

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>th</sup> DAY OF SEPTEMBER, 2015

PRESENT

THE HON'BLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE BUDIHAL R.B.

CRIMINAL APPEAL NO.80/2012

BETWEEN :

Hanumantharayappa  
S/o Kadarappa  
Aged about 31 years  
R/o. Harogere Village  
Sira Taluk  
Now R/at Budasanahalli Village  
Pavagada Taluk  
Tumkur District

..Appellant

(By Sri C.H.Jadhav, Senior Counsel for  
C.H.Jadhav Associates)

AND :

The State of Karnataka  
By Arasikere Police Station  
Represented by State  
Public Prosecutor  
High Court Building  
Bangalore-1

..Respondent

(By Sri K.R. Keshavamurthy, SPP-II)

This Appeal is filed under Section 374(2) Cr.P.C praying to set aside the judgment dated 21.12.2011 passed by the Presiding Officer, Fast Track Court-V, Madhugiri in S.C.No.162/2011 convicting the appellant/accused for the offence punishable under Section 302 of Indian Penal Code.

This Appeal coming on for hearing, this day, MOHAN M. SHANTANAGOUDAR, J., delivered the following:-

### **J U D G M E N T**

The judgment and order of conviction dated 21.12.2011 passed by the V Fast Track Court, Madhugiri in S.C.No.162/2011 is called in question in this appeal by the convicted accused.

By the impugned judgment and order, the accused is convicted for the offence punishable under Section 302 of IPC.

2. Case of the prosecution in brief is that the deceased Shivalingamma is the wife of the accused;

since character and conduct of the accused was not good, the deceased had deserted the accused and started living in her parental house situated in a different village; the accused came to the house of the parents of the deceased on previous day of the incident in question i.e. on 24.5.2011; after having dinner, the accused slept in the house of his in-laws along with the deceased; the complainant's mother got up at about 4.30 a.m, in order to go to Pavagada market for selling flowers; the mother and brother - Thippeswamy of the deceased went to Jangamarahalli at 6.00 a.m. to catch the bus to go to Pavagada market; the father of the deceased took cattle to the field; thereafter, the accused came out of the house and took big stone, which was lying in front of the house; he dropped the same on the head of Shivalingamma, who was sleeping and fled away from the scene; Manjula - the complainant being the younger sister of the deceased heard the sound "*dhud*" and rushed to the room, wherein she found the deceased

lying in a pool of blood; the head of the deceased was crushed because of the impact of big stone; the complainant came out of the house and shouted for help; the father of the deceased and others gathered near the scene.

Complaint came to be lodged by PW.1 - Smt.Manjula as per Ex.P5 before Arasikere Police Station, Pavagada Taluk, which came to be registered by PW.13 - Assistant Sub-Inspector and First Information Report as per Ex.P17 sent to the jurisdictional Magistrate. PW.14 - the Circle Inspector of Police completed the investigation and laid the charge sheet;

3. In order to prove its case, the prosecution in all has examined 14 witnesses and got marked 22 Exhibits and 9 Material Objects. The Trial Court based on the mahazars, evidence of Police Inspector, FSL report and also on the evidence of Doctor, who conducted the

postmortem examination, convicted the accused for the offence punishable under Section 302 of IPC.

4. In the matter on hand, all the relatives of the deceased, who are examined before the Court have turned hostile to the case of the prosecution. The mahazar witness in respect of all the mahazars have also turned hostile to the case of the prosecution. Only the official witnesses such as Doctor, Inspector of Police have supported the case of the prosecution;

5. PW.1 is the sister of the deceased. She is the complainant and she is the eye witness.

PW.2 is the younger brother of the deceased. He is also the eye witness.

PW.3 is the witness for mahazar at Ex.P8 under which a big stone (MO.No.1) was seized from the scene of offence.

PW.4 is the witness for mahazar at Ex.P9 under which blood stained clothes of the accused (MO.Nos.5 and 6) were seized.

PW.5 is the witness for mahazar at Ex.P10 under which clothes of the deceased (MO.Nos.7, 8 and 9) were seized.

PW.6 is the witness for inquest *panchanama* at Ex.P12.

PW.7 was the Assistant to deceased. She was examined to speak about motive. The deceased was *Anganawadi* Worker during the relevant point of time.

PW.8 is the witness for scene of offence *panchanama* at Ex.P6 and the seizure of size stone MO.No.4.

PWs.1 to 8 have turned hostile to the case of the prosecution.

PW.10 is another witness for offence *panchanama* at Ex.P6. He has also turned hostile to the case of the prosecution. Thus, all the witnesses, except the official witnesses have not supported the case of the prosecution. Unfortunately, the sister and brother of the deceased also did not support the case of the prosecution. Though they have been cross-examined by the Public Prosecutor, no incriminating material is forthcoming against the accused from their evidence.

PW.9 is the *Taluka* Executive Magistrate. He conducted inquest *mahazar* at Ex.P12.

PW.11 is the doctor who conducted postmortem examination over the dead body of the deceased. Postmortem report is at Ex.P15. His opinion is at Ex.P16. Evidence of the doctor and the postmortem report reveal that it is a case of homicidal death.

PW.12 is the Sub-Inspector of Police. He went to the house of the deceased and received the written complaint from PW.1 as per Ex.P5 and forwarded the same to the Police Station for registration of the crime. He also arrested the accused on the same day near Jangamanahalli.

PW.13 is the Assistant Sub-Inspector of Police attached to Arasikere Police Station. He received the complaint and registered the crime.

PW.14 is the Investigating Officer, who recorded the statement of the witnesses, conducted mahazars and laid the charge sheet.

Report of the Forensic Science Laboratory is produced as per Ex.P22.

6. We have already mentioned supra that it is a case of homicidal death. There is no dispute with regard to that aspect of the matter. More over, the postmortem



report (Ex.P15) and the evidence of the doctor clarify the same. The incident has taken place in the house of the parents of the deceased, wherein PWs.1 and 2 were residing along with their parents. In other words, the incident has not taken place in the matrimonial house of the deceased. According to the prosecution, on the previous day of the incident, the accused had gone to the house of in-laws (parents of the deceased) to take back his wife (deceased) and the incident has taken place in the early hours of 25.5.2011. But the witnesses who were supposed to depose about the accused coming to his in-laws' house on the previous day, his presence and complicity in the crime, have turned hostile to the case of the prosecution. As mentioned supra, even the sister and brother of the deceased have turned hostile to the case of the prosecution. If it is so, there is no reliable material to show that the accused had really come to the house of his in-laws, stayed there and committed the murder of the deceased. The official witnesses viz.,

police officials come into picture only after lodging the complaint at Ex.P5 by PW.1, however, by that time the incident had already over. It is no doubt true that it is a case of homicidal death and therefore it is incumbent on the part of the prosecution witnesses more particularly, PWs.1 and 2 to explain as to how the death has occurred. However, no explanation is forthcoming from them. In the absence of any material to show that the accused was present on the scene of offence and he committed the crime, it cannot be presumed that the accused had come to the house of his in-laws and had committed the offence. The only circumstance against the accused is that MO.No.6-*panche* worn by the accused was blood stained and the same was seized and sent by the Investigating Officer to the Forensic Science Laboratory for examination. The report of Forensic Science Laboratory is at Ex.P22. The said report is marked through the Investigating Officer. However, at the time marking the said report, defence did not object. Be that

as it may, FSL report at Ex.P22 reveals that MO.No.6 (*panche*) contained human blood stain and that the same was having 'A' group blood. The other items which were sent for examination to the Forensic Science Laboratory were the stone, mat, bedsheet, pillow, clothes of the deceased, etc. All these items contained 'A' group blood, including MO.No.6, i.e., *panche* of the accused. Thus, the only circumstance against the accused was that MO.No.6 (blood stained *dhoti* of the accused) contained 'A' group blood. But only on the said solitary circumstance, the accused cannot be convicted for the offence punishable under Section 302 of IPC, more particularly when the defence did not have opportunity to cross-examine the person who conducted FSL examination inasmuch as Scientific Officer of FSL is not examined. There is nothing on record to show that the person who conducted FSL examination was expert in the field. There was nothing to show which procedure was adopted by the Scientific Officer for coming to the said

conclusion. The report of the Forensic Science Laboratory being merely an opinion of the expert, the same may not be sufficient to prove guilt against the accused. Absolutely no other material is found against the accused. Expert's opinion has got presumptive value and the same is rebuttable. Hence, the accused could not have been convicted by the trial Court only on the said solitary opinion of the Scientific Officer. It is the duty of the prosecution to prove its case beyond reasonable doubt. In the absence of any other circumstance against the accused, we disagree with the conclusion reached by the trial Court. Hence, the judgment and order of conviction passed by the trial Court is liable to be set aside.

7. Accordingly, the following order is made:-

- i) *The judgment & order of conviction and sentence dated 21.12.2011, passed by the 5<sup>th</sup> Fast Track Court, Madhugiri, in*

*SC.No.162/2011, convicting the accused-appellant herein for the offence punishable under Section 302 of IPC, stands set aside.*

*ii) The accused-appellant herein is acquitted of the charge levelled against him.*

*iii) The accused-appellant herein, namely, Mr.Hanumantharayappa, S/o.Kadarappa, shall be set at liberty forthwith if he is not required in any other case.*

Appeal is **allowed** accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

*\*lb/ck/-*