



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1270 OF 2024 (C)

BETWEEN:

ARUN KUMAR M.
S/O. MURUGAN
AGED ABOUT 35 YEARS
NO.37/1, LAKSHMI NIVASA
2ND CROSS, I.T.I LAYOUT
VIJANAPURA
BENGALURU-560 016.

...APPELLANT

(BY SRI C.H. HANUMANTHARAYA, ADVOCATE)

AND:

STATE BY BAGALURU P.S.
REPRESENTED BY S.P.P.
HIGH COURT OF KARNATAKA
BENGALURU-560 001.

...RESPONDENT

(BY SMT. SOWMYA R., H.C.G.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO ACQUIT THE APPELLANT OF THE CHARGE UNDER SECTIONS 498A, 302 AND 201 OF IPC BY SETTING ASIDE THE JUDGMENT OF CONVICTION DATED 14-3-2024 AND ORDER OF SENTENCE DATED 16-3-2024 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL, DEVANAHALLI, ON THE FILE OF S.C.NO.15033/2015.



THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 26-11-2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T.)

Challenging the order of his conviction and sentence, accused No.1 in S.C. No.15033/2015 on the file of the V Additional District and Sessions Judge, Bengaluru Rural, Sitting at Devanahalli, has preferred this appeal.

2. The appellant was prosecuted in S.C. No.15033/2015 for the charges for the offences punishable under Sections 498A, 120B, 109, 302 and 201 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') on the basis of the charge-sheet filed by Bagaluru Police in Crime No.213/2014 of their Police Station.

3. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court. The appellant was accused No.1 in SC No.15033/2015. Pending the case, accused Nos.3 and 4 died. Hence, case



against them stood abated. As accused No.7 was absconding, case against him was split up. Accused Nos.2, 5, 6 and 8 to 10 have been acquitted of the charges leveled against them.

4. The case of the prosecution is as follows:-

The first informant/Sri Muniswamigowda (PW1) lodged complaint as per Ex.P1 before the respondent-Bagaluru Police on 30-12-2014, alleging that, when he had been to his land on that day at 10.30 a.m., he found dead body of woman near the compound and security room of the said land with visible crushed injuries on her face, head, the chest bones were visible, since she sustained deep injuries on her head, chest etc., body was not identifiable. Her left toe was cut. Hence, a case was registered by PW25-Sri Jayaram R., Bagalur Police Inspector, in Crime No.213/2014 for the offences punishable under Sections 302 and 201 IPC vide Ex.P32-F.I.R and took up investigation. During the course of investigation, PW25 visited the scene of occurrence, drew spot mahazar vide Ex.P2, recovered incriminating articles vide MOs.1 to 5, conducted inquest panchanama on the dead body of victim vide Ex.P20, sent dead body of the victim to B.R. Ambedkar Hospital for



postmortem examination, where PW15-Dr.B.M.Nagaraj conducted postmortem examination on the dead body and issued his report vide Ex.P27. Investigating Officer recorded statement of witnesses. During the course of investigation, on 02.01.2015, the Investigating Officer arrested accused No.1, recorded his voluntary statement, and pursuant to his voluntary statement, other accused persons were also arrested. As per their voluntary statements, accused No.1-Arun Kumar fell in love with victim-Ramya and married her in the month of November-2013. Later, he developed illicit relationship with accused No.8-Asha P. Hence, he subjected Ramya to cruelty both physical and mental. Thereafter, accused No.8 with intent to marry him instigated accused No.1 to torture the victim. All the accused hatched criminal conspiracy to commit the murder of Ramya. Hence, on 29.12.2014, accused No.1 along with other accused took the victim in an auto rickshaw from Kappa Coffee Day situated at Kasthuri Nagar, Bengaluru, to the land of CW8 - Riyaz Ahamad, which was cultivated by PW1, situated at Kadusonnappanahalli, Bagaluru Police Station limit and at 7 p.m., accused No.1 along with accused Nos.2 to 6 in order to commit the murder of the victim, accused Nos.4 and 5 gripped



her from hind side, accused Nos.1 and 2 stabbed on her neck with knives and committed her murder. Then accused Nos.1 to 5 holding her by her tuft, hands and legs shifted her to the place between compound and watchman shed, on confirming that she is dead, accused using the same knives peeled off her skin from scalp upto chest, cut her right forearm and left foot to cause disappearance of evidence and identification of dead body. Then they carried the peeled skin of the victim in a bag. Investigating Officer recorded statements of all witnesses and after completion of investigation, he filed the charge sheet against all the accused persons for the aforesaid offences.

5. Motive behind the alleged crime is that, accused No.1 came into contact with the victim, they fell in love. Victim was also an employee of another private sector. Accused No.1 proposed to marry her, roamed with her, found condoms and money in her vanity bag, suspected about her character, refused to marry her, and he asked her to abort the child when she forced him to marry, tried to avoid her, but later married her when she threatened to lodge a complaint to the concerned Police. Their relationship was cordial for 3-4 months. Thereafter, the victim used to leave the house and return late



night. Again he found condom and money in her vanity bag and her contact with others through her phone. In the month of February-2014, accused No.1 sent the victim back to her parents' house. In the meanwhile, he fell in love with accused No.8 and proposed to marry her. He and accused No.8 used to chat through Facebook. He decided to give divorce to the victim and marry accused No.8. Victim forwarded messages to the friends of accused No.8-Asha stating that, accused No.8 is available to all. Therefore, accused No.8 decided to teach a lesson to the victim. Accused No.1 got Facebook account of PW10-Jaison. At that time, accused Nos.1 and 8 came to know about the posts that accused No.8 is available to all, hence, they hatched a plan to eliminate the victim. Accordingly, on 15.06.2014, accused No.1 invited the victim and her family members to discuss about his marital life. Altercations took place and a complaint was lodged against him in Crime No.327/2014. On 24.11.2014, two unknown persons pelted stones and caused injuries to the mother of accused No.1. A complaint was lodged against the victim and others. However, the victim continued to contact accused No.1 over phone and



threaten him. Therefore, accused No.1 along with accused No.8 decided to commit murder of the victim.

6. One month prior to the incident, accused No.1 met accused Nos.2 to 5 and assured to pay Rs.50,000/- and asked them to help him to commit the murder of the victim. He also requested accused No.6, the Auto driver, to assist him assuring him to buy a new auto rickshaw for him.

7. On 29.12.2014, on the eve of birthday of accused No.1, he called the victim to Kappa Coffee day. On the same day, at 3.30 p.m., the victim informed him about her presence near Kappa Coffee Day at Kasthuri Nagara, Bengaluru. Accused No.1 went there in the auto rickshaw of accused No.6 concealing a knife in a bag, went inside and invited her to Bhagini Bar and Restaurant for party and took her in the auto rickshaw. PW11 to PW14 joined him in the said place, he sent his friends and the victim inside the Bar, called accused Nos.2 to 5 and asked accused No.6 to drop them at a scheduled place to commit murder of the victim. Accordingly, accused No.6 dropped them and returned. Accused No.1 took the victim in the said auto rickshaw to the place, where accused No.6 had



dropped accused Nos.2 to 5 after 6.45 p.m. They committed her murder. Accused No.1 also peeled off the skin of the victim from head and chest etc., cut her left leg, palm, foot and right hand, and also caused disappearance of evidence.

8. The incident has taken place on 29.12.2014 just one year after the marriage. On 30.12.2014 at 10.30 a.m., PW1 the cultivator of land, saw the dead body and informed the Police at 11.30 a.m., and lodged the complaint as per Ex.P1 for having seen an unknown dead body of a lady with multiple injuries. Thereafter, the Bagaluru Police registered the case in Crime No.213/2014 (at Ex.P32) and investigated the matter and filed the charge sheet.

9. Trial Court on hearing the parties, framed charges against the accused for the offences punishable under Sections 498A, 109, 120B, 302 and 201 read with Section 149 IPC. As the accused claimed to be tried, trial was conducted. In support of the case of the prosecution, PW1 to PW35 were examined, Ex.P1 to Ex.P65 and MO1 to MO21 were marked. The examination of accused persons under Section 313 Cr.P.C. was conducted by the trial Court and the case of the accused



persons were of total denial. Accused persons have not led any defence evidence.

10. Trial Court on hearing the parties, by the impugned judgment and order, has convicted accused No.1 for the offences punishable under Sections 302, 498A and 201 IPC. Further, trial Court has sentenced accused No.1 to rigorous imprisonment for life and fine of Rs.50,000/- for the offence under Section 302 IPC, rigorous imprisonment for five years and fine of Rs.20,000/- for the offence under Section 201 IPC and rigorous imprisonment for a term of two years and pay fine of Rs.5,000/- for the offence punishable under Section 498A IPC with default sentences.

11. Trial Court has held that though the case was based on circumstantial evidence, prosecution has established the circumstance that accused No.1 and the victim were last seen together, death of the victim was homicidal one, there was strong motive behind the commission of murder and the witnesses viz., PWs.3, 7, 8 and 9 have clearly stated about the incident. The official witnesses have also stated in favour of the prosecution. Said judgment and order of conviction and



sentence are challenged by accused No.1 in the above appeal.

**Submissions of Sri C.H. Hanumantharayappa,
learned counsel appearing on behalf of the appellant:**

12. (i) There are no direct witnesses to the crime. The case was based solely on circumstantial evidence. The circumstances set up by the prosecution were not established by cogent and consistent evidence. There was no evidence to show that the accused and the victim were seen together soon before her death. The reasons assigned by the trial Court are contrary to law and facts, hence, the same is not sustainable in the eye of law.

(ii) Impugned judgment is based on surmises and conjectures and element of presumption has crept in for the conviction of the appellant/accused No.1. As such, the same is liable to be reversed and the trial Court on the basis of the complaint presumed the other facts and said fact cannot be used against accused No.1.

(iii) The trial Court framed additional charge with regard to Section 498A IPC, in fact, there was no allegation of harassment in the complaint as the victim had left the company



of accused No.1 long back and she was not living with accused No.1 from the month of February 2014 till 30.12.2014. Further, the alleged incident has not taken place within the closed doors or at the residence of accused No.1. Trial Court relied on the statement of PW2, who is a hearsay witness. His testimony is not admissible in evidence. Further, trial Court framed additional charge in the absence of any specific allegation of harassment by accused No.1 to the victim soon before her death and the fact that, the trial Court framed charge without there being any opportunity to cross-examine the witness, even no specific date, time and place were mentioned in the charge. Hence, the additional charge as framed by the trial Court is contrary to Section 212 Cr.P.C.

(iv) Evidence of PW2 discloses that since the beginning of marriage of the victim and accused No.1, PW2-mother of the victim was not happy with the marriage of accused No.1 and the victim and as such, they approached the Police and harassed the appellant by lodging the complaint. It shows that the parents of the victim were always interested to send the appellant to the prison. On 29.12.2014, they lodged the



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complaint for kidnapping of the victim based on the statement of one Shankar, but said Shankar has not been examined as witness. Hence, the evidence of PW2 requires corroboration of other material witnesses. Though there is no allegation of ingredients of Section 498A IPC, trial Court convicted the appellant based on uncorroborated testimony. Trial Court ignored the fact that the names of PWs.3, 7 and 9 did not find place in the complaint. Investigating Officer has not examined said Shankar and Vinay who were suspected initially. Testimony of PWs.3, 7 and 9 do not inspire the confidence of the Court to connect that they were last seen witnesses. In fact, PW3 has not fully supported the case of the prosecution. Prosecution has failed to establish the aspect of motive and that the death of the victim was homicidal one. None of the witnesses have identified the dead body of the victim, except PW2, the mother of the victim, who identified a tattoo mark, which is not sufficient one. Investigation Officer ought to have got conducted DNA test. Prior to the incident, victim was allegedly assaulted by accused No.1. If such is the case, it goes hard to accept that the victim accompanies accused No.1. Further,



PWs.10 to 14, 29 to 32 and 34 turned hostile to the case of the prosecution and PWs.15 to 26, 28 and 33 are official witnesses.

(v) Prosecution has failed to prove the allegations beyond reasonable doubt, though there is uncorroborated testimony of the prosecution witnesses, the trial Court convicted the appellant based on circumstantial evidence, hence, Trial Court's judgment is liable to be reversed. In support of his submissions, he relied upon the following decisions:-

1. ***Vikramjit Singh @ Vicky v/s State of Punjab*** reported in **2006 (12) SCC 306.**
2. ***Ram Gulam Chaudhary and Others v. State of Bihar*** reported in **(2001) 8 SCC 311.**
3. ***Mohammed Sameer Khan v. State Represented by Inspector of Police*** reported in **2025 SCC Online SC 2298;**
4. ***Ram Singh V. State of Uttar Pradesh*** reported in **(2024) 4 SCC 208;**
5. ***Sovaran Singh Prajapati v. State of Uttar Pradesh*** reported in **2025 SCC Online SC 351.**



Submissions of Smt. Sowmya R., learned High Court Government Pleader:

13. The case was based on circumstantial evidence. The circumstance that accused No.1 and the victim were last seen together and in this regard, PWs.3 and 7 to 9 have clearly stated that they saw accused No.1 and the victim together prior to the death of the victim in Kappa Coffee Day. Prosecution has been able to prove the homicidal death of the victim. Prosecution also proved the ingredients of Section 498A IPC by examining the mother-PW2 and other material witnesses. There is cogent evidence to show that accused No.1 married victim-Ramya and thereafter, he developed relationship with accused No.8 and since the victim posted certain derogatory and defamatory statement in the Facebook of accused No.1 stating that accused No.8 is always available for public, thereby, she disclosed the mobile number and personal information of accused No.8 in public platform, thus, accused Nos.1, 8 and other accused persons made criminal conspiracy to eliminate the victim, accordingly, on the birthday of accused No.1, he called the victim to Kappa Coffee Day and



from there, they went to the scene of offence, where other accused joined accused No.1 and they committed the murder of the victim. All the material and official witnesses have supported the case of the prosecution. The trial Court, on proper appreciation of evidence and applicable law, has rightly convicted and sentenced the appellant/accused No.1. Therefore, the judgment and order of conviction and sentence does not warrant interference of this Court.

14. Considering the submissions of both sides and examining the material on record, the point that arises for determination of this Court is:

Whether the impugned judgment and order of conviction and sentence is sustainable?

Analysis

15. The relationship between the victim and accused No.1 was not disputed. As rightly pointed out by the learned counsel for accused No.1, there was no eyewitness to the incident. The case was based on circumstantial evidence. The circumstances relied on by the prosecution are as follows:



- i. Death was homicidal one;
- ii. Motive;
- iii. Accused No.1 and the victim were last seen together and soon after that, the victim was found dead with homicidal injuries;
- iv. Recovery of blood stained knife-MO12;
- v. Evidence of the official witnesses; and
- vi. Section 106 of the Indian Evidence Act, 1872.

Reg. Nature of death of the victim (homicidal death):

16. To prove that the death of the victim was homicidal one, the prosecution relied on the evidence of PW1, the first informant, who saw the dead body of the victim in his land at the first instance. He has stated that he saw the dead body of female near watchman room and saw visible injuries on face, head, her skin had peeled off from chest to head and body was not identifiable. To corroborate the testimony of PW1, the mother of the victim was examined as PW2, who has stated that she saw the dead body of her daughter at Mortuary of Ambedkar Hospital, and found that the victim's left foot and right hand were missing. PW2 saw sharp injury on the neck of



the victim. PW5-Munegowda, the witness to spot mahazar-Ex.P2, has stated that he saw the visible injuries on the dead body of the victim, thus, he corroborated the testimony of PWs.1 and 2 with regard to visible injuries found on the dead body of the victim.

17. Further, the prosecution relied upon the medical evidence. PW15-Dr. B.M. Nagaraj, conducted Post-mortem examination on the dead body of the victim and issued his report as per Ex.P27. As per the evidence of PW15 and Ex.P27, the victim had suffered the following injuries:-

External injuries:-

1. The skin peeling i.e., skinning out present extending from top of the scalp, front of the neck, both the shoulders and extending upto upper part of both the chest regions.
2. Cut-throat injury present over front of either side of neck, above the thyroid cartilage, measuring 12 cm x 2.5 cm x cervical vertebra depth.
3. 4 cm below injury No.2, another cut-throat injury was present over front of either side of neck below the thyroid cartilage measuring 14 cm x 2.5 cm x cervical vertebra depth.
4. Right hand missing i.e., amputated.



5. Left foot missing i.e., amputated.

Ex.P27 and the evidence of PW15 finding regarding internal injuries and cause of death are as follows:

(i) On further dissection of injury No.2, it is observed that the weapon has cut the underlying blood vessels, nerves, ribbon muscles in front of the neck, trachea, oesophagus and has made a nick over the second cervical vertebra. Blood extravasated at the fracture site. The severed muscle ends show clean cut margins, vital reaction and extravasation of the blood. Few ribbon muscles in the sides of the neck were contused. Upper part of the thyroid cartilage is contused.

(ii) On further dissection of injury No.3, it is observed that the weapon has cut the underlying blood vessels, nerves, ribbon muscles in front of the neck, trachea, oesophagus and has made a nick over the sixth cervical vertebra. Blood extravasated at the fracture site. Lower part of the thyroid cartilage is contused. Few ribbon muscles in the sides of neck were contused. The severed muscle ends show clean cut margins, vital reaction and extravasation of the blood.

(iii) Injury Nos.2 and 3 are antemortem in nature, fresh and homicidal in nature, and could be caused by light sharp cutting weapon like knife.

(iv) Injury Nos.1, 4 and 5 are postmortem in nature and could be caused by light sharp cutting weapon like knife. The underneath skin of injury Nos.1, 4 and 5 is pale, devoid of any circulation and shows no vital reaction.



(v) Time since death could not be ascertained precisely as body preserved in cold storage.

(vi) Blood collected, packed, labeled, sealed and handed over to the concerned police along with the sample seal.

(vii) Death was due to shock and haemorrhage as a result of homicidal cut throat injuries sustained.

18. PW15 further deposed that on the requisition of the Investigating Officer, he examined three knives-MOs.12 to 14 and opined that external injuries Nos.1 to 3 and the corresponding internal injuries could be caused by MOs.13 and 14. The external injury Nos.4 and 5 found on the dead body of the victim could be caused by MO12. In the cross-examination, nothing has been elicited to discredit his testimony regarding homicidal death. Even in the evidence of other witnesses, no other probable theory of death was elicited. Therefore, the trial Court was justified in holding that death was homicidal.

Reg. Motive:

19. According to the prosecution, accused No.1 though married to victim Ramya, had developed illicit relationship with accused No.8, accused Nos.1 and 8 intended to marry, their relationship was objected by the victim and she had made



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some offensive Facebook postings against accused No.8, therefore, accused Nos.1 and 8 with the aid of other accused committed her murder.

20. PW2/the mother of the victim testified that accused No.1 had physical relationship with the victim, when she became pregnant, he retracted and she attempted to commit suicide. On filing complaint to the Police, he married her. She further deposed about the accused subjecting the victim to physical and mental cruelty, regarding they filing complaint before the Police and conciliation efforts and accused assaulting the victim and her father during conciliation sessions, etc. Though the accused denied the theory of extramarital relationship of accused Nos.1 and 8, they themselves suggested to the prosecution witnesses, more particularly, PW2 on the complaint of mother of accused No.1, F.I.R. as per Ex.P47 was registered against the victim, PW2 and her husband. Ex.P47 shows that mother of accused No.1 had filed the complaint alleging that on 24.11.2014, two boys assaulted her at the instigation of the victim, PW2 and her husband and on such complaint, case was registered by them for the offences under Sections 341 and 324 read with Section 34 IPC.



Accused claim that there were bickering between accused No.1 and Ramya and she had left the matrimonial home and filed several complaints against accused No.1 and his people. Further, mother of accused No.1 filing complaint against Ramya and her parents, accused are falsely implicated in the case. Since both claim ill-will against each other, motive circumstance is proved. However, motive is a double edged weapon which may lead to false implication or commission of crime by one rival party against the other rival party. Therefore, motive is only a corroborative piece of evidence. Unless other circumstances are proved, only based on motive circumstance, conviction cannot be placed.

Reg. Last seen circumstance:

21. According to the prosecution, accused No.1 committed murder of the victim in the land of PW1 on 29.12.2014 by assaulting her with MOs.12 to 14-knives. It is further case of the prosecution that PWs.3 and 7 to 9 saw accused No.1 and the victim in Kappa Coffee Day and on the following day, the victim was found dead.



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22. In order to establish this aspect, PW3-Obbalapati, a co-worker of the father of the victim, stated that, on 29.12.2014 at 3:30 p.m., he saw the victim and accused No.1 near Kappa Coffee Day of Kasthuri Nagara. They were sitting in the auto rickshaw and on the following day, he came to know about missing of the victim through CW3-father of the victim. Thus, he informed CW3 having seen accused No.1 and the victim near Kappa Coffee Day on the previous day. In the cross-examination, he admits that he saw victim-Ramya during her marriage at first instance. He further admits that CW3 is his friend. The alleged incident occurred on 29.12.2014. However, he gave statement before the Police on 19.3.2015 stating that he saw accused No.1 and the victim at Kappa Coffee Day. He further stated that, apart from accused No.1 and the victim, another person was sitting in the auto rickshaw.

23. In order to corroborate the oral testimony of PW3, the prosecution got examined PW7-Karthik, who has stated that on 29.12.2014, he saw the victim at Kappa Coffee Day, at that time, accused No.1 and others (except accused No.8) were present there. In the cross-examination, he admitted that he saw accused No.1 and other accused persons between



2:30 p.m. and 3:00 p.m. at Kappa Coffee Day and when they were coming out from the said shop, at that time, the victim was in their company. In the chief-examination, he has stated that on 25.12.2014, himself and CW14-Vinay had been to the house of the victim-Ramya on the eve of Christmas, but in the cross-examination, he admits the suggestion that he did not visit the victim's house. He further admitted that on other occasions, he has visited the house of the victim. He came to know about the victim and her close associates through CW14 and he came to know about the accused through CW14. He further admits that the Police enquired him after three months of the incident.

24. PW8-Manjunatha, an employee of Kappa Coffee Day, has stated that, accused No.1 came to Kappa Coffee Day on 29.12.2014 at 3:30 p.m. and the victim was there in between 1.00 p.m. and 5 p.m. The victim asked PW8 that she would pay the bill later and accordingly, she left the Coffee Day. Accused No.1 took the victim in the auto rickshaw. The victim left her mobile phone in Kappa Coffee Day itself. Later, he came to know that the victim was murdered.



25. PW9-Hanumantharaju, another last seen witness, has stated that during the month of December-2014, one day himself and CW16-Gurubasavaraj had been to tea stall at Solakoppanahalli, at that time, one auto rickshaw came there, a boy and a girl were there and four boys were standing little away from them. After a month, he came to know through a Newspaper, a lady came in auto rickshaw was murdered and those four persons were standing at that time, they were in the custody of Bengaluru Police and they are accused Nos.1, 2, 4 and 6. In the cross-examination, he admits that he has not stated to the Police as to how the auto rickshaw came to the scene of occurrence, he does not know the registration number of the auto rickshaw, the clothes worn by the accused at that time, the appearance of the accused in the auto rickshaw, and the place where PW9 standing. He further admits that, when he visited the Police Station, the Police showed the photograph of the victim and told that said girl was murdered.

26. Insofar as other last seen witnesses are concerned, PWs.10 to 14 have turned hostile to the case of the prosecution. The perusal of oral testimony of PW3, it appears that, he informed the victim's father-CW3 about the victim's



last seen circumstance, after which, himself, father of the victim and PW2-mother of the victim went to the Police Station, where PW2 states that she went to the Police Station after receipt of information of death of the victim and the victim's last seen circumstance from CWs.7 and 14, which contradicted the testimony of PW3. The Investigating Officer has recorded statements of PWs.3 and 7 to 9 after three months of the incident and this delay of three months in recording the statements of these material witnesses is not explained. The fact that PW2 in her complaint (for kidnapping) has stated that, CW7 informed her that, CW14 had informed CW7 of unknown persons having abducted the victim, however, in her evidence before the Court, she has stated CW7 informed her that accused Nos.1, 7, 9 and 10 and others have adducted the victim. This amounts to crucial improvement.

27. PW7 has stated that he first met the victim only on 25.12.2014. However, in the cross-examination, he states that he never went to the house of the victim on the said date, but he had gone on an earlier occasion, which he cannot recall. Thus, the evidence of this witness is not reliable, as his statement was recorded after two months of the incident.



28. Insofar as PW8 is concerned, though he was recalled, he was never tendered for cross-examination during trial. Hence, his evidence has to be eschewed.

29. Now, only the evidence of PW9 is available. PW9/the alleged last seen witness was a stranger to accused No.1. He admitted in his evidence having identified accused No.1 in the Police Station. In fact, there was no test identification parade held in this case. The precise evidence of PW9 is that, accused Nos.1, 2, 4 and 6 were standing on the road, near condiments of Solakoppanahalli Village, where he was standing to have a cup of tea, but his evidence is not clear and clinching about the persons inside and outside of auto rickshaw. Furthermore, PW3 stated about the last seen circumstance at 3.30 p.m., PW7 stated that it was between 2.30 and 3.00 p.m. and whereas, PW8 stated that it was at 5.00 p.m. Under the said circumstances, the trial Court was not justified in relying on the evidence of PWs.3, 7, 8 and 9 to hold that last seen circumstance theory was proved.

**Reg: Recovery of bloodstained knife-MO12:**

30. According to the prosecution, accused No.1 committed murder of the victim-Ramya and during the course of investigation, accused No.1 gave his voluntary statement before PW28-Investigating Officer and pursuant to the voluntary statement, the Investigating Officer recovered Knife-MO12 and Mobile phone-MO19 under Ex.P55-seizure panchanama and burnt vanity bag of the victim-MO16 and clothes of accused No.1 under Ex.P54-seizure panchanama. PW28 has stated that soon after arrest of accused No.1, he confessed before him and pursuant to his voluntary statement, he recovered MO16-burnt vanity bag of the victim under Ex.P54 and he also seized steel knife-MO12 and Sony Xperia mobile phone-MO19 under Ex.P55. In order to corroborate the oral testimony of the Investigating Officer, the prosecution has not examined CWs.28, 30 and 31. Though the prosecution has examined CW29 as PW32, but he has turned hostile to the case of the prosecution.

31. Such evidence of PW28 and PW32 coupled with the above circumstances create doubt about the recovery of



MOs.12, 16 and 19 in the manner stated by the prosecution. The other circumstances regarding recovery of other articles from accused Nos.2, 5, 6 and 8 to 10 are concerned, they have been acquitted of the charges (Accused Nos.3 and 4 are dead, and accused No.7 is absconding). Hence, no much importance has been given to recovery of other articles from them. Under the aforesaid circumstance, the trial Court was not justified in holding that the circumstance of recovery of MOs.12, 16 and 19 at the instance of accused No.1 was proved.

Reg: Evidence of the official witnesses:

32. It may not be a proper judicial approach to distrust and suspect the evidence of the official witnesses, without good grounds. In the instant case, PWs.10 to 14, 27, 29 to 32 and 34 are independent witnesses and they have turned hostile to the case of the prosecution. PWs.15 to 26, 28 and 33 are the official witnesses and they have supported the case of the prosecution. The official witnesses, i.e., Police, public servant hold significant evidentiary value, but their testimonies are not automatically superior; the Court weighs it based on quality, corroboration, consistency, and absence of bias, focusing



on credibility over mere number, often requiring independent proof, especially for crucial facts, as their roles can introduce potential bias or official duties, demanding scrutiny for truthfulness. Hence, without the corroboration of the independent witnesses, recovery of MOs.12, 16 and 19 cannot be said to be proved.

Reg: Identity of dead body:

33. In the case on hand, the incident occurred on 29.12.2014 and the dead body was found on 30.12.2014 as that of the victim-Ramya. At first instance, PW1 saw the dead body of the victim, who informed PW25-Inspector, Bagaluru Police Station, about the dead body being found in his property, upon such information, PW25 visited the scene of occurrence, removed the dead body from there and got it stored in cold storage since identity was not found. Thereafter, he sent communication to other Police Stations about the finding of unknown person's dead body and later, he received information from Ram Murthy Nagar Police Station about arrest of accused No.1 in connection with kidnap case, who allegedly confessed that he has murdered the victim. Pursuant to such statement, he collected all the material. However, he has not collected



enough material to establish the fact that accused No.1 committed the murder of the victim and the dead body was that of daughter of PW2 and wife of accused No.1. None of the prosecution witnesses has identified the dead body of the victim, except PW2, mother of the victim. According to PW2, she has seen the dead body of the daughter and she has identified the tattoo mark on her left arm, but she has not mentioned the details of the clothes worn by the victim while she left the house. The evidence of PW15-Doctor, who conducted Post-mortem examination, discloses that the victim's face was not identifiable as it was disfigured due to peeling of skin from top of the head to the upper part of the chest. The dead body was never subjected to DNA examination. Therefore, there is nothing apart from the version of PW2 to establish the identity of the dead body.

Section 106 of the Indian Evidence Act, 1872:

34. As per the case of the prosecution, accused No.1 with an intention to eliminate the victim, caused her death by MO12-knife with the help of accused Nos.2 to 10 and hence, the



burden is on the accused to prove the circumstance, under which the death has taken place.

35. Learned High Court Government Pleader contended that the dead body of the victim was recovered from the scene of occurrence and this fact exclusively was within the knowledge of accused No.1. Hence, the burden shifts on him. However, to raise any presumption or inference under Section 106 of the Evidence Act, the prosecution has to discharge its initial burden of proof of charge. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot straightaway invoke the said Section and throw the entire burden on accused No.1 to establish his innocence. In the instant case, the incident occurred in isolated place and the said place does not belong to accused No.1. Dead body was not discovered at his instance. Hence, there is no question of raising any presumption under Section 106 of the Evidence Act.



HC-KAR

36. On perusal of the above evidence, what is apparent is that, there is no eyewitness to the alleged incident. This case, thus, is of circumstantial evidence. It is, now, well settled principle that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances, so proved, must form such a chain of events as would permit no conclusion other than one of the guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled principle that suspicion, however, grave, it may be, cannot be a substitute for a proof and the Court shall take utmost precaution in finding the accused guilty only on the basis of the circumstantial evidence.

37. The last seen theory, further more, comes into play where the time gap between the point of time when the accused and the victim were last seen alive and the victim was found dead is so small that possibility of any person, other than the accused being the author of the crime becomes impossible. Even in such a case, the Court should look for some corroboration. Therefore, in the overall view of the matter, we



are convinced that the trial Court has committed error in holding accused No.1 guilty for the offence of murder. If an *iota* of doubt creeps in at any stage, in the sequence of events, the benefit of doubt thereof should be given to the accused. Mere suspicion alone, irrespective of fact that, it is very strong, cannot be a substitute for a proof. When there is a missing link, a finding of guilt cannot be recorded.

38. The evidence of PWs.3, 7 and 9 would indicate that accused No.1 along with other accused had gone to Kappa Coffee Day and at that time, the victim was there in their company. So, the possibility of accused No.1 being there at the relevant time cannot be ruled out. According to these witnesses, accused No.1 was found going in auto rickshaw with the victim between 2:30 and 5 p.m. What is significant to note is that, it was not going out of the house of the victim, nor from the house of accused No.1, but that accused No.1 was seen going out of Kappa Coffee Day. The evidence of PWs.3, 7 and 9 are not consistent as to the victim alone was in the company of accused No.1 soon before her death. There was much time gap between the time of death of the victim and alleged sighting of



accused No.1 and the victim together. In the light of the fact that, initially, a missing complaint was lodged alleging kidnap of the victim and later, the death intimation was communicated to the parents of the victim. Though accused No.1 allegedly confessed the crime before the Investigating Officer, but none of the independent witnesses has supported the case of the prosecution. The prosecution fails to examine the material witnesses, including seizure mahazar witnesses. In this light, the aspect which marks itself as contradiction and may cast doubt on the efficiency, sincerity, and fairness of the investigation in non-recording of the material witnesses and the fact that the Investigating Officer recorded the statements of the last seen witnesses, after three months, which casts doubt in the case of the prosecution. The medical evidence would only point the offence having been committed, but unfortunately, the prosecution has not been able to connect accused No.1 to the crime.

39. All the above aspects, when seen in the context of the case being dealt with by us, a case of circumstantial evidence, it would be difficult to connect accused No.1 to the crime. The



chain of events being sought to be projected is laden with deficiency creating significant gap, leading to other possible hypothesis as aforementioned. Due to such missing links, the finding of guilt cannot be recorded. The benefit of doubt must be extended to accused No.1. In this light, the guilt of accused No.1 has not been proved beyond reasonable doubt and the impugned judgment is, thus, liable to be set aside. Hence, the following:

ORDER

- i. The appeal is ***allowed***.
- ii. The judgment and order of conviction and sentence in S.C. No.15033/2015 on the file of the V Additional District and Sessions Judge, Bengaluru Rural, Sitting at Devanahalli, against the appellant/accused No.1 is hereby set aside.
- iii. Appellant/accused No.1 is acquitted of the charges for the offences punishable under Sections 302, 201 and 498A of the Indian Penal Code, 1860. Appellant shall be set at liberty, forthwith, if his detention is not required in any other case.
- iv. Fine amount deposited, if any, shall be refunded to the appellant.



- v. Case papers and properties shall be preserved for the purpose of split-up case against accused No.7.
- vi. Acting under Section 357A of the Code of Criminal Procedure, 1973, the matter is referred to the concerned District Legal Services Authority for determination and payment of compensation to PW2-Mithra, mother of the victim.

Communicate copy of this order to the trial Court and concerned Prison, forthwith.

Sd/-
(K.S.MUDAGAL)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MN, KVK
List No.: 1 Sl No.: 1