

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2018

PRESENT:

THE HON'BLE Mr.JUSTICE K.N.PHANEENDRA

AND

THE HON'BLE Mr.JUSTICE H.T.NARENDRA PRASAD

CRIMINAL APPEAL No.19 of 2013

BETWEEN:

ANNAPPA,  
S/O MANJAIAH,  
AGED 43 YEARS,  
COOLIE, R/O HALOOR VILLAGE,  
MUDIGERE TALUK,  
CHIKAMAGALUR DISTRICT.

...APPELLANT

(BY SRI N.R.KRISHNAPPA, ADVOCATE)

AND:

STATE OF KARNATAKA  
BY GOONIBEEDU POLICE,  
REPRESENTED BY SPP,  
HIGH COURT,  
BENGALURU – 560 001.

...RESPONDENT

(BY SRI CHETAN DESAI, HCGP)

THIS CRL.A IS FILED U/S.374(2) CR.P.C, PRAYING TO SET ASIDE THE ORDER DATED:5/9.3.11 PASSED BY THE P.O., FTC, CHIKMAGALUR, IN S.C.NO.2/2009 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S 302 AND 201 OF IPC AND THE APPELLANT/ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE AND TO PAY FINE OF RS.2,000/- IN DEFAULT OF PAYMENT OF FINE TO UNDERGO S.I. FOR 6 MONTHS FOR THE OFFENCE P/U/S 302 OF IPC AND THE APPELLANT/ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR 5 YEARS AND TO PAY FINE OF RS.2,000/- AND IN DEFAULT OF PAYMENT OF FINE, TO UNDERGO S.I. FOR 6 MONTHS FOR THE OFFENCE P/U/S 201 OF IPC. BOTH THE SENTENCES SHALL RUN CONCURRENTLY.

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY, **K.N.PHANEENDRA.J.**, DELIVERED THE FOLLOWING:

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

The present appeal is preferred against the judgment of conviction and sentence passed by the learned Fast Track Judge at Chikmagalur in S.C.No.2 of 2009 dated 05.03.2011, convicting the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code and sentencing him to undergo

imprisonment for life and to pay a fine of Rs.2,000/- for the offence punishable under Section 302 of the Indian Penal Code and also to undergo imprisonment for five years and to pay a fine of Rs.2,000/- with a default clause of six months imprisonment.

2. The brief factual matrix available from the records are that:- PW-1 by name Veeresha, who is none other than the brother of the deceased Puttamma has lodged a suspicious complaint on 24.08.2008 stating that his sister by name Puttamma was given in marriage to one Subbaiah, the younger brother of the accused Annappa. After the marriage, about three months later, the said Subbaiah died. Puttamma continued to reside in the house of the accused/appellant. It is stated that, they developed some intimacy and were living happily together. On

22.08.2008, it is stated that, Veeresha had been to the house of the accused in order to invite his sister to Gowri Festival. At that time, he did not find his sister in the house of the accused. On enquiry, the accused has not given proper answer and he has given an evasive reply and also abused the complainant. Suspecting the conduct of the accused, PW-1 went to the Police Station and lodged a complaint requesting the Police to enquire into the matter by examining the accused.

3. On the basis of such information, the police have started enquiring into the matter. It appears that on 02.09.2008, the police have received some information through their informants, that the accused himself has committed the murder of the deceased and buried the dead body somewhere else. On that

suspicion, they called the accused to the police station and enquired into the matter and it is the further case of the prosecution that the accused has accepted the same and he has shown the dead body of the deceased where it was actually buried, which was just behind the house of his mother, in the same village.

It is further case of the prosecution that the Investigating Agency requested the Assistant Commissioner for exhuming the dead body. On 05.09.2008, according to the prosecution, it is at the instance of the accused, the place of burial of the dead body was detected and exhumed. It is the case of the prosecution that, the accused took all the panch witnesses, Police as well as the Assistant Commissioner to the place where actually the dead body was buried and showed the place and thereafter, the dead body was exhumed and post-mortem was

conducted and according to the Doctor's evidence and post-mortem examination report, the death of the deceased Puttamma was a homicidal death. Therefore, they have come to the conclusion that the accused is the purportor of such death. In this context, the police have examined various witnesses and also conducted spot mahazar, inquest as well as the sketch has been prepared in the spot and ultimately, Investigating Officer came to the conclusion that the accused is the person who has committed the murder of Puttamma. Therefore, they have laid a charge-sheet against the accused. The accused was arrested on 05.09.2008 and it appears that since then, the accused is in custody.

4. In order to prove the guilt of the accused, the prosecution examined as many as 20 witnesses, PWs-1 to 20 and got marked Exs.P1 to P27 and during the

course of cross-examination, Exs.D and D1(a) were also marked. The accused Annappa also examined himself as DW-1, after examination under Section 313 of Cr.P.C. by entering into defence evidence. The prosecution also got marked seven material objects, MOs-1 to 7.

5. Sri.N.R.Krishnappa, learned counsel for the appellant has assisted the Court by taking us through the evidence recorded by the Trial Court and he has pointed out various points to show that, the police even much earlier to the examination of the accused knew about the place where the dead body was buried and he further took us through the evidence to point out that the accused was not at all arrested by the police upto 5.30 p.m. on 05.09.2008. Therefore, they have not recorded the statement of the accused. Therefore,

there is no question of coming to any conclusion that the dead body was recovered only at the instance of the accused. He also pointed out that, in so far as the motive of the murder is concerned, no substantial material is placed before the Court and no witness has asserted that, they have witnessed the accused had any motive to do away with the life of the deceased. He also further contends that there is a doubt with regard to homicidal death is concerned because of the simple reason, the dead body was recovered after long lapse of time. Doctor's evidence also does not indicate in so far as the homicidal death is concerned. Therefore, the learned counsel contends that circumstances relied upon by the prosecution has not been proved beyond reasonable doubt. When doubtful circumstances are there with regard to the death of the deceased, benefit of doubt ought to have been given to the accused by



the trial Court. Thereby, the Trial Court has not properly appreciated the oral and documentary evidence on record. Under the above said circumstances, he pleads for acquittal of the accused.

6. Sri.Chetan Desai, learned HCGP has contended that the learned Sessions Judge, after appreciating the oral and documentary evidence on record, has come to the conclusion that, the dead body was recovered only at the instance of the accused and the cause of death was due to the injuries sustained by Puttamma on head and it was a homicidal death and the accused has not explained as to how the incident has happened in his house. Drawing the inference under Section 106 of the Indian Evidence Act the Trial Court has concluded that, the accused has committed the murder of Puttamma and the Trial Court has

rightly convicted and sentenced him, in accordance with law and hence, the learned HCGP sought for dismissal of this appeal.

7. Having heard the arguments of the learned counsels, the points that arise for consideration by this Court are:

- i) *Whether the prosecution has proved the case against the accused beyond all reasonable doubt?*
- ii) *Whether the Trial Court has committed any error in convicting and sentencing the accused for the above said offences?*

8. In order to evolve the findings on the above said points, it is just and necessary for us to re-evaluate the evidence on record.

9. PW-1 Veeresha is none other than the brother of the deceased who has stated about the contents of the complaint and he has specifically stated that when he visited the house of the accused, he did not find his sister. There is no much dispute by the accused in so far the said deceased was given in marriage to his brother and his brother died, after three months from the date of the marriage and thereafter, Puttamma started living in the house of the accused himself. But according to the evidence of the accused, the deceased went away from his house after the death of her husband and died at her parents house and thereafter, her dead body was buried by her parents, i.e., the exact defence taken during the course of his evidence. Therefore, in this case, the Court has to ascertain the circumstances projected by the

prosecution that, whether the dead body of the deceased was recovered at the instance of the accused.

In this context, the prosecution has relied upon the evidence of PW-1, Veeresha. He has stated that after lodging of the complaint, about 12 days later, the police have told him to come near the place where the accused told to have buried the dead body of Puttamma. Therefore, this witness has directly gone to that particular place at about 9.30 a.m. near the house of the mother of the accused. He says that, the police came to the spot at about 11.00 a.m., on that day along with the accused, Sub-Inspector and four other police personnel. The dead body was exhumed with the help of few persons. Even without coming to the cross-examination of this witness, the examination-in-chief itself creates a serious doubt because much prior to the police coming to the spot, this witness was

already on the spot, where the dead body of Puttamma was buried. Therefore, it creates a serious doubt regarding the place where the dead body of Puttamma was buried was already known to this witness. When such being the case, it is difficult to believe that, it was in the exclusive knowledge of the accused as to, where the dead body of Puttamma was buried.

10. In the cross-examination, he further clarified at Para No.4 that he do not remember on what date exactly he has seen the dead body of his sister. After lodging of the complaint, 10 to 12 days later, he saw the dead body of his sister. He has also stated that the house of the accused is at a distance of 10 to 15 feet away from the house of the mother of the accused. Therefore, it clears the doubt that he very well knew the place where the dead body was buried. It is also

suggested to him that the said Puttamma died long back and that it is very well known to the witness that they all together have buried the dead body of Puttamma and they have performed the obsequies ceremonies of Puttamma. This particular aspect, though denied by this witness, in my opinion, the same has been accepted by the father of this witness and the father of the deceased, Puttamma, which we refer it later. Therefore, looking to the above evidence of the witness, no reliance can be placed to come to a definite conclusion, that the place of burial of the dead body of Puttamma was in the exclusive knowledge of the accused.

11. PW-2, Motamma is another relative of the deceased who is the maternal aunt of the deceased. She has also deposed about the cordial relationship

between the parties. She pleads her ignorance as to how Puttamma died. She was also enquired with regard to missing of Puttamma and she has stated that, only after exhuming the dead body of Puttamma, she came to know that, she was murdered by the accused. She has stated that she has no personal information about the murder. But, in the cross-examination, she has deposed whatever she has stated before the police, that the police enquired her regarding missing of Puttamma and after recording her statement about 20 days later, the dead body of Puttamma was exhumed. Even much prior to exhuming of the dead body, the police had already visited the said spot and they were talking with each other that the dead body was buried at a place and how to remove the same, etc., and thereafter this witness, PW-1 Veerasha have told the police to remove the dead body and thereafter,

the dead body was removed. This also confirms the situation that the police were very much knowing the burial place of the dead body in a particular spot and that the dead body was buried much prior to even lodging of the complaint by Veerasha.

12. PW-3, Nagamma though she turned hostile to the prosecution, but only supported the prosecution to the effect that, the said Puttamma was residing with the accused after the death of Subbaiah. No much reliance can be attributed to the evidence of this witness.

13. PW-4, J.S.Devaraju of Angadi Village has deposed before this Court that the police having coming to know that, the accused has buried the dead body of Puttamma, they requested this witness to assist the police in removing the dead body from that



particular place. He says that, on that day, Sub-Inspector Nagegowda, Rudresha and Assistant Commissioner and other police personnel were present and the accused showed the place, and the dead body was exhumed thereafter. This witness has stated that, he went to the particular spot at about 10.00 a.m. and at that time, the dead body was not yet removed and at about 11.00 a.m., they started to exhume the dead body. He did not know at what time, his statement was recorded by the police. It is suggested that he has been telling falsehood that, the dead body was removed at the instance of the accused. Recapitulating the evidence of PW-7, it is elicited from the evidence of PW-1, that PW-1 had already been to the spot at about 9.30 a.m. This witness went to the particular spot at about 10.00 a.m. but they started to exhume the body only at about 11.00 a.m. PW-1 has stated that the

police came to the spot at about 11.00 a.m. Therefore, this witness also knew about the particular spot, therefore, he had been to that place even much earlier, the police visited the spot with the accused. Therefore, the accused showing the place remains a mystery & doubtful.

14. PW-5, Karunakara Murthy is another witness who has stated that, he is a witness to the inquest proceedings drawn at the spot as per Ex.P3. He stated that he was present at the time of inquest and the accused showed the spot where the dead body was buried. In the course of cross-examination, he says that he has not actually seen the dead body but he has signed the mahazars as per the request of the police. He has also stated that, the accused was earlier working in the house of this witness. This witness has

not been examined for the purpose of accused giving any statement before the police or leading police to the spot for removing dead body. Only for the purpose of inquest proceedings, the evidence of this witness can be taken into consideration, not otherwise.

15. PW-6, one H.L.Mayura is the witness to the spot mahazar, Ex.P4 and also recovery of material objects and also to the inquest proceedings. It is stated that the police have recovered MOs-1 and 2 from the house of the mother of the accused and the accused has given voluntary statement and showed the place where the dead body was buried and thereafter, the dead body was removed. In the course of cross-examination, he has stated that, the police have not recorded the statement of this witness on that particular point of time. He states that MOs-1 and 2

were at the spot itself and he has not touched MOs-1 and 2. As rightly contended by the learned counsel for the appellant, it creates a serious doubt that even at the presence of this witness, when he says that he has not actually seen the dead body, however he has stated that MOs-1 and 2 were at the spot itself. But, according to the prosecution, MOs-1 and 2 were actually recovered from inside the house of the mother of the accused. Therefore, it creates a serious doubt. Much reliance cannot be placed with regard to the statement of this witness accused that, the accused has actually shown the buried place of the dead body.

16. PW-7, Manjaiah is another witness who is the father of the deceased Puttamma. He has stated that he knew about the conduct of the accused and his daughter. He has stated that PW-1, (his son) Veerasha

had been to the accused house to invite his daughter. This witness has stated that after the death of Subbaiah, the husband of the deceased Puttamma, Puttamma started residing with the accused. He has further deposed that, PW-1 had been to the house of the accused and came back and said that Puttamma was not in the house of the accused. Thereafter, the police have enquired the accused and he told the police that, he has buried the dead body of Puttamma behind the house of his mother. The police have exhumed the dead body and he also went there and saw the dead body. Though he has stated so many words in such a manner in examination-in-chief, but in the course of cross-examination, something indifferent has come out from his mouth. It is stated in the cross-examination that, after the death of Subbaiah, they had brought Puttamma to their house. The people were talking that

the accused himself might have committed the murder of Puttamma. After the death of Puttamma about 22 days later, the dead body was removed from the earth. He admitted that normally if a girl dies, her parents would bury the dead body and perform the obsequies ceremonies. He specifically stated that accordingly, they have buried the dead body and after burial of dead body, there was some quarrel between his son PW-1 and the accused and thereafter, PW-1 lodged a complaint and thereafter, the police have exhumed the dead body. It is a categorized admission on the part of this witness. In our opinion, this admission cuts the back bone of the prosecution, this admission also corroborated by the evidence of other witnesses, which we have already discussed, expressing our doubt that, the police and other persons even much earlier to exhumation of the dead body knew about the place

where the dead body was buried. Therefore, in juxtapose putting the evidence of other witnesses to the evidence of this witness, it creates a serious doubt whether much earlier to the lodging of the complaint itself, the said Puttamma died and was buried by other persons and falsely, PW-1 lodged a complaint implicating the accused. When this witness has categorically stated that he knew about the place of burial of the dead body of Puttamma, then the case of the prosecution falls to the ground that, the dead body was recovered only at the instance of the accused.

17. PW-8, N.C.Nagegowda, Police Sub-Inspector has actually received the complaint on 24.08.2008 from PW-1 and registered in N.C.R.No.79/2008 and started the investigation from 02.09.2008 itself. He has visited that previous places, particularly, Haluru

Village and S.C. and S.T. Colony and examined some of the witnesses and thereafter, he came to know that the accused himself has committed the murder of the deceased and buried the dead body. On suspicion, he examined the accused and thereafter, he gave the statement that he committed the murder of his wife. It is very conspicuously to be noted here that, though this man was competent to examine the accused to record his voluntary statement but he did not record the voluntary statement of the accused, till his voluntary statement was recorded by C.P.I. on 05.09.2008; without arresting the accused and without recording his voluntary statement, he makes a request to the Assistant Commissioner for exhumation proceedings. He further states that on 05.09.2008, at the instance of the accused, the Assistant Commissioner exhumed the body and thereafter, he



*suomoto* registered a complaint in Cr.No.79/2008 and handed over the investigation to the C.P.I.

18. In the cross-examination, he has specifically admitted that, he has not arrested the accused at any point of time though he has conducted the investigation from 02.09.2008. Upto 05.09.2008, i.e., upto 5.30 p.m., the CPI did not do any further investigation and did not arrest the accused nor recorded his statement. In the cross-examination, he has however admitted that, he knew about the death of Puttamma on 02.09.2008 itself from his informants but he has not stated so anywhere in the investigation papers. Therefore, from the evidence of this witness also, it creates a serious doubt whether from 02.09.2008, the police had knowledge about the burial place of Puttamma and they did not even register a

case nor arrested the accused and recorded his voluntary statement for the reasons best known to them. This also, in our opinion, creates a serious doubt with regard to the conduct of the Investigating Agency as to why they have made such a delay in arresting the accused and recording his statement.

19. PW-9, Panchakshri is also a person who is a witness to the inquest proceedings. He only says that he was present at the time of inquest and the police have drawn the mahazars as per Ex.P3 and also seizure of some of the articles on the dead body. No much importance can be attached to the evidence of this witness because he has stated nothing about the accused.

20. PW-10, Dr.Farooq Junaid is the Doctor who conducted post-mortem examination on the dead body

of Puttamma. He has stated that, on examination, he found that the dead body had turned into black colour, eyes were spoiled, tongue and lips were decomposed and he also found at the right side of the forehead of the dead body, an injury of 0.5 cms in width and 5 cms in length and he did not find any other external injuries on the body. He also examined the club and has given his opinion that if a person is hit with such a club, there is a chance of sustaining such injury. He gave his opinion that the death is an homicidal death.

The Doctor was specific that, the injury found on the dead body of Puttamma was ante mortem in nature. But in the course of the cross-examination, he has accepted that he has not written in post-mortem examination that the said injury was in ante mortem in nature. The dead body was almost subjected to putrefaction and he denied the suggestion that if the

dead body was almost decomposed, the cause of death cannot be stated. Though the prosecution has established from the evidence of this witness that it was a homicidal death, but there is no evidence to substantiate that the accused has actually committed the murder of Puttamma. There is a serious doubt about the burial of the dead body by the accused, in view of the evidence of the father of the deceased. Therefore, though the evidence of the Doctor shows that the dead body has sustained injuries, it is very difficult at this stage to draw inference whether they are pre-mortem or ante-mortem injury. Therefore, the death of the deceased Puttamma itself was doubtful as to how she died, whether homicidal death of suicide, natural death or un-natural death, in such circumstances, in our opinion, the prosecution cannot

be successful unless it has proved beyond reasonable doubt that the deceased died homicidal death.

21. PW-11, H.L.Basavaraju is the person who was working as a Junior Engineer, who drawn the sketch, Ex.P11.

22. PW-12, Subramanya, Secretary of Grama Panchyath has given Ex.P12, which is the assessment register extract pertaining to the house of the accused where actually the dead body was buried. There is no dispute in so far as this aspect is concerned as to where the house belongs to the mother of the accused.

23. PW-13, K.A.Nanjundappa, who is an agriculturist is also a witness to the exhumation proceedings. He has stated that on that particular day, he signed Ex.P8, the spot mahazar and he has also

stated that the accused has shows the place where the dead body was buried and the police have exhumed the same. Though this witness has also stated that the accused has shown the place but as we have suspected earlier, with regard to the conduct of the other witnesses, the police came to the place where the dead body was buried and the police were already knew the place where the dead body was buried.

24. PW-14, G.G.Shivashankarappa is the person who was working as a police constable, has taken the incriminating articles to the FSL and brought them back.

25. PW-15, Shakuntala is the police constable who watched the dead body until it was taken to post-mortem examination.

26. PW-16, S.Shivarudramma is another police constable, she has stated that, on 24.08.2018, she received Ex.P1 from PW-1, Veeresha. It is stated that she has brought the complaint written and she has given the endorsement to the same and she has handed over the same to the Police Sub-Inspector thereafter. Further, the evidence of PW-1 shows that he went to the police station and disclosed the facts to the police and police themselves prepared Ex.P-1. Though, there is some discrepancy in this aspect is concerned, but lodging of the complaint as per Ex.P-1 itself cannot be disbelieved.

27. PW-17, the evidence of this witness, in our opinion play a dominant role, because he is the Investigating Officer, who conducted important stage of the investigation. He has stated that he took over the

investigation on 5.9.2008 and he made a request to the Assistant Commissioner for exhumation of the dead body of the deceased, and he went to the spot along with the Assistant Commissioner and doctor. At the instance of the accused, they exhumed the dead body of the deceased, Puttamma in the backyard of the house of Somamma, the mother of the accused. Thereafter, he arrested the accused, who was present at the spot on the particular date and accused has admitted the guilt and thereafter, he stated that he would show the club and spade used for commission of the offence. This witness has recorded the voluntary statement of the accused. In the cross examination, it is very clear in the evidence of the witness that he never arrested the accused upto to 5.30 p.m. on 5.9.2008 and the dead body was recovered much prior to 5.30 p.m. and after drawing of mahazar, Ex.P-5 at



5.30 p.m., he recorded the statement of the accused at the spot accused at any time prior to his arrest. That clearly goes to show that the accused was not in the custody of the police, nor his voluntary statement was recorded upto 5.30 p.m. on 5.9.2008. It is a recognized settled principles of law that unless the accused is in custody and police records voluntary statement of the accused, thereafter the accused leads the police to the place where the incriminating articles are recovered buried at the instance of the accused story that the recovery at the instance of the accused falls to the ground. Therefore, this also creates serious doubt whether this witness has taken the accused to the custody and accused led the police to the said place for the purpose of exhuming the dead body, because the accused was not in the custody of the police. This witness has stated in the examination-in-chief that, the

accused was there at the spot and on the spot itself, he was arrested. Therefore, the whole of the prosecution witnesses including the Investigating Officer created a serious doubt with regard to the accused being in custody of the police and accused giving any voluntary statement that he alone exclusively knew the place of burial and he alone took the police or led the police to the spot and only at his instance, the dead body was detected. When such a strong doubt is created in the mind of the Court, it is the responsibility of the prosecution to clear the doubt. But, the doubt expressed by the court on the basis of the said evidence, is not clarified.

28. PW-20, is a formal witness who has taken the photographs of the spot and dead body. No much importance can be attributed to the said evidence.

29. The accused examined himself as DW-1. He has stated that, after the death of his brother, the deceased Puttamma, wife of his brother had been to her house and she died later. Thereafter, the dead body was buried and later there was some dispute between himself and PW-1 and therefore, a false case has been foisted against him. Though, this aspect has been denied in the cross-examination and a suggestion has been put to him that he has committed the murder and buried the dead body of his wife in the backyard of his mother's house, this suggestion has been denied. The evidence of this witness, in our opinion, is fully corroborated in the cross examination of the father of the deceased. At the cost of repetition, we may say that, the witness i.e., PW-7 has categorically stated that, after the death of Puttamma, they all together

buried the dead body of the Puttamma, thereafter some dispute started between PW-1 and the accused and thereafter, a complaint was lodged. Therefore, the evidence of defence witnesses also in our opinion is supported by the evidence of the prosecution.

30. In the circumstances of the case, the court expects the evidence from the prosecution witnesses of sterling quality and the allegations against the accused have to be proved beyond reasonable doubt. If any semblance of doubt which goes to the root of the prosecution case and it is coupled with the evidence uprooting the case of the prosecution, in such an eventuality the benefit of such doubt should not be brushed aside. In our opinion, the trial court has not meticulously considered the evidence of the father of the deceased and such evidence, particularly of the

investigating officer that the accused was not at all in the custody of the police when alleged exhumation had taken place. Therefore, for all these reasons, we are inclined to grant the benefit of doubt in favour of the accused as noted above. Consequently, we hold that the judgment of conviction and sentence passed by the trial court is not proper and correct and the same is liable to be set aside. Having drawn such an inference, we proceed to pass the following :

### ORDER

The criminal appeal is allowed.

The judgment of conviction and sentence dated 5.3.2011 passed by the Fast Track Court, Chikkamagalur in S.C.2/2009 for the offences punishable under Sections 302 and 201 of IPC, is hereby set aside. The accused is set at liberty and he

shall be released forthwith, if he is not required in any other case.

Office to intimate the concerned Jail Authorities to release the accused forthwith, if he is not required in any other case.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

dh/DM