NC: 2026:KHC:6797-DB
CRL.A No. 1785 of 2018

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1785 OF 2018

BETWEEN:

1. SRI. JAYARAMA @ BANGARU
   S/O RAMAIAH
   AGED ABOUT 42 YEARS
   R/AT DEVITHANDRE VILLAGE
   K.R.NAGAR TALUK
   MYSURU DISTRICT-577103.

...APPELLANT

(BY SRI. PRATHEEP K.C., ADVOCATE)

AND:

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

1. STATE BY
   SALIGRAMA POLICE STATION
   REPRESENTED BY STATE PUBLIC PROSECUTOR
   HIGH COURT BUILDING
   BENGALURU-560001.

...RESPONDENT

(BY SMT. RASHMI PATEL, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 21.07.2018 PASSED BY THE II ADDITIONAL SESSIONS JUDGE, C/C V ADDITIONAL SESSIONS JUDGE, MYSURU IN S.C.NO.254/2013 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498(A) AND 302 OF IPC.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

1. Heard the learned counsel for the appellant and also Smt.Rashmi Patel, the learned High Court Government Pleader appearing for respondent-State.

2. This appeal is filed against the judgment of conviction for the offence punishable under Section 498A and also Section 302 of Indian Penal Code and life imprisonment with fine of Rs.1,000/- for the offence under Section 302 and also one year punishment for the offence under Section 498A of IPC with fine of Rs.200/-.

3. The factual matrix of case of prosecution is that the accused is the husband of the deceased and there was a dispute between them, particularly in the intervening night between 10.04.2013 and 11.04.2013, the wife of the accused by name Rathnamma was murdered in the house

of the accused at Devithandre Village. The law is set into motion on the first information report lodged by the brother of the deceased who is examined as P.W.1. The first information statement is marked as Ex.P.3, wherein he has stated that at about 11 years prior to the incident, the deceased was married the accused and in the said wedlock they were having two children. Two years after the marriage, the accused addicted to drinking and started ill-treating the deceased, conciliations were also held and even inspite of the conciliation, he did not heed to the advice. The earlier incident was taken place in the year 2010, when the accused and his relatives ill-treated the deceased, she had lodged the complaint against them as per Ex.P.2. Thereafter she left the house of the accused and took refuge along with her children in the house of P.W.1 at Gulagunjihalli Village, Holenarasipura Taluk. After the investigation, Police filed a charge sheet and accused was secured and he did not plead guilty and claims trial and hence, the prosecution relied upon the evidence of

prosecution witnesses P.W.1 to P.W.22 and also got marked documents Ex.P.1 to Ex.P.35. The accused did not choose to lead any defence evidence. However, on closure of the evidence of the prosecution, the accused was subjected to 313 statement. The prosecution got marked material objects MO.1 to MO.3.

4. The Trial Court having considered both oral and documentary evidence of the prosecution, comes to the conclusion considering the material on record i.e., homicidal death of the accused as deposed by P.W.14-Doctor and so also the death was taken place in the house of the accused as well as the accused last being seen in the company of the accused that has been spoken by P.W.2 and also there was no any explanation on the part of the accused that inspite of death was occurred in the house, he has not given any explanation. The Trial Court also taken note of the recovery of ornaments of the deceased from the possession under the instance of the accused, gold ornaments were pledged with P.W.17 and

also taken note of the evidence of witness P.W.16 and comes to the conclusion that recovery is proved. The Trial Court also taken note of the false defence of alibi and murder by robbers which was the defence which was taken, but when the defence of alibi is taken and the same is not proved by the accused. The Trial Court also comes to the conclusion that there was an strained relationship between the accused and the deceased and comes to the conclusion that there was a motive to commit the murder of his wife and having considered all these material, the Trial Court convicted the accused for both the offences of 302 and 498A of Indian Penal Code.

5. Being aggrieved by the conviction and sentence, the present appeal is filed by the accused. The counsel appearing for the appellant in his argument would vehemently contend that the Trial Court committed an error in convicting the accused when the case is rest upon the circumstantial evidence. The counsel would vehemently contend that the prosecution has not proved

its case and it is the primary duty of the prosecution to prove the case beyond reasonable doubt. The counsel would vehemently contend that the trial judge grossly erred in convicting the appellant without considering that there is no any eye witness evidence. The interested witnesses evidence is considered by the Trial Court i.e., brother of the P.W.1 and also the sister-in-law of the deceased i.e., P.W.2 and the evidence of P.W.3 who is also the brother-in-law of the deceased and also the evidence of P.W.5 who is the sister of the deceased who has spoken about the alleged ill-treatment. The counsel also submits that the witnesses other than interested witnesses have not supported the case of the prosecution. The counsel contend that villagers who have been examined before the Court are P.W.4, P.W.6 to P.W.12 and P.W.15 have not supported the case of the prosecution with regard to the panchayat is conducted since the case of the prosecution is that these witnesses have conducted the panchayath when the relationship was strained.

6. The counsel would vehemently contend that P.W.13 is the neighbor and his evidence of ill-treatment is considered by the Trial Court and counsel would contend that mahazar recovery witness P.W.16 though says that recovery was made and his evidence partly supported the case and treated as hostile and cross examined. The counsel would vehemently contend that the evidence of P.W.16 and P.W.17 cannot be relied upon though P.W.17 is the pawn broker who deposes before the Court that accused came and pledged the gold ornaments and his evidence also not inspires the confidence of the Court.

7. The counsel would contend that accused was arrested on 12.04.2013 and the same is spoken by P.W.19 and after the arrest, the recovery was made. The counsel would vehemently contend that the evidence of P.W.20 who is the son of the deceased as well as the accused, he speaks about ill-treatment, but the fact is that he went along with the accused also not in dispute and it is clear that he was also in good terms with the accused. The

counsel would vehemently contend that P.W.21 is the I.O who conducted the investigation and his evidence also not inspires the confidence. The counsel would vehemently contend that P.W.1 evidence is very clear that body was found in the house of the accused and counsel would vehemently contend that with regard to the last seen witness is concerned, none of the witnesses spoken about both deceased as well as accused came together and they were staying in the very same house. The counsel would vehemently contend that the last seen evidence of P.W.2 also cannot be accepted and also time gap to be taken note of.

8. The counsel would contend that there are other surrounding houses and the same is spoken by the inquest witnesses and inquest mahazar also discloses the same. The counsel would vehemently contend that when the last seen witnesses evidence is not available before the Court, someone may be entered and committed the murder of the deceased and prosecution has not proved the case

beyond reasonable doubt. The counsel would vehemently contend that when the prosecution has not proved its case, question of giving any explanation by the accused does not arise and so also giving explanation under Section 106 of the Evidence Act.

9. The counsel for appellant in support of his argument, he relies upon the judgment reported in **(2021) 10 SCC 725** in case of **Nagendra Sah V/s State of Bihar** and brought to notice of this Court paragraph No.20 wherein the Apex Court discussed extracting the provisions of Section 106 of Evidence Act and also discussed with regard to Section 101 of Evidence Act burden of proof i.e., burden is on the prosecution and also brought to notice of this Court, paragraph No.22, wherein also categorically held that Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which is reasonable inference can be drawn regarding the existence of certain other facts which are within the special

knowledge of the accused. The counsel brought to notice of this Court, paragraph No.23, wherein discussed with regard to the circumstances is concerned. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all.

10. The counsel also relied upon the judgment reported in **(2005) 3 SCC 114** in case of **State of UP V/s Satish** and brought to notice of this Court with regard to the last seen theory witness which was discussed in paragraph No.22 that the Court has to take note of time gap with regard to the last seen theory is concerned when there is a long gap and possibility of other persons coming in between exists. The Court has to appreciate the evidence considering the time gap.

11. The counsel also relied upon the judgment reported in (**2023) 11 Supreme Court cases 255** in

case of **Subramanya V/s State of Karnataka** and with regard to the recovery is concerned, the counsel brought to notice of this Court particularly paragraph No.77 wherein it is held that the first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein, which ultimately lead to the discovery of a fact relevant under Section 27 of the Evidence Act. The counsel also brought to notice of this Court paragraph No.78, wherein detailed discussion was made with regard to the first part of panchanama and also the second part of panchanama that there must be a disclosure in the presence of pancha witnesses and thereafter recovery should be made.

12. Per contra, the counsel appearing for the respondent-State would submits that the prosecution has proved the case beyond reasonable doubt. The counsel would submits that there is no dispute with regard to the relationship between the accused and deceased is strained

and also counsel would vehemently contend that Ex.P.2 is a document which clearly discloses that the complaint was given in the year 2010 itself when the deceased was subjected to harassment and cruelty. The counsel also would vehemently contend that there is a motive since the Ex.P.1 clearly discloses that the wife of the deceased had already approached the Court by filing a criminal miscellaneous petition claiming maintenance. The counsel would vehemently contend that on the date of alleged incident, there was a hearing before the Trial Court in respect of criminal miscellaneous petition is concerned and both the accused persons as well as the deceased attended the Court and thereafter, the accused took the deceased along with him. The counsel would submits that motive for committing the murder is that already relationship is strained and also petition was filed for claiming maintenance and hence, motive to eliminate the deceased.

13. The counsel appearing for the respondent-State submits that last seen theory is categorically spoken by P.W.2 and P.W.2 says that on the date of hearing, she also accompanied with the deceased and also what had happened on that day was explained by P.W.2 before the Court and it is also her case that accused came and requested her to accompany him and also forced her to accompany him and she says that she made a phone call to P.W.1, but P.W.1 has not given any consent. However, the deceased agreed to go along with the accused and both of them left at around 5:30 to 6:00 in a bus and she also came in a different bus to her village and this last seen theory witness is also very clear that she was taken to the house of the accused.

14. The learned High Court Government Pleader appearing for the respondent-State would vehemently contend that death was taken place in the house of the accused and accused is also not disputing the said fact that death was occurred in his house, but no explanation

is given under Section 106 of the Evidence Act. The other circumstances is with regard to the fact that the Court has to take note of the conduct. The incident was taken place in the intervening night on 10.04.2013 and 1104.2013 and immediately he was missing and Court has to take note of his conduct that he was arrested on 12.04.2013.

15. The other circumstances is that the gold ornaments belongs to the deceased were missing and the same were seized at the first instance from the accused and other articles which were pledged with P.W.17 is also recovered and document of pledging of article i.e., Ex.P.21 and Ex.P.22 is also recovered and the same is not disputed. The counsel would vehemently contend that though P.W.16 recovery witness has turned partly hostile and in the cross-examination also elicited the answer and nothing is elicited to disprove the evidence of P.W.16.

16. The counsel would vehemently contend that with regard to the harassment is concerned, P.W.1 to PW3, PW5, P.W.13, P.W.20 and P.W.22 all deposes before

the Court with regard to the strained relationship and also the cases are filed and subjecting her for cruelty and complaint was lodged even prior to separation from her husband. The fact that she is living separately from the accused also spoken and with regard to the said fact is concerned, there is no dispute. All these circumstances clearly discloses that the accused only committed the murder. The counsel would vehemently contend that the Trial Court while considering the evidence, taken note of all these circumstances while coming to a conclusion that accused only committed the murder.

17. Having heard the appellant's counsel and also the counsel appearing for the respondent-State and we have given anxious consideration to the evidence available on record and also case is rest upon the circumstantial evidence and no eye witnesses evidence and having considered the material on record, the points that would arise for consideration of this Court are:

1) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 498A and Section 302 of IPC in coming to the conclusion that prosecution has proved the case beyond reasonable doubt and whether it requires interference of this Court?

2) What order?

Point Nos.1 and 2.

Homicidal death of deceased

18. The case of the prosecution is that the death of the victim is homicidal and in order to prove the same, the prosecution examined Doctor PW.14, who conducted the post-mortem report and post-mortem report is marked as Ex.P17. The same discloses nail marks on the neck of deceased Rathnamma. It is also the case of the prosecution that death of the victim is an account of throttling. PW.14 in his evidence has stated that he conducted the autopsy on 11.04.2013 at 03.15 p.m. and the evidence of PW.14 is very clear that there were 4 nail marks on the left lateral side of the neck, 1 nail

mark over the right lateral side of the neck, nail mark/abrasion over the middle phalanx of the left third and fourth finger dorsal part of left hand, post-mortem staining seen over the dependent parts, contusion seen on the neck left side, contusion measuring 4 x 4 cm over the left upper arm medially, swelling measuring 2 x 2 cm on the right forearm mid-part laterally. The post-mortem report-Ex-P17 is also very clear that the death of deceased Rathnamma is due to asphyxia as a result of throttling. It is also mentioned that the time since death is 12 to 18 hours prior to the post-mortem examination. Having taken note of Ex.P17 and also the reasoning of the cause of death and in the cross-examination, except eliciting whether the Doctor has verified the fingernail markings on the neck were belonging to the hand of the deceased herself and whether he has measured the finger nail markings and the length of impression of the fingernail, nothing is elicited. It is only disputed that fingernail injuries on the neck may be defence injuries and the injuries on the phalanx and on left upper arm may be defence injuries. Having taken note of the time of death also, PW.14 deposes that death has taken place 12 to 18 hours prior to the post-mortem examination. But the

post mortem was conducted at 3.15 p.m. on 11.04.2013, which means that the death has taken place on 11.04.2013 early morning or on previous night of 10.04.2013 and when a suggestion was made that PW14 that two to three persons may be involved in causing injuries to the deceased, he deposes, he cannot say whether such injuries may be caused while 2-3 persons tried to snatch the chain from the neck of the deceased. But the defence is that someone else committed the murder of deceased Rathnamma for the purpose of wrongful gain. However, the death of deceased has taken place in the house of the accused and having considered the timings of death i.e., 12 to 18 hours prior to post-mortem examination, any third person entering the house of the accused is ruled out and hence the homicidal death of the deceased is proved by the prosecution that death was occurred in the house of the accused.

Last Seen Theory

19. The prosecution relies upon the evidence of PW.2. PW.2 categorically deposes that on the date of the incident, there was hearing of dowry harassment case filed by deceased

against the accused before the JMFC Court, K.R. Nagar in C.C.No.550/2010 and the same is also not disputed by the counsel appearing for the accused that there was hearing of said case on 10.04.2013. The accused persons as well as Rathnamma(deceased) were present before the court. PW.3 also categorically says that PW.2 had accompanied the deceased on the hearing date i.e., on 10.04.2013. PW.2 has narrated with regard to as to what had happened on the hearing date when all of them went to the court in order to attend the case. Her evidence is very clear that when they were waiting for boarding the train at 7.20 p.m., the accused came there and called the deceased stating that he would get her groceries and clothes to the children on account of Ugadi festival on the next day. When she refused, the accused insisted her to accompany him and when she(PW.2) went to call her husband(PW.1) in coin booth whether to send the deceased along with accused No.1, before she coming back after speaking over phone, the deceased had made up her mind to accompany the accused and informed her that she would go with the accused and would come for festival on the next day. Thereafter, the accused and the deceased boarded

the bus and she also separately boarded the bus and went to the house. Though PW.2 has not stated the timings of boarding of the bus, but during the course of her cross-examination by learned counsel for the accused, at page 9 paragraph No.2, PW.2 stated that accused and deceased together boarded the bus at 5.30 p.m. to 6.00 p.m. on the relevant day. Hence, it is clear that the deceased was in the company of the accused even at 5.30 p.m. to 6.00 p.m. on 10.04.2013.

20. Learned counsel appearing for the appellant would vehemently contend that no one had witnessed that the accused and the deceased were together and they went inside the house belonging to the accused. But the fact is that the evidence of PW.2 is very clear and nothing is elicited in the cross examination of PW.2 that deceased did not accompany the accused on that day and also nothing elicited from the mouth of PW.2 that accused did not request the deceased to accompany him. The fact that on the very next day, there was Ugadi festival and the accused requesting the deceased to accompany him for purchase of groceries and clothes to the children is also not in dispute and when such being the case,

when the evidence of PW.2 is very consistent with regard to the deceased accompanying the accused and she was last seen, that too, in the evening at 05.30 p.m. to 06.00 p.m., which was elicited from the defence itself, it is clear that PW.2 is the last seen witness.

21. Learned counsel appearing for the appellant relies upon the evidence of ***State of UP v. Satish*** reported in ***2005 (3) SCC 114***, wherein the Hon'ble Apex Court discussed in paragraph No.22 with regard to the long gap and possibility of other persons coming in between exists and it can be doubted. But, in the case on hand, as per the evidence of PW.2, on the previous evening of 11.04.2013, i.e., on 10.04.2013, both deceased and the accused travelled together by boarding the bus and death of deceased Rathnamma occurred on the intervening night on 10/11/04.2013 and when such being the case, there is proximity of cause of death as well as last seen and hence the principle laid down in the judgment referred by the learned counsel appearing for the appellant will not come to the aid of the accused and there was no any long gap.

MOTIVE

22. The motive for committing the murder in a case of circumstantial evidence is significant, if it is direct evidence and the same is insignificant in cases of direct evidence. But the Court has to take note of the aspect of motive for committing the murder of deceased Rathnamma. In the instant case, it is not in dispute that Ex.P2-complaint was filed by the deceased against the accused on 03.06.2010 and that there was matrimonial dispute between the deceased and the accused and Ex.P1-C.Misc.No.529/2012 was filed on 16.11.2012 by the deceased against the accused under Section 125 Cr.P.C. seeking maintenance i.e., six months prior to the death of the deceased. It is also not in dispute that as on the date of the incident, hearing of the very case was before the trial Court. It also has to be noted that the relationship between the accused and deceased i.e., husband and wife was strained and the evidence of PW.1 is very clear that after lodging of the complaint in terms of Ex.P2, the deceased and her children had taken the shelter in his house and when such material is available before the court with regard to the motive is

concerned, as the deceased had already initiated criminal misc. petition proceedings seeking maintenance for herself and her children against the accused and when such being the case, motive is also established by the prosecution that in order to avoid the criminal proceedings between the husband and wife, the accused took away the life of the deceased i.e., his wife.

23. The evidence of PW.22 is also very clear with regard to the motive is concerned, wherein he has stated that the accused has stated before him that the deceased has lodged the complaint against him and he is made to run to Court, which has caused great hardship to him and that if she is eliminated, he would be relieved of the same. No-doubt, in the cross examination, it is elicited that PW.1 is his relative and with regard to motive is concerned, nothing is elicited from the mouth of PW.22. So also, the evidence of PW.1, 2, 3 and PW.5 is very clear with regard to the earlier harassment meted out to the deceased at the hands of the accused and hence both of them were separated and were living separately from last five years, which is not in dispute. When such being the case, the motive is also established by the prosecution.

Conduct of the accused.

24. The accused does not dispute the fact that the death of deceased Rathnamma had taken place in his house and also that said house is standing in his name. When the dead body is lying in the house of the accused, but defence is that someone else has committed her murder, which defence is taken by the accused, if any third party role is involved in causing the death of the deceased, he being the husband and also an ordinary prudent men, would have lodged the complaint immediately to the police, but he did not lodge the complaint and the fact remains that the accused was missing and he was arrested on 12.04.2013 after 2 days of the incident. There is also no explanation by the accused as to when both of them i.e., he and the deceased were living separately from last 5 years, how the deceased got access to the house of the accused, which is in the exclusive possession of the accused. Hence, the Court has to take note of the conduct of the accused in non-filing of any complaint, when the deceased, who is his wife was murdered.

Recovery Of The Gold Articles

25. Having perused the inquest, it is clear that some gold ornaments were missing from the person of the deceased and the case of the prosecution is that the person who committed the murder of the deceased took away the gold ornaments and hence, the prosecution relies upon the evidence of PW.16 and PW.17. PW17-Pawn broker in this evidence categorically says that accused came and pledged the ear rings in the year 2013 and the police directed him to produce the same and the evidence of PW.17 is also very clear that the accused came and pledged the ear rings and he has given Rs.2,600 to the accused and also issued the receipt, which is marked as Ex.P21 and also the ledger book as per Ex.P22. In the cross-examination, no doubt, the witness PW.17 says that he did not bring the receipt book and the same is in his custody, but he categorically says that the original receipt was taken by the police and when a suggestion was made with regard to having CCTV, his evidence is very clear that he has installed the same from last 3 years and at the time of the pledging, CCTV was not there. His evidence is further clear that the accused came to his shop at

09.00 a.m. on the relevant date and he has issued the receipt to the accused and the said receipt was the first receipt given to the accused on that day. But he cannot tell how many receipts were issued on that day and since he was having acquaintance with the accused, he did not insist for the address proof document from the accused and at that time also, he was alone. No doubt, in the cross examination, he states that other than police, no one came along with the accused and police came at around 12.00 to 1.00 p.m. and also suggestion was made that there was complaint against the police that the owners of the pawn brokers have given the complaint against police, same was denied by him. Other suggestion was made that the receipt and ledger book- Ex.P21 and Ex.P22 are created, except these suggestions nothing is elicited from the mouth of PW.17 with regard to the creation of receipt is concerned. Now, the Court has to take note of the evidence of PW.16. PW.16 in his evidence has stated that he accompanied the accused along with the police, at the time of recovery of the receipt and ledger and M.O.1 and M.O.2 coin and mangalya beads from the shop of PW.17. He categorically says he had signed the mahazar and his signature was taken and along with

the police, the accused was also there. The signature of the witness is marked as Ex.P20(a) and this witness was treated as hostile in-part. But with regard to the seizure of other gold ornaments from the custody of the accused, he has not spoken and hence a suggestion was put to him and he categorically says that in the police station, the accused took out an amount of ☐2,150/- from his pocket and also a Mangalya chain, appearing to be gold, coins and also 45 gold beads, which were seized from the possession of the accused. This witness was also subjected to cross-examination and in the cross examination, it is elicited that in connection with other work, he went to police station along with CW28, but, he also admits that police have not given any notice and he cannot tell as to whether other persons were there other than them and in the police station and he was there for about half an hour. Thereafter, they went to the shop of PW.17 and at that time, there were 50 to 60 persons with them. He and CW.28 went inside the shop of PW.17 along with the police and there were two to three police personnels and except him, PW.17 and police, no other persons were there inside and he cannot state as to how the police got the Mangalya beads. He also says that

he had signed the mahazar first in the police station and then went to the shop of PW17. But suggestion was made that he is deposing falsely before the court as per the instructions of the police, however, the same was denied. No doubt, PW.17 says that no one was there along with the police. But the evidence of PW.16 is very clear that accused was also very much present along with them when all of them went to the shop of PW.17. Though PW.16 turned hostile to the extent of seizure of the gold ornaments from the accused in the police station, but his evidence is very clear that first he had signed the mahazar in the police station and the same is in respect of recovery of the gold ornaments from the accused i.e., mangalya chain beads and coins, which appears to be gold. Hence, it is clear that, at the first instance, he had signed the document at the police station with regard to the seizure from the accused including the amount of Rs.2,150/-. It is also important to note that the case of the prosecution also is that the accused has pledged the gold articles and the evidence of PW.17 is also very clear that the accused had pledged the ear rings and taken an amount of Rs.2,600/- and an amount of Rs.2,150/- was seized from the accused from his pocket in the police station and hence, the

evidence of the witness PW.16 is very clear that though he turned hostile in respect of seizure at the police station, but when the suggestion was made, he categorically admitted the same. But, he also categorically deposed before the Court that he is not deposing as per the instructions of the police.

26. Learned counsel appearing for the appellant relies upon the judgment of the Apex Court in the case of ***Subramanya v. State of Karnataka*** reported in ***(2023) 11 SCC 255*** and brought to the notice of this court to paragraph Nos.77 and 78 with regard to the recovery is concerned, wherein also the Apex Court noticed that the first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant therein, which ultimately led to the discovery of the fact relevant under Section 27 of the Evidence Act and so also in paragraph No.78, discussion is made with regard to the first part of panchanama and the disclosure statement in the presence of panch witnesses and also the recovery. In the case on hand, it has to be noted that Ex.28-voluntary statement of the accused and

portion of Ex-P28 is marked, wherein he categorically says that he had pledged the gold articles in the pawn shop and took an amount of Rs.2,600/- from him and also stated that if he taken to that pawn shop, he would show the pledged gold ornaments in the said shop. Now the Court has to take note of Section 27 of the Evidence Act. The same is also discussed in paragraph No.76 of ***Subramanya***'s case referred supra as to '*how much of information received from accused may be proved*', wherein also, it is very clear that '*when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved*'.

27. Having considered the principles laid down in the ***Subramanya's case,*** it is clear that Section 27 of the Evidence Act does not contemplate anything about the nature of information. But in the case on hand, it has to be noted that the said fact is not discovered as the same is not within the exclusive knowledge of the accused, but it was already within

the knowledge of PW.17 since the accused himself had been to the shop of PW.17 and pledged the articles with PW.17, there is no question of any unearthing at the instance of the accused, as it was already handed over and pledged in the shop of PW17 and hence strict compliance of recovery as contemplated under Section 27 of the Evidence Act does not arise. The fact was already within the knowledge of PW.17 that the accused had pledged the ornaments belonging to the deceased. When such being the case, it is very clear that it is a trite law that the same is not discovery as held in paragraph 31 of the judgment of the Apex Court reported in **(2025) 3 SCC 314** in the case of **RAJA KHAN vs STATE OF CHHATTISGARH** wherein it is held that it is now well settled that recovery of an object is not discovery of fact envisaged in the section. The Apex Court also in the three Judges judgment reported in **(2017) 2 SCC (Cri) 673** in the case of **MUKESH AND ANOTHER vs STATE (NCT OF DELHI) AND OTHERS** held that requirement of independent witness not necessary. In paragraph 449, it is held that witness deposed in her cross-examination that no independent person had agreed to become a witness and in the light of such a statement, there is no reason for the Courts to

doubt the version of the police and the recoveries made. But in the case on hand, recoveries are made at the instance of the accused and witnesses have also spoken and same is only for as a rule of caution evolved by the judiciary that while making recoveries pursuant to the disclosure statement of the accused, which aims at protecting the right of the accused by ensuring transparency and credibility in the investigation of a criminal case. The Apex Court also in the very same judgment in paragraph 450 held that when recovery is made pursuant to the statement of the accused, seizure memo prepared by the investigating officer need not mandatorily be attested by independent witnesses. In **STATE (GOVT. OF NCT OF DELHI) vs SUNIL** reported in **(2001) 1 SCC 652** it was held that non-attestation of seizure memo by independent witnesses cannot be a ground to disbelieve recovery of articles list consequent upon the statement of the accused. It is further held that there was no requirement, either under Section 27 of the Evidence Act or under Section 161 of Cr.P.C. to obtain signature of independent witnesses. If the version of the police is not shown to be unreliable, there is no reason to doubt the version of the police regarding arrest and contents of the seizure memos.

The Apex Court also discussed the landmark case of **PULUKURI KOTAYYA vs KING EMPEROR** reported in **1946 SCC ONLINE PC 47.** The Privy Council has laid down the relevance of information received from the accused for the purpose of Section 27 of the Evidence Act. Section 27 seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The same also reiterated in the judgment of the Apex Court reported in **(2002) 11 SCC 600** in the case of **STATE (NCT OF DELHI) vs NAVJOT SANDHU.** The recovery of articles at the instance of the accused is a strong incriminating evidence against the accused, especially when no plausible explanation is forthcoming from the accused. Hence, the contention that the principles held in the judgment of **SUBRAMANYA**'s case comes to the aid of the accused cannot be accepted. When the accused makes the voluntary statement before the police, it is already within the knowledge of the

Investigating Officer as to the golden ornaments are already pledged in the shop of PW.17 and the same doesn't amount to discovery as contemplated under Section 27 of the Evidence Act and since the Investigating Officer comes to the knowledge of the same that the gold ornaments are already pledged to PW.17, the very principle laid down will not come to the aid of the appellant as there is no discovery within the meaning of Section 27 of Evidence Act recovery is distinct from discovery.

Death of deceased in the house of the accused

28. Now coming to the other circumstance of the death of deceased in the house of the accused, it is not in dispute that the body of deceased Rathnamma was recovered in the house of the accused and it is the defence of the accused that he was not in the said house on that day and he does not dispute the fact that the said house in which the deceased died belongs to him and the ownership is also in his name. It is to be noted that when the incident has taken place in the house of the accused and the fact that the deceased had deserted the house of the accused long back and since then, the accused was residing in the said house and the deceased was residing in the

house of her brother PW.1, the deceased was found dead in the house of the accused. This fact is not disputed by the accused and the spot mahazar, hand sketch and inquest further corroborates the same that the body was found in the house of the accused and there is no explanation on the part of the accused with regard to the death of deceased which had occurred in his house. When the death has occurred in the house of the accused, considering the post mortem report of the Doctor, which is marked as Ex.P17 and the time since death is also mentioned as 12 to 18 hours, and post mortem being conducted at 03.45. p.m. on the next day i.e., on 11.04.2013, which means it goes back to the midnight of the previous night as contended by the prosecution i.e., intervening night of 10/11.04.2013 and when the house belongs to the accused, no chances of third person entering his house, no explanation is offered by the accused under Section 106 of the Evidence Act. Having taken note of time since death as well as death having taken place in the house of the accused and as deceased was also not residing with the accused in the said house and in view of the fact that PW.2 stating on the particular date, accused only took the deceased along with him and when both of them

were living in the very same house on the relevant night, no explanation is offered by accused under 313 Cr.P.C.. Statement.

Plea of Alibi

29. The accused also taken the defence of *alibi* that someone else has committed the murder of deceased, may be, by the robbers. In the evidence of PW.1, PW.2 and PW.21, the accused has introduced the plea of alibi while cross examining these witnesses that some third person might have committed the murder of deceased for committing the robbery. Even when examined under Section 313 Cr.P.C to the question No.27, the accused has stated that on the fateful day, he was in Hebbala of K.R. Nagara. He has failed to substantiate the plea of *alibi* introduced by him and when question was put to him, he did not give any answer that on particular date, he was in particular house and as to where he stayed on the date of the incident. The evidence of PW.2 with regard to the plea of alibi is very clear that that accused accompanied the deceased and boarded the bus together and there was no any explanation particularly in respect of possession of MO Nos.1 and 2 and the

same also falsifies the plea of *alibi*. It is trite law that when the accused takes the defence of *alibi*, burden is on him to prove that he was not in the place of incident and the same is also not proved by placing any material before the court and unless any cogent evidence is placed before the court and when the plea of alibi is taken, ought to have proved the same by placing cogent material on record and the same has not been placed before the Court. Having considered the material available on record and also the principles laid down in the judgments of the Apex Court in the case of **SHARAD BIRDICHAND SARDA vs STATE OF MAHARASHTRA** reported in **(1984) 4 SCC 116**, with regard to the circumstantial evidence and also in the case of **RAJA NAYKAR vs STATE OF CHATTISGARGH** reported in **(2024) 3 SCC 481** and also the judgment of ***Subramanya's*** case which is quoted by the counsel appearing for the appellant, the Hon'ble Apex Court once again reiterated regarding circumstantial evidence and the conditions that are to be fulfilled by the prosecution. The very panchasheel principles of proving of the circumstantial evidence is reiterated and hence it is very clear that there must be a chain of evidence so complete as not to leave any reasonable ground for the

conclusion, consistent with the innocence of the accused, and must show that, in all human probability, the act must have been done by the accused. Having considered the five golden principles, which constitute the panchasheel of the proof of a case based on circumstantial evidence and considering the factual aspects of the case on hand, with regard to the motive, last seen theory, conduct, recovery and also the relationship between the accused and deceased being strained and also the plea of alibi which is not substantiated, the golden principles of panchasheel is completed. The judgment of the Hon'ble Apex Court in the case of **State of Himachal Pradesh vs. Jeet Singh** reported in **(1999) 4 SCC 370,** wherein also discussion was made with regard to the homicidal death and medical evidence, wherein in the said case, death was caused by smothering and injuries were found on both legs of the deceased indicating homicidal smothering, held in the circumstances, death was homicidal and not suicidal and circumstantial evidence last seen together and conduct of the accused and other circumstances including medical jurisprudence and asphyxia was discussed in this judgment. Hence, in the case on hand also, it is clear that it is a case of

homicidal death and injuries were also found on the neck of the deceased and death was due to asphyxia as a result of throttling and apart from that circumstantial evidence of last seen together and conduct of the accused, which discloses that the accused escaped from the spot and he was arrested on 12.01.2013 and he has not given any complaint also when his wife was murdered. The judgment referred above is also very clear with regard to Section 27 of the Evidence Act is concerned, wherein recovery of crime articles from a place which is open and accessible to others and evidence of recovery is not vitiated and test is not whether the place was accessible to others, but whether it was ordinarily visible to others and that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered, but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it and having considered the principles laid down in the judgment also and also in the light of the discussion made in ***Subramanya***'s case, this Court already has taken note of the fact that the relevant fact was within the knowledge of the Investigating Officer as well as within the knowledge of PW.17 that gold ornaments were pledged by

accused and hence Section 27 of the Evidence Act will not come to the aid of the prosecution.

30. In the judgment reported in **(2003) 12 SCC 199** in the case of **PRAVEEN KUMAR vs STATE OF KARNATAKA**, a case of circumstantial evidence is discussed with regard to robbery and murder particularly when gold ornaments are in constructive possession of ornaments belonging to the deceased immediately after the murder, when no explanation by accused in respect thereof, in such circumstances held that inference could be drawn that the accused must have robbed those jewelries from the victims and in that process committed the murder. In the case on hand, the recovery was made at the instance of the accused at the police station i.e., Mangalya Chain which was in his pocket and also the other item of golden articles which were pledged with PW17 and receipts are also produced as per Ex.P21 and P22. When gold ornaments are in the constructive possession of ornaments belonging to the deceased and within two days, he was apprehended and his voluntary statement was also recorded, there is no explanation by the accused in respect thereof of pleading the same with

PW17. When such being the case, this judgment is aptly applicable to the facts of the case on hand.

31. Having reassessed both oral and documentary evidence available on record particularly, the evidences of PW1, PW2, PW3, PW5 and also PW13, it discloses that they all speak about the harassment meted out by the accused to the deceased. The documentary evidence at Ex.P1 and P2 disclose that the deceased has filed the case against the accused even prior to filing of Ex.P2 clearly discloses that complaint was given on 03.06.2010 as per Ex.P1 and immediately after lodging the complaint, she left the accused and staying in the house of PW1. Apart from that the evidence of PW2 is very clear about last seen theory is concerned since there was a recovery at the instance of the accused by drawing the mahazar and the pledged articles were also recovered from the shop of PW17. The medical evidence available on record discloses that it is a case of the throttling. Even the son of the deceased also speaks against the accused stating that the accused and deceased are his parents and he also stated with regard to the ill-treatment given to his mother by the accused.

Having considered the plea of alibi, strange relationship and also the motive for committing the murder, the Trial Court considered the evidence available on record and all the heads are discussed in detail and comes to the conclusion that accused only committed the murder. Hence, we do not find any error on the part of the Trial Court in appreciating both oral and documentary evidence available on record.

32. The records disclose that there was no any explanation on the part of the accused. When the death was occurred in the house of accused, he is bound to explain the same. The very argument of the counsel appearing for the appellant that the prosecution has not proved the case, hence, question of giving any explanation does not arise and the same cannot be accepted even considering Section 106 of the Evidence Act. No doubt, there is a burden on the prosecution under Section 101 of Evidence Act and the prosecution established chain link of each circumstances against the accused. When the chain link is established, it is the bounden duty of the accused to explain the same, but accused has failed to do the same. Hence, we do not find any ground to come to

other conclusion that accused has not committed the murder. Thus, no grounds are made out to allow the appeal setting aside the judgment of conviction and sentence of the Trial Court. Hence, we answer the above point accordingly.

33. In view of the discussions made above, we pass the following:

ORDER

The criminal Appeal is dismissed.

Accused is directed to surrender before the Trial Court within two weeks from today. If he fails to surrender before the Trial Court within two weeks, the Trial Court is directed to issue conviction warrant against him and subject him for sentence securing him.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

RHS,MN,SN