creating disturbances while under the influence of alcohol.

17. PW-1 has further deposed that she subsequently arranged the marriage of the deceased with CW-21 and that their engagement had taken place three days prior to the murder. Even on the day of the engagement, the accused allegedly came near the house of the deceased and shouted that he would kill her.

18. She has further stated that, after the engagement, the deceased continued to attend her work at the nursing home. On the date of the incident, the deceased left for work but did not return home. As the

deceased had taken the key to the house with her, PW-1 stayed at the residence of CW-14, a neighbour. On the following morning, PW-1 went to the nursing home where the deceased was working and made enquiries regarding her whereabouts. She was informed that the deceased had left the nursing home at about 7.30 p.m. The attendance register maintained by the nursing home was also shown to her in this regard.

19. PW-1 has further deposed that she remained at the nursing home until about 9.30 a.m., when CW-7 arrived and took her near the Yeliyur culvert, where she found the dead body of her daughter. She has stated that, upon seeing the dead body, she suspected the involvement of the accused, as he had on several earlier occasions threatened to kill the deceased if she refused to marry him.

20. PW-1 has identified M.Os.1 to 6, M.O.7, the vanity bag, and M.O.8, the slippers belonging to the

deceased. She has also identified Ex.P1, the bus pass of the deceased. She has further identified Exs.P2 and P3 as the photographs of the vehicle driven by the accused and Exs.P4 to P7 as the photographs of the mobile phone used by the deceased. The said mobile phone was marked as M.O.9.

21. PW-2, Boregowda, has deposed that the accused used to quarrel with PW-1 in connection with the deceased and had threatened to kill her if the marriage was not performed. He has further stated that PW-1 informed him about the incidents and that he, along with other villagers, advised the accused not to indulge in such quarrels. He has also spoken about the accused vacating the house in which he was residing. He denied the suggestion that the accused was falsely implicated on account of a dispute relating to employment or bonded labour.

22. PW-4, Dr. Jagadish Kumar, has deposed that the deceased was working as a trainee nursing assistant at the hospital from March 2015 to June 2015. According to him, on 13.06.2015, the deceased attended work at about 10.00 a.m. and left the hospital at about 7.00 p.m. He has stated that the hospital maintained an attendance register and that, pursuant to the requisition received from the police, he issued the attendance certificate and produced the register. However, during cross-examination, he admitted that the signature of the deceased was not found in the attendance register produced at Ex.P15 and that the register was not maintained in the manner suggested by the prosecution.

23. PW-5, Dr. Ashwini Narayan, who conducted the post-mortem examination, has deposed regarding the injuries sustained by the deceased. In the PM report it is mentioned that there was a lacerated wound 3x2cm bone deep seen over the mid forehead situated vertically. Lacerated wound 3cmx1.5cm bone deep seen over the

dorsum, of right elbow joint. He has opined that the cause of death was asphyxia consequent upon ligature strangulation. He also examined the scarf produced by the Investigating Officer and furnished his opinion regarding the ligature mark found on the dead body. He has further opined that certain injuries could have been sustained while the deceased was attempting to defend herself.

24. PW-6, Vijayakumar, the first informant, has deposed that he received information over the telephone regarding the dead body of Prathima having been found in the V.C. Canal near Yeliyur. On reaching the spot, he noticed the police and members of the public gathered there and identified the dead body. He also noticed certain articles, including a vanity bag and bottles. He identified the complaint at Ex.P21 and his signature thereon.

25. PW-6 has further stated that the mother of the deceased informed him that Prathima had not returned home and that her mobile phone was switched off. He has

also spoken about the alleged refusal of marriage and the quarrels between the accused and the family members of the deceased. According to him, he furnished a subsequent statement before the police on 27.06.2015 alleging that the accused had committed the murder because the deceased had refused to marry him.

26. PW-6 was treated as hostile by the prosecution. He denied the suggestion that the accused was falsely implicated on account of a dispute relating to bonded labour.

27. PW-7, Chandrappa, who was running a tea shop at Sundahalli village on the Bengaluru–Mysuru Road, has not supported the prosecution case. He has denied having seen the accused and the deceased together. He has also denied that on 18.06.2015 the accused showed the place of occurrence to the police and disclosed that he had brought Prathima in the vehicle bearing registration No.KA-11-A3-100, assaulted her and strangulated her with

a kerchief. He has further denied having made the statement at Ex.P23.

28. PW-8, Ananda, has deposed that he had not seen the accused and was unaware of the circumstances leading to the death of Prathima. He has denied having given any statement before the police to the effect that the accused confessed to committing the murder and throwing the dead body into the V.C. Canal. He has also denied the contents of Exs.P24 and P25.

29. PW-9, Siddamma, has deposed that she was unaware of the cause of death of Prathima. She has denied knowledge of any quarrel involving the accused near the house of the deceased or having advised him in that regard. She has also denied that the mother of the deceased approached her on 13.06.2015 informing her that Prathima had not returned home. She has further denied having visited the Police Station on 18.06.2015 and learnt that the accused had committed the murder

because the deceased refused to marry him and had become engaged to another person. PW-9 was treated as hostile by the prosecution.

30. PW-11, Rajeeva, has deposed that his engagement with deceased/Prathima was performed on 11.06.2015. According to him, Prathima and her family members were expected to visit his house after three days, but they did not do so. He attempted to contact Prathima over the telephone, but she did not answer the call. Subsequently, he was informed to visit the Government Hospital, Mandya, where he saw the dead body of Prathima. He has further stated that he saw the accused at the Police Station on the 16th and that the police informed him that the accused had committed the murder.

31. PW-12, Bommegowda, has deposed that the Police Inspector took him to Kallahalli and thereafter towards Yeliyur Circle near the canal for the purpose of

drawing mahazars and taking photographs. He has stated that the person standing between the witnesses in the photographs accompanied the police to show the spot and handed over a kerchief, which he identified as M.O.10. PW-12 was treated as hostile by the prosecution.

32. PW-13, Mallaraju, has identified his signatures on the mahazars. He has stated that the person standing between the witnesses in certain photographs accompanied the police and showed the places in question. He has further identified the accused before the Court as the person who handed over the kerchief to the police. He has also spoken about photographs having been taken at the places shown by the accused.

33. PW-14 has deposed that he knew the accused but was unaware of the accused having parked the vehicle in the vacant space belonging to him. He was treated as hostile by the prosecution and denied having given the statement at Ex.P39.

34. PW-16, D.C. Ramaswamy, has deposed that he received a requisition from the PSI, Mandya Rural Police Station, on 24.06.2015. On 10.07.2015, he visited the spot along with the Head Constable and prepared a sketch. He thereafter visited the place where the dead body was allegedly thrown and prepared another sketch at the spot shown by the Head Constable. The sketches were subsequently prepared in his office and forwarded to the Investigating Officer through his superior officer.

35. PW-17, Kishore Babu, the Investigating Officer, has deposed that on 14.06.2015, PW-6 lodged a written complaint, pursuant to which he registered the case and forwarded the FIR to the jurisdictional Court and his superior officer. He visited the spot, drew the mahazar at Ex.P11, noticed the dead body in the V.C. Canal and seized the articles found there, including a vanity bag, mobile phone without battery, photographs of the deceased and a bus pass. He also conducted the inquest,

recorded the statements of witnesses and seized the clothes of the deceased.

36. PW-17 has further deposed that the accused was arrested on 18.06.2015 and his voluntary statement was recorded. According to him, the accused stated that he would show the places where he had picked up Prathima, committed the murder and parked the vehicle. Thereafter, the police visited the said places along with panch witnesses and drew the mahazars at Exs.P27, P29, P31, P33 and P38. The vehicle bearing registration No.KA-11-A-3100 was seized along with certain mobile phones and SIM cards. He denied the suggestions that the accused had not shown the places mentioned in the mahazars, that his signatures were forcibly obtained at the Police Station or that the mahazars and photographs were fabricated.

37. PW-18, Chandraiah, has deposed that the accused was his elder brother's son and was working as a

driver of a Tata Ace goods vehicle. He has stated that he had obtained a mobile phone several years earlier and had given his SIM card to the accused approximately four to five years prior to the incident. However, he denied the alleged previous threats and quarrels involving the accused.

38. PW-19, Madurshree, has deposed that the accused was her relative and that she knew him as a driver. She has denied having given any SIM card to the accused and has further stated that the police had not enquired with her. She has denied the contents of Ex.P50.

39. PW-20, Lokesh, the Circle Police Inspector, has deposed that he received the post-mortem report and was entrusted with tracing the accused. According to him, on 18.06.2015, upon receiving information from informants, he proceeded to Mandya Railway Station, apprehended the accused and produced him before PW-17. He has further deposed that he obtained the call detail records (CDRs)

and consumer application forms relating to the mobile SIM cards and recorded the statements of the concerned witnesses.

40. PW-20 has stated that the SIM card allegedly used by the accused at the time of the incident belonged to Chandraiah, while another SIM card allegedly used after the incident belonged to Sachin. He has also referred to a SIM card stated to belong to Ningannagowda. He has further deposed regarding receipt of the RFSL report and submission of the charge-sheet.

HOMICIDAL:

41. The first aspect that requires consideration is whether the prosecution has established that the death of Prathima was homicidal in nature. PW-5, the doctor who conducted the post-mortem examination, noticed, among other injuries, the following:

> *"(i) Crescentic fingernail scratch abrasion measuring 1 × 0.5 cm below the mid-right ramus of the mandible.*

(ii) Crescentic, vertically situated scratch abrasion measuring 2 × 0.5 cm over the chin and upper neck.

(iii) Crescentic contused abrasion measuring 2 × 0.5 cm below the mid-ramus of the mandible.

(iv) A transverse ligature mark measuring approximately 18 × 2.5 cm, situated just above the thyroid cartilage, extending over the front and sides of the neck and interrupted posteriorly. The skin over the ligature mark was reddish-brown in colour. Dissection of the neck revealed extravasation of blood in the strap muscles. The hyoid bone and thyroid cartilage were intact."

42. PW-5 has opined in the post-mortem report at Ex.P17 that the death was due to asphyxia as a result of ligature strangulation. The medical evidence is consistent with the injuries noticed on the neck and other parts of the body. The opinion that certain injuries could have been sustained while the deceased was attempting to defend herself also lends support to the homicidal nature of death.

43. Thus, on consideration of the testimony of PW-5 and the post-mortem report at Ex.P17, this Court is satisfied that the prosecution has established that the

death of Prathima was homicidal in nature. However, proof of homicidal death, by itself, does not establish the identity of the perpetrator. The prosecution is further required to prove beyond reasonable doubt that it was the accused who caused the death of the deceased.

44. Admittedly, in the present case, the prosecution case rests entirely upon circumstantial evidence. The principal circumstances relied upon are the alleged motive arising out of the refusal of marriage, the deceased having left her workplace on 13.06.2015, the alleged last-seen circumstance, the use and seizure of the vehicle, the recovery of M.O.10-kerchief, the voluntary statement and consequential discoveries, and the mobile phone and SIM-card evidence.

45. In a case resting entirely upon circumstantial evidence, each incriminating circumstance must be fully established by reliable evidence. The circumstances so proved must be consistent only with the hypothesis of the

guilt of the accused and must form a complete chain excluding every reasonable hypothesis consistent with his innocence. It is therefore necessary to examine whether the prosecution has established the aforesaid circumstances and whether they collectively point towards the guilt of the accused.

MOTIVE:

46. As regards motive, as emerging from the evidence of PW-1, the mother of the deceased, discloses that the accused was persistently following and harassing the deceased, insisting that she marry him and threatening to kill her if she refused. Despite having been summoned to the Police Station and having assured the police that he would desist from such conduct, the accused allegedly continued to harass the deceased. Though PW-1 initially agreed to the marriage proposal made by the father of the accused, she subsequently declined the proposal upon learning about the antecedents and conduct of the accused. Thereafter, the marriage of the deceased

was arranged with CW-21, and their engagement took place three days prior to the incident. PW-1 has specifically deposed that even on the day of the engagement, the accused came near her house and threatened to kill the deceased. Thus, the testimony of PW-1 discloses the alleged motive of the accused arising out of the deceased's refusal to marry him and her subsequent engagement to another person. However, proof of motive alone would not establish the guilt of the accused unless supported by other reliable incriminating circumstances connecting him with the commission of the offence.

47. PW-2 has spoken about the quarrels between the accused and PW-1 in connection with the deceased and the alleged threat by the accused if the marriage was not performed. PW-6 has also referred to the refusal of marriage and the quarrels near the house of the deceased. PW-11 has deposed that his engagement with the deceased was performed on 11.06.2015.

48. In view of the aforesaid discussion, this Court is of the considered opinion that, even if the motive attributed to the accused is held to have been established, motive alone cannot form the basis for sustaining a conviction in the absence of cogent and reliable evidence connecting the accused with the commission of the offence. The alleged threats and previous conduct of the accused may raise a strong suspicion regarding his involvement in the crime. However, it is a cardinal principle of criminal jurisprudence that suspicion, however grave or strong, cannot take the place of proof beyond reasonable doubt.

49. In the present case, the prosecution has failed to establish the essential incriminating circumstances forming a complete and unbroken chain pointing exclusively towards the guilt of the accused. The learned Trial Court, therefore, was not justified in placing reliance upon the alleged motive to sustain the conviction when the other material links in the chain of circumstantial evidence

remained unproved. A conviction founded upon such incomplete circumstantial evidence cannot be sustained in law and necessarily warrants interference by this Court**.**

LAST-SEEN CIRCUMSTANCE:

50. The principal circumstance relied upon by the prosecution is that the deceased was last seen in the company of the accused. To invoke the last-seen theory, the prosecution must establish by cogent and reliable evidence that the deceased was seen alive in the company of the accused at or about the relevant time. The proximity between the time when the deceased was allegedly last seen with the accused and the time of death is a material consideration. The possibility of intervention by another person must also be examined in the light of the surrounding circumstances.

51. In the present case, PW-7, who was running a tea shop at Sundahalli village, has categorically denied having seen the accused and the deceased together. He

has also denied the alleged statement that the accused brought the deceased in the vehicle, assaulted her and strangulated her with a kerchief.

52. Similarly, PW-8 has denied having seen the accused and has not supported the allegation that the accused confessed to committing the murder and throwing the dead body into the canal. Though these witnesses were treated as hostile by the prosecution, the portions of their previous statements which they have denied cannot be treated as substantive evidence of the alleged last-seen circumstance or confession.

53. It is well settled that the evidence of a hostile witness is not liable to be discarded in its entirety merely because the witness has not supported the prosecution. However, the Court can rely only upon such portions of the testimony as are found to be credible and are supported by other reliable evidence. In the present case, the

testimony of PWs.7 and 8 does not establish that the deceased was last seen in the company of the accused.

54. The last-seen theory is only one of the circumstances in a case resting upon circumstantial evidence. Even where the said circumstance is established, it cannot automatically give rise to a presumption of guilt. In the present case, the foundational fact that the deceased was last seen alive in the company of the accused has not been proved.

DEPARTURE OF THE DECEASED FROM THE HOSPITAL:

55. The evidence of PW-4 relates to the employment of the deceased and her departure from the hospital on 13.06.2015. Though PW-4 has stated that the deceased attended work and left the hospital at about 7.00 p.m., he admitted during cross-examination that her signature was not found in the attendance register at

Ex.P15 and that the register was not maintained in the manner suggested by the prosecution.

56. Even assuming that the deceased left the hospital at about 7.00 p.m., as stated by PW-4, the said circumstance does not establish who met her thereafter or who accompanied her. There is no reliable evidence connecting the accused with the deceased after she left the hospital. Therefore, the evidence of PW-4 does not establish the alleged last-seen circumstance or provide the missing link in the prosecution case.

VOLUNTARY STATEMENT AND ALLEGED DISCOVERIES:

57. The prosecution has further relied upon the voluntary statement of the accused and the discoveries allegedly made pursuant thereto. PW-17, the Investigating Officer, has deposed that the accused stated that he would show the places where he picked up the deceased, committed the murder and parked the vehicle. PW-13 has

supported the fact that the accused accompanied the police to certain places and handed over a kerchief. PW-12 was treated as hostile, while PW-14 did not support the alleged parking of the vehicle in the vacant space belonging to him.

58. It is settled that only so much of the information furnished by an accused in police custody as distinctly relates to the fact thereby discovered is admissible under Section 27 of the Indian Evidence Act, 1872. The remaining portion of the statement, including any confession of guilt made to the police, cannot be treated as substantive evidence against the accused.

59. The mere fact that the accused accompanied the police and pointed out certain places does not, by itself, establish that he committed the murder. The Court is required to ascertain what fact was actually discovered pursuant to the information furnished by the accused and

whether such discovery has a reliable connection with the commission of the offence.

60. In the present case, even accepting the testimony of PW-13 regarding the accused having shown certain places, the same does not establish that the accused strangulated the deceased. The prosecution has failed to demonstrate how the alleged discoveries, considered with the other evidence on record, conclusively connect the accused with the commission of the offence.

SEIZURE AND USE OF THE VEHICLE:

61. The prosecution has also relied upon the seizure of the vehicle bearing registration No.KA-11-A3-100. In order to treat the said circumstance as incriminating, the prosecution was required to establish that the vehicle was in the custody or control of the accused at the relevant time and that it was used for transporting the deceased or otherwise in connection with the commission of the offence.

62. Learned counsel for the appellant has specifically contended that the owner of the vehicle has not supported the prosecution case. PW-14 has also failed to support the allegation that the accused parked the vehicle in the vacant space belonging to him. In the absence of reliable evidence connecting the vehicle with the transportation of the deceased or the commission of the offence, its mere seizure cannot be regarded as a conclusive incriminating circumstance.

63. On re-appreciation of the evidence, this Court finds that the prosecution has not satisfactorily established the alleged use of the vehicle by the accused on the date of the incident. Consequently, this circumstance also fails to provide a reliable link connecting the accused with the crime.

RECOVERY OF M.O.10-KERCHIEF:

64. The prosecution has further placed reliance upon the recovery of M.O.10-kerchief. PW-13 has deposed

that the accused handed over the kerchief to the police, whereas PW-12 was treated as hostile. The medical evidence establishes that the death was caused by ligature strangulation and that PW-5 examined the scarf produced by the Investigating Officer.

65. However, the medical evidence does not, by itself, establish that M.O.10 was the very article used for strangulating the deceased or that it was used by the accused in committing the offence. The prosecution was required to establish a reliable nexus between the recovered article, the ligature injury found on the deceased and the accused.

66. Even if the recovery of M.O.10 is accepted, such recovery, in the absence of other reliable connecting circumstances, cannot establish the identity of the perpetrator. The recovery of an article alleged to have been used in the commission of the offence is only one circumstance, and its evidentiary value must be assessed

along with the other evidence on record. In the present case, the prosecution has failed to establish the necessary connecting circumstances.

MOBILE PHONES, SIM CARDS AND CALL DETAIL RECORDS:

67. The prosecution has also relied upon the seizure of mobile phones and SIM cards. PW-18 has stated that he had given a SIM card to the accused several years prior to the incident, whereas PW-19 has denied having given any SIM card to the accused. PW-20 has deposed that he obtained the CDRs and consumer application forms and has referred to different SIM cards allegedly used by the accused at and after the time of the incident.

68. However, the evidence of these witnesses, by itself, does not establish that a particular SIM card was actually used by the accused at the relevant time or that the accused was present at or near the place of occurrence.

69. Significantly, though PW-20 has stated that he obtained the CDRs during investigation, the prosecution has not produced and proved the relevant CDRs along with the requisite certificate under Section 65B of the Indian Evidence Act, 1872. In the absence of the electronic records being produced and proved in accordance with law, the oral assertion of the Investigating Officer cannot be treated as a substitute for the contents of such electronic records.

70. The mere seizure of a SIM card does not establish the contents of the call records or the location and movements of the person alleged to have used it. The prosecution has not established through admissible electronic evidence whether any communication took place between the accused and the deceased at the relevant time or whether the accused was present at or near the place of occurrence.

71. Thus, the evidence relating to mobile phones and SIM cards does not establish the crucial connecting circumstances. The absence of the relevant admissible electronic evidence assumes significance in the present case, particularly when the prosecution seeks to establish the guilt of the accused entirely through circumstantial evidence.

EVIDENCE OF HOSTILE WITNESSES:

72. The evidence of PWs.6 and 9, who were treated as hostile by the prosecution, also requires consideration. Their testimony may establish certain surrounding facts, including the deceased having failed to return home, her mobile phone being switched off and the alleged background relating to the marriage proposal.

73. However, the material allegation that the accused committed the murder cannot be held to have been proved merely on the basis of statements attributed to these witnesses during investigation. Previous

statements made before the police cannot be elevated to the status of substantive evidence. The Court must assess the testimony actually given before it and determine whether the incriminating circumstances have been established by admissible and reliable evidence.

74. In the present case, the testimony of the aforesaid witnesses does not establish the crucial. circumstances connecting the accused with the commission of the offence.

LEGAL PRINCIPLES GOVERNING CIRCUMSTANTIAL EVIDENCE:

75. At this juncture, it is apposite to refer to the judgment of the Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116***, wherein the principles governing cases resting entirely upon circumstantial evidence have been authoritatively laid down. In paragraph 152 of the said judgment, the Apex Court enunciated the following five essential

conditions, commonly referred to as the five golden principles governing circumstantial evidence:

(i) The circumstances from which the conclusion of guilt is to be drawn must be fully established.

(ii) The facts so established must be consistent only with the hypothesis of the guilt of the accused.

(iii) The circumstances must be of a conclusive nature and tendency.

(iv) The circumstances must exclude every reasonable hypothesis except the one sought to be proved.

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and the circumstances must establish that, in all human probability, the act was committed by the accused.

76. The Apex Court has emphasized the distinction between circumstances which merely suggest that an accused may have committed the offence and circumstances which establish that the accused must have

committed it. The prosecution must establish the latter. Suspicion, however strong, cannot substitute legal proof.

77. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecution has failed to establish the material circumstances relied upon against the accused.

78. The alleged last-seen circumstance has not been established by the testimony of PWs.7 and 8. The evidence of PW-4 concerning the deceased leaving the hospital does not establish that she thereafter accompanied the accused. The alleged use of the vehicle has not been satisfactorily proved. The recovery of M.O.10-kerchief does not conclusively connect the accused with the act of strangulation. Further, the electronic evidence relating to the mobile phones and SIM cards has not been produced and proved in accordance with law.

79. Thus, the first requirement laid down in ***Sharad Birdhichand Sarda*** *supra* is not satisfied, inasmuch as

the material incriminating circumstances relied upon by the prosecution have not been fully established.

80. The second and third requirements are also not satisfied. The circumstances proved do not point exclusively towards the guilt of the accused and are not conclusive in nature. The alleged motive may suggest a possible reason for hostility, but it does not establish the commission of the offence. Similarly, the fact that the accused allegedly showed certain places or that articles were seized during investigation does not, without a reliable nexus, establish that he committed the murder.

81. The fourth and fifth requirements are likewise not fulfilled. The circumstances relied upon by the prosecution do not exclude every reasonable hypothesis consistent with the innocence of the accused. The absence of reliable last-seen evidence, the failure to establish the use of the vehicle, the lack of a conclusive connection between M.O.10 and the commission of the offence, and

the non-production of admissible CDR material leave material gaps in the prosecution case.

82. These deficiencies are not mere minor discrepancies or omissions which can be overlooked. They relate to the essential links by which the prosecution seeks to connect the accused with the deceased and the commission of the offence.

83. It is equally well settled that the circumstances in a case resting upon circumstantial evidence must be considered cumulatively and not in isolation. However, a cumulative assessment cannot convert unproved circumstances into established facts. Several incomplete links, merely considered together, cannot constitute a complete chain unless the evidence as a whole points unerringly towards the guilt of the accused.

84. In the present case, even upon cumulative consideration of the oral and documentary evidence, the circumstances relied upon by the prosecution do not lead

to the only conclusion that the accused committed the murder. The chain of circumstances is not so complete as to exclude every reasonable hypothesis consistent with his innocence.

85. This Court is conscious of the fact that the deceased suffered a homicidal death. However, the gravity of the offence cannot dilute the standard of proof required in a criminal trial. The prosecution is required to establish the guilt of the accused beyond reasonable doubt. The mere fact that a homicidal death has occurred cannot justify a conviction unless the identity of the perpetrator and his involvement in the commission of the offence are established by reliable evidence.

86. On an overall re-appreciation of the evidence, this Court is of the considered opinion that the prosecution has failed to satisfy the five golden principles laid down by the Apex Court in *Sharad Birdhichand Sarda* (supra). The circumstances relied upon are neither fully established nor

conclusive in nature. They do not form an unbroken chain pointing exclusively towards the guilt of the accused.

87. The learned Trial Court, while appreciating the evidence, has failed to give due weight to the missing links in the chain of circumstantial evidence and has placed reliance upon circumstances which, either individually or cumulatively, are insufficient to establish the guilt of the accused beyond reasonable doubt.

88. Insofar as the offence punishable under Section 201 IPC is concerned, the prosecution has also failed to establish beyond reasonable doubt that the accused caused the disappearance of evidence of the offence with the requisite intention of screening the offender from legal punishment. The mere discovery of the dead body in the canal, without reliable evidence connecting the accused with its disposal, is insufficient to sustain the conviction under Section 201 IPC.

89. In view of the foregoing discussion, this Court finds that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt for either of the offences punishable under Sections 302 and 201 IPC. The accused is therefore entitled to the benefit of doubt.

90. Consequently, the findings recorded by the learned Trial Court cannot be sustained in law. The impugned judgment of conviction and order of sentence suffer from infirmity in the appreciation of circumstantial evidence and warrant interference by this Court.

91. Accordingly, the point framed for consideration is answered in the **affirmative**, holding that the judgment of conviction and order of sentence passed by the learned Principal District and Sessions Judge, Mandya, in S.C.No.2/2016, are liable to be set aside.

ORDER

i. The criminal appeal is ***allowed***.

ii. The judgment of conviction and order of sentence dated 14.01.2019 passed by the learned Principal District and Sessions Judge, Mandya, in S.C.No.2/2016, convicting the appellant-accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, are hereby ***set aside.***

iii. The appellant-accused is acquitted of the offences punishable under Sections 302 and 201 IPC.

iv. The appellant-accused shall be released forthwith, unless his detention is required in connection with any other case.

Ordered accordingly.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

Bsv, MKM