



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

**DATED THIS THE 26TH DAY OF NOVEMBER, 2025
PRESENT**

R

**THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI
CRIMINAL APPEAL NO.100335 OF 2022 (C)**

BETWEEN:

BHIMAPPA S/O. MALLAPPA BINGI,
AGE: 48 YEARS, OCC: COOLI,
R/O. NAREGAL JOGIYAVAR ONI,
TALUKA: RON, DIST. GADAG.

...APPELLANT

(BY SRI. A. R. PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
R/BY. ADDL. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD,
RON CIRCLE POLICE STATION, RON, GADAG DISTRICT.

...RESPONDENT

(BY SRI. M. B. GUNDAWADE, ADDL. S.P.P.)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO ALLOW THE CRIMINAL APPEAL AND TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 30.12.2021 PASSED BY THE LEARNED PRL. DISTRICT AND SESSIONS JUDGE, GADAG IN S.C.NO.47/2019 AND ACQUIT THE APPELLANT IN THE INTEREST OF JUSTICE AND ETC.

THIS CRIMINAL APPEAL, HAVING BEEN HEARD AND RESERVED ON 13.10.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



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NC: 2025:KHC-D:16402-DB
CRL.A No. 100335 of 2022

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

1. This appeal is directed against the judgment of conviction and order of sentence dated 30.12.2021 passed in S.C.No.47/2019 on the file of learned Principal District and Sessions Judge, Gadag (for short, 'the trial court') against the accused/appellant, for the offences under Sections 498A and 302 of IPC.

2. Originally, a case in Crime No.1/2019 was registered at Naregal Police Station against the accused herein and four others for the offences punishable under Sections 498A and 302 of IPC in connection with murder of one Smt. Uma on 06.01.2019 at 7.30 a.m., based on a complaint lodged by one Smt. Tayavva Singatalakeri. Upon completion of the investigation, the Circle Inspector of Police of Ron laid a charge sheet only against the accused for the offences punishable under Sections 498A and 302 of IPC and dropped



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other four accused persons from the case for want of incriminating materials to support their involvement in the crime. Based on the charge sheet, the jurisdictional magistrate took cognizance of the alleged offences and committed the case for trial after complying with Section 207 of the Cr.P.C.

3. On receipt of the record, the trial Court registered a case against the accused in S.C.No.47/2019, secured his presence, and framed the charge against him for the alleged offences. The accused pleaded not guilty. Afterwards, the case was tried and disposed of on merits of the case vide impugned judgment wherein the accused was held guilty of the offences under Sections 498A and 302 of IPC and he was sentenced to undergo two years rigorous imprisonment and fine of Rs.2,000/- for the offence under Section 498A of IPC and life imprisonment and fine of Rs.5,000/- for the offence under Section 302 of IPC.

4. The trial court, based on evidence of PW-1, PW-2, PW-6 and PW-7, held that the accused suspected the fidelity of the deceased and ill-treated her physically and mentally despite advice by PW-1, PW-6, PW-7, and the elders of the village. Further, relying on the evidence of PW-2 and corroborative



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evidence of PW-1, PW-3, PW-4 and PW-6 to PW-8, coupled with the failure on the part of the accused to offer any explanation regarding the cause of the death of his wife, the trial court held that the accused has committed the murder of his wife, suspecting her fidelity.

5. Being aggrieved by the said judgment of conviction and sentence, the accused has come up this appeal on the ground that the impugned judgment of conviction and sentence is contrary to law, the evidence on record, and probabilities of the case. According to him, the trial court did not consider the medical report and committed a serious error in relying on highly interested versions of PW-1, PW-2, and PW-4 to PW-6. It is submitted that the trial court did not consider the statements of PW-5, before whom the accused said to have made extra judicial confession. Thus, the accused has contended that the entire approach adopted by the trial court is illegal and erroneous and, as such, the impugned judgment is liable to be set aside.

6. During the course of argument, Sri A.R.Patil, learned Counsel for the Accused, apart from urging the grounds put forth in the appeal memo, relied on the judgment in **Harijanara**



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Kumar Vs State by Circle Police Inspector, Gonikoppa, reported in **2020 (4) KCCR 3189 (DB)**, and submitted that the initial burden is on the prosecution to prove the case against the accused, and the said burden of proof never shifts to the accused when the prosecution itself fails to discharge it. He further submitted that however grave the suspicion may be, it cannot amount to proof, and mere presumption is not sufficient to convict the accused. He has contended that in the present case the prosecution has failed to discharge its burden of proving the case through direct or circumstantial evidence, and as such, the accused is entitled for acquittal in the case.

7. *Per Contra*, Sri M.B.Gundawade, learned Additional State Public Prosecutor submitted that the prosecution has proved the guilt of the accused through material witnesses and by adducing sufficient evidence on record. He submitted that PW-2, who is an eyewitness to the incident, has supported the prosecution's case and that the prosecution has adduced ample other evidence on record which inspire confidence to rely on, and thereby has proved their case beyond any reasonable doubt regarding the guilt of the accused.



8. Before proceeding further, it would be appropriate to have a cursory look at the basic facts of the prosecution case and the evidence adduced by them before the trial court in support of their case.

8.1 The case of the prosecution is that deceased Smt. Uma and the accused are husband and wife, whose marriage had taken place about 12 years prior to the date of incident. They had three children and PW-2 is the eldest amongst them. It is alleged that the accused was suspecting fidelity of his wife and ill-treating her, physically and mentally, despite the advice of the elders. It is further case of the prosecution that on 06.01.2019 at 7.30 a.m., the accused picked up a quarrel with his wife in their house situated in Jogiyavara Oni, Naregal and with an intention of killing her, he assaulted his wife with an axe on the back of her neck and left cheek, due to which the wife of the accused sustained grievous injuries and died at the spot.

8.2 In support of their case, the prosecution has examined altogether 12 witnesses and got marked 23 documents and 13 material objects before the trial court.



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8.3 PW-1 Smt. Tayavva Singatalakeri is the mother of the deceased and the de-facto complainant. In her evidence, PW-1 has affirmed that the accused was ill-treating his wife i.e, the deceased, physically and mentally, in spite of advice to mend his ways. She has further stated that on hearing about the incident, she and her relatives had gone to the house of the accused, wherein they saw the dead body of the deceased lying in a pool of blood inside the house of the accused. She has also deposed about lodging of a complaint with Naregal Police as per Ex.P1 and thereafter the police having recovered the axe marked as MO-1 from the scene of crime, by drawing a mahazar in her presence.

8.4 PW-2 Kumari Vaishnavi is the daughter of the deceased and the accused. In her evidence, PW-2 has reiterated that the accused was ill-treating her mother physically in spite advice of the elders. She has further stated that on the relevant date and time, when she was in sleep, she heard the scream of her mother and on getting up, she saw the accused assaulting her mother with an axe, her mother falling down and dead.



8.5 PW-3 Shri Vidyadhar Doddamani is the witness to the inquest mahazar marked at Ex.P2, spot mahazar marked at Ex.P3 and seizure mahazars marked at Ex.P4 and Ex.P5. He has spoken about his presence at the time of drawing up of all these mahazars and having observed the procedures conducted during these mahazars

8.6 PW-4 Sri Basavaraj Jogi is a person, residing in the neighborhood of the accused. In his deposition, PW-4 has stated that on the particular date and time, on hearing a shout, he had gone near the house of the accused, wherein he saw the accused having assaulted the deceased with an axe and his running away from the place by throwing the axe at the plot. PW-4 has further stated that on going to the entrance hall of the house, he found the deceased lying dead with injuries on her neck and left cheek, inflicted with an axe.

8.7 It is the case of the prosecution that the accused had confessed his crime before CW-7 namely Sri Irappa Jogi, who later on brought the accused to the police station and produced him before the concerned police. The prosecution has examined the said person as PW-5. However, he has not



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supported the case of the prosecution except stating that about two years one day morning he had come to know that the accused has killed his wife.

8.8 PW-6 Sri Renukappa Singatalakeri is the younger brother and PW-7 Sri Ramanna Shingatalakeri is the uncle of the deceased. In their evidence, both PW-6 and PW-7 have testified that the accused was ill-treating the deceased by suspecting her fidelity and that the accused had not changed his behavior in spite of the counseling through the elders. They have further stated that on hearing about the incident, they had gone to the house of the accused and found the deceased lying dead in the pool of blood inside the house of the accused, with injuries on her head and neck.

8.9 PW-8 is the doctor, who conducted the post-mortem on the dead body of the deceased. In his evidence PW-8 Dr. Anwar Samudri has stated about the external appearance and external injuries found on the dead body of the deceased. He has specifically stated that the deceased had been hacked to death with a sharp object and opined that her death was due to shock



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and hemorrhage caused by deep cut and lacerated wounds on face, skull and neck.

8.10 PW-9 Sri Ravindra Yaligar is the Assistant Engineer of PWD. He has stated in pursuance of a requisition received from the office of the Investigating Officer, he visited the spot of the crime along with PC 507 and based on information provided by PC 507 and verifying the place, he prepared the spot sketch as per Ex.P9 and forwarded the same to the Investigating Officer through his office.

8.11 PW-10 Dr.Mahadeshwar Swamy is the Forensic Expert. In his evidence, PW-10 has stated that as per the orders of the Director of RFSL, he subjected 13 articles pertaining to this case to chemical examination and submitted a detailed report as per Ex.P10.

8.12 PW-11 Sri Krishnappa was working as ASI in Naregal Police Station at the relevant point of time. In this evidence, PW-11 has stated that on 6.1.2019 at 10-00 a.m., when he was on duty in Naregal Police Station, PW-1 came to the police station and lodged a complaint as per Ex.P1 and that on receiving the said compliant, he registered a case in Crime



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No.1/2019, forwarded FIR to the concerned and then handed over the record to CW-25 for further investigation in the case.

8.13 PW-12 Sri Manjunath Naduvinamani is the Investigating Officer in the case. He was working as Circle Inspector of Police of Ron Police Station at the relevant point of time. In his evidence PW-12 has deposed in detail regarding the investigation conducted by him in the case from the stage of drawing up of inquest mahazar at the spot till filing of the charge sheet.

8.14 After the prosecution concluded their evidence, the trial court has recorded the statement under Section 313 of Cr.P.C., during which the accused has denied all the incriminating evidence appearing against him as false. Further, the accused has not adduced any defense evidence.

9. On careful scrutiny of the evidence placed on record by the prosecution before the trial court, it becomes clear that there is no dispute regarding the following factual aspects of the case, i.e., (1) the accused and the deceased, Smt.Uma were the husband and wife; (2) the accused and the deceased had three children, including PW-2, who was the eldest; (3) the accused



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was residing in a house situated at Naregal along with the deceased and their three children; and (4) on 06.01.2019 at 07.30 a.m., the dead body of the deceased was found lying in the entrance hall of the accused's house at Naregal, in a pool of blood with injuries on her neck and face. During their evidence, PW-1, PW-2, PW-4, PW-6 and PW-7 made categorical statements regarding these aspects and those statements have remained unchallenged.

10. In his evidence, PW-8 Dr. Anvar Samudri narrated in detail the external injuries found on the dead body of the deceased during the post mortem, conducted on 06.1.2019 between 1.30 p.m. and 2.30 p.m. at Primary Health Centre, Naregal. According to him the deceased was hacked to death by a sharp object and he opined that the death was due to shock and hemorrhage caused by deep cuts and lacerated wounds suffered by the deceased. The deposition of PW-8 coupled with the post mortem report marked at Ex.P7 and the inquest report marked at Ex.P2, unerringly points out that the deceased met with a homicidal death. The accused has not disputed this portion of evidence on record.



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11. It is the definite case of the prosecution that the accused was subjecting the deceased to cruelty, both physically and mentally, suspecting her fidelity. On 6.1.2019 at 7.30 a.m., with the intention of killing her, the accused quarreled with the deceased in their house and assaulted on the neck and left cheek with an axe, thereby causing her death.

12. Undisputedly, during their evidence PW-2 and PW-4 made statements on oath supporting the prosecution's case. However, the accused has contended that these persons were not the eye-witnesses to the incident, and as such, their testimony is neither believable nor reliable. In support of this contention, learned Counsel for the Accused mainly relied on the contents of Ex.P2 and certain admissions of PW-2 and PW-4.

13. Ex.P2 is the Inquest Report drawn at the scene of the crime on 6.1.2019 between 11.45 am and 1.00 pm. In this document, while noting the details pertaining to Question No.3, it is mentioned that one Smt. Shakuntala W/o Sri Basavaraj Jogi and Sri Basavaraj Jogi were the persons who first saw the dead body of the deceased at the place, i.e., on 06.01.2019 at 7.35 a.m. This document does not contain any reference to PW-2



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either as a person present at the time of the incident or as the person who had seen the dead body of the deceased first. However, in the considered view of this Court, this aspect cannot be a ground to disbelieve the presence of PW-2 at the place during the incident or to hold that she was not an eye-witness to the incident.

14. First of all, PW-2 was about 9 years old at the time of incident and about 11 years old when giving evidence. The materials on record indicate that PW-2 gave evidence naturally, with no exaggeration or improvement in her testimony. Further, the accused neither disputed any of PW-2's statements including her presence in the house at the relevant point of time, nor attempted to discredit her testimony on any ground.

15. A careful analysis of the facts suggests that the absence of reference to PW-2 in Ex.P2 is natural. PW-2, the eldest child of the accused and the deceased, was studying in 3rd Standard and was about 9 years old at the time. The crime was committed at 7.30 a.m., and the Investigating Officer arrived at around 11.30 a.m. The spot mahazar marked at Ex.P3 and the spot sketch marked at Ex.P9 indicate that the crime scene was a



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small house; as such, it is plausible that someone took PW-2 and her siblings away from the scene in their interest. Therefore, this Court finds no unusualness or reason to doubt the credibility of PW-2 based on her non mention in Ex.P2.

16. It is true that during their cross examination, both PW-2 and PW-4 admitted that they did not see the accused assaulting the deceased. However, the material question is whether such a stray admission is sufficient to hold that these witnesses were not eye witnesses to the incident or had no personal knowledge about the offender. In our considered view, the answer is no. PW-2 is the daughter of the accused and she was living with her family in the very same house, wherein her mother was murdered. The spot mahazar marked at Ex.P3 and the sketch produced at Ex.P9 show that the house in question was a small, comprising only two portions, a hall measuring 20 feet by 7 feet and a small kitchen. In all probability, the family members were using the hall for all purposes. PW-2 stated that while she was asleep, she heard her mother's scream, and upon waking saw the accused assaulting the deceased with an axe on her neck, after which the deceased fell down. Analyzing this



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statement carefully against the undisputed facts, it should be held that PW-2 was in a position to observe the incident even before getting up, as the crime was committed in same hall in their house.

17. It is also relevant that according to PW-8 the deceased suffered deep cuts and lacerated wounds on the left side of the face and neck, swelling and deformity in the right hand, and fractures in corresponding parts of her body. This indicates that the deceased received multiple blows during the incident, further strengthening the likelihood that PW-2 witnessed the accused assaulting the deceased.

18. Regarding PW-2's admission that she did not see the accused assaulting the deceased with an axe, it is well settled that such stray statements, especially those elicited during cross examination, cannot be relied upon in isolation unless corroborated by clear, categorical, and voluntary admissions elsewhere on record. As noted, the accused has not disputed any of PW-2's statements on oath, either during examination-in-chief or cross-examination, nor provided any motive for PW-2 to make such statements against him. Further more, PW-2's



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examination-in-chief was recorded on 15.12.2020 and cross-examination on 27.07.2021, making it possible that she might have been persuaded to give the admission noted. On a holistic evaluation, PW-2's testimony is trustworthy and confirms her status as an eye-witness despite that stray statement.

19. The reliance on the statements of PW-4 differs slightly from that of PW-2. Admittedly, PW-4 was a neighbour of the accused and came to spot only after hearing the cry or sound. As such, there would likely be some gap between the time of the incident and when PW-4 reached the spot. It is noteworthy that during his examination-in-chief, PW-4 stated that "ಈಗ ಎರಡು ವರ್ಷಗಳ ಹಿಂದೆ, ಮುಂಜಾನೆ ೦೭.೩೦ ಕ್ಕೆ ಆರೋಪಿ ಮನೆಯಲ್ಲಿ ಬಾಯಿ ಸಪ್ಪಳ ಕೇಳಿ ನಾನು ಅವರ ಮನೆಗೆ ಹೋದೆನು. ಆರೋಪಿ ಉಮಾಳನ್ನು ಕೊಡ್ಲಿಯಿಂದ ಕಡಿದಿದ್ದನು. ಆರೋಪಿ ಕೊಡ್ಲಿಯನ್ನು ಸ್ಥಳದಲ್ಲೇ ಒಗೆದು ಓಡಿ ಹೋದನು."

which means by the time PW-4 arrived, the accused had already attacked the deceased with an axe. Even then, PW-4's statements support the prosecution's case and appear reliable because he specifically stated that the accused was still at the place when he arrived, and that he saw the accused running away after throwing the axe at the spot. As per Ex.P2, PW-4



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was at the crime scene by 7.35 a.m., within 5 minutes of the incident. The accused has not disputed either PW-4's statement or the contents of Ex.P2, which corroborates his version. Besides, the accused has not attributed any motive for PW-4 to falsely implicate him. Therefore, on careful consideration of the depositions of PW-2 and PW-4, we are convinced they were eye witnesses to the incident, and their testimony is truthful and reliable.

20. During the trial, the accused attempted to set up a defense that the deceased had accidentally fallen on the sickle and machetes present in the house, resulting in her injuries. This is evident from answers elicited during the cross examination of PW-1 and PW-12, which reads as follows: "ನನ್ನ ಮಗಳು ಕುಡಗೋಲು ಮಚ್ಚುಗಳ ಮೇಲೆ ಬಿದ್ದು ಗಾಯವಾಗಿದ್ದಾಗ ಆರೋಪಿ ಅವಳನ್ನು ರಕ್ಷಣೆ ಮಾಡಲು ಹೋಗಿ ಆತನ ಬಟ್ಟೆಗೆ ರಕ್ತ ಹತ್ತಿರುತ್ತದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.(PW-1)" and "ಮೃತಳು ಜಗಳ ಆಗುತ್ತಿದ್ದ ಸಮಯದಲ್ಲಿ ತಾನೇ ಅಜಾನಕ್ ಆಗಿ ಸ್ಥಿಮಿತ ಕಳೆದುಕೊಂಡು ಒಂದು ಆಯುಧದ ಮೇಲೆ ಬಿದ್ದು, ಗಾಯಗೊಂಡು ಮೃತಪಟ್ಟಿರುತ್ತಾಳೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.(PW-12)" respectively. Added to it, during the course of argument, learned Counsel for the Accused contended



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that the accused had approached the police to complain about the murder of his wife but was instead implicated as an accused. However, the accused has placed no material evidence on record to support these contentions.

21. In their evidence, PW-1, PW-2, PW-6 and PW-7 testified about the accused's conduct and ill-treatment to the deceased, suspecting her fidelity, despite advice from elders. Their statements corroborate the prosecution's case that the accused committed the crime in furtherance of such behavior.

22. Learned Counsel for the Accused has drawn the Court's attention to the relationship between PW-1, PW-2, PW-6 and PW-7 and the deceased, arguing that as close relatives they are interested witnesses and their version cannot be believed. However, the law on this point is well settled. A close relative of a victim is not automatically categorized as an interested witness nor is their testimony inherently biased. An interested witness is one who has a personal stake in the outcome of the case, such as an enmity, desire for revenge, or material gain, which could influence their testimony. In the present case, the accused has not pointed out any such personal stake or motive to suspect



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these witnesses' testimony. PW-1, PW-6 and PW-7 have mainly spoken about the accused's past conduct apart from narrating facts they personally witnessed at the crime scene. PW-2, the daughter of the accused, is a natural witness. Therefore, this Court finds no substance in the argument to discredit their testimony solely based on their relationship to the deceased.

23. On an overall appraisal of the material on record, the Court is satisfied that the trial court correctly applied its mind and rightly held the accused guilty of the alleged offences. The sentence awarded is commensurate with the offence committed. Hence, the impugned judgment of conviction and sentence does not warrant any interference.

24. Before parting with the judgment, we find it necessary to point out one lapse on the part of the investigating agency in not obtaining the blood grouping report of the deceased in the case. In his evidence, PW-12 - the Investigating Officer, has stated about the recovery of blood stained articles from the scene of crime as well as the seizure of the blood stained clothes on the persons of the deceased and the accused. Further, the prosecution has marked an FSL report pertaining to



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its chemical analysis at Ex.P10, which states that the blood was human blood of the 'O' blood group. However, the prosecution has not produced any other material on record to show that those blood stains were that of the deceased.

25. The above noted lapse on the part of investigating agency has no bearing on out come of the present case because of the reliable ocular testimony available on record. However, the same cannot be said in every case. In **Mustkeem Vs State of Rajasthan** reported in **(2011) 11 SCC 724**, the Hon'ble Supreme Court of India has held that sole circumstance of recovery of blood stained weapon cannot form a basis of conviction unless the same was connected with the crime. The similar view has been taken by the Hon'ble Supreme Court of India in **Raja Naykar Vs State of Chhattisgarh**, reported in **(2024) 3 SCC 481**. The very purpose of collecting blood stained mud, clothes, and other incriminating articles during the course of investigation is to link the circumstantial evidence and to corroborate the guilt of the accused. If the investigating agency fails to obtain the blood grouping report of the deceased or the injured, as the case may be, the very object of collecting blood



stained material would be defeated. It is our experience that the investigating agency often commits such mistakes. As such, we deem fit to issue a direction to the Director General and Inspector General of Police of Karnataka and the Director of Department of Prosecutions to issue necessary instructions to all concerned, to mandatorily collect the blood samples of the injured or the deceased, as the case may be, and to submit such blood grouping reports to the court as part of the prosecution papers to avoid similar lapses in future.

26. One more aspect which requires attention is the non compliance with Sections 357 and 357A of the Cr.P.C. In **Ankush Shivaji Gaikwad Vs State of Maharashtra** reported in **(2013) 6 SCC 770**, the Hon'ble Supreme Court of India has highlighted the legislative intent behind Section 357 of the Cr.P.C., which is to ensure that victims are not neglected and to necessitate courts to apply their mind to the question of awarding compensation in every relevant criminal case. It is further held that the occasion to consider awarding compensation arises only after the court records a conviction of the accused. The capacity of the accused to pay is an important



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aspect of any order under Section 357 of the Cr.P.C. and involves a summary enquiry unless the facts emerging in the trial make such enquiry unnecessary. Such enquiry can precede the order on sentence to enable the court to take a view on both the question of sentence and compensation to be awarded to the victim or their family.

27. While Section 357 of the Cr.P.C. contemplates ordering compensation from the accused, Section 357A of the Cr.P.C. introduces a Victim Compensation Scheme for providing compensation to victims or their dependents who have suffered loss or injury due to the crime and require rehabilitation. In **State of Karnataka Vs. Mr. Vishwanatha Devadiga and Others** reported in **ILR 2019 KAR 4643** the Co-ordinate bench of this Court issued directions and guidelines to trial court judges and Public Prosecutors regarding the implementation of the Victim Compensation Scheme, as under:

“51. The trial Court judges are directed to keep in mind the following guidelines while sentencing the accused persons:

- i) *While sentencing, the Courts are directed to consider the capability of the accused to pay*



the fine and if the accused is capable to pay the fine amount, order for appropriate fine and compensation.

- ii) If the accused is not capable to pay the compensation, then direct or refer the matter to the District Legal Services Authority to pay the appropriate compensation with the corpus created by the State Government of Karnataka in terms of the Notification dated 22.02.2012.*
- iii) The trial Court Judges shall not only order for compensation but also make an interim order to rehabilitate the victims as held by the Apex Court in the cases of ANKUSH and SURESH (cited supra).*
- iv) The trial Court Judges shall also while awarding appropriate compensation and passing an order for interim rehabilitation, keep in mind the gravity of the offences, nature of injuries and the amount spent for treatment which should be just and reasonable and not exorbitant. In other words, the compensation should be proportionate to the gravity of the offence.*
- v) The Public Prosecutors are directed to keep in mind the following guidelines while assisting the Court to award sentence to the accused persons:*



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- vi) *The Public Prosecutors shall request the respective Courts to impose the fine and compensation with the letter and spirit of Sections 357 and 357-A of Cr.P.C.*
- vii) *The trial Courts have to determine whether the accused is capable to pay the fine or the compensation amount, if not the same has to be referred to the District Legal Services Authority.*
- viii) *The learned Public Prosecutors shall also make necessary application before the Court to make interim arrangements to rehabilitate the victim in order to fulfill the very object of Sections 357 and 357-A of Cr.P.C as held by the Apex Court in the cases of Ankush and Suresh (cited supra)."*

28. Additionally, in compliance with the direction therein, the High Court of Karnataka issued Circular No.4/2019 dated 23.09.2019, instructing all the judicial officers in the State to comply with the object and intent of Sections 357 and 357A of the Cr.P.C.

29. This is a case where the accused killed his wife, aged about 32 years, as a result of which their three children i.e, two daughters and a son, were left orphans, all being minors at the



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time of crime. This fact is evident from the deposition of PW-2, who appeared before the trial court from a Children Home at Gadag to give her evidence in the case. Even otherwise, PW-2 and her siblings have lost their mother and caretaker during their minority. Thus, the plight of the three children left behind by the deceased and their need for rehabilitation is clear.

30. The materials on record suggest that the trial court imposed only a nominal fine on the accused, taking into account his financial condition. The spot mahazar marked at Ex.P3 indicates that the accused was leaving his wife and three children in a house comprising only one hall measuring 20 feet by 7 feet and another small portion used as a kitchen, pooja room, and bathroom. Nonetheless, it was the duty cast of the trial court to disclose the application of its mind to this aspect by recording reasons. This Court finds no justification for not invoking Section 357A of the Cr.P.C. in this case.

31. It is well settled that the power to award compensation under Section 357 is not ancillary to other sentences. Sentences such as imprisonment and/or fine are imposed independently of any victim compensation, and these



two aspects stand on completely different footings. Section 357A of the Cr.P.C. was introduced with effect from 31.12.2009, which is continued under corresponding new provision i.e. Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The power vested in the courts under Sections 357 and 357A of the Cr.P.C. is for the benefit of the victims of crimes. Consequently, it necessarily follows that there exists a mandatory duty on the courts to apply their mind to these provisions before concluding the proceedings. The awarding or refusal of compensation may be within the discretion of the court, but reasons are to be recorded by the court to disclose the application of mind. In the above narrated facts and circumstances of the case, we opine that apart from recommending compensation to the dependants of the victim under Section 357A(2) of the Cr.P.C., it is essential to issue a direction to all the judicial officers working in the State to strictly comply with mandatory requirements of law.

32. In the result, this Court proceeds to pass the following :

ORDER

- (i) The appeal is **dismissed**.



HC-KAR

- (ii) As a result, the judgment of conviction and sentence dated 30.12.2021 passed in S.C. No.47/2019 by the learned Principal District and Sessions Judge, Gadag is confirmed.
- (iii) Under Section 357A(2) of the Cr.P.C., a recommendation is made to the District Legal Services Authority, Gadag to award suitable compensation to the children of the deceased, in compliance with NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/ Other Crimes, 2018.
- (iv) The registry is directed to forward a copy of this judgment to the Director General and Inspector General of Police of Karnataka and to the Director of Department of Prosecutions, to issue necessary instructions to the concerned, in compliance with the observations made in Para 25 of the judgment.
- (v) The registry is directed to forward a copy of the judgment to all the Judicial Officers working in the State for strict compliance with Sections 357 and 357A of Cr.P.C. or corresponding Sections 395 and 396 of



Bharatiya Nagarik Suraksha Sanhita, 2023,
as the case may be, in all criminal cases.

- (vi) The registry is directed to return the trial court record to concerned court and send a copy of judgment to the District Legal Services Authority, Gadag for complying with the recommendation made under Section 357A(2) of the Cr.P.C.
- (vii) The registry is directed to furnish free copy of the judgment to the accused through concerned jail authority.

Sd/-
(R.DEVDAS)
JUDGE

Sd/-
(B. MURALIDHARA PAI)
JUDGE

VB, CKK /CT-AN
List No.: 1 Sl No.: 1