

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2019

PRESENT :

THE HON'BLE Dr. JUSTICE H.B. PRABHAKARA SASTRY

AND

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

CRIMINAL APPEAL No.180 OF 2016

BETWEEN:

Mr. Ravi @ Chinna @ Raja
S/o. Shri Manjesh,
Aged 39 years,
Coolie by avocation
Resident of Kumbatthi Colony,
Devagodu Village, Koppa Taluk,
N/o Near Kattinamane School,
N.R.Pura Taluk,
Chikkamagaluru District, Pin-577 112.

...Appellant

(By Sri. H.S.Suresh, Advocate)

AND:

State of Karnataka
By Balehonnur Police,
Chikkamagaluru District,
Through the State Public Prosecutor,
High Court Building,
Bangalore-560 001.

...Respondent

(By Sri. Nasrulla Khan, HCGP)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment dated:26-09-2015 and order on sentence dated 30-09-2015 passed by the Principal Sessions Judge, Chikkamagaluru in Sessions Case No.107/2014, convicting the appellant/accused for the offence punishable under Section 302 of IPC and sentencing him to undergo life imprisonment and to pay a fine of ₹10,000/-, in default of payment of fine, he shall undergo R.I. for one year for the offence punishable under Section 302 of IPC and he prays that he be acquitted.

This Criminal Appeal coming on for Hearing this day, **Dr.H.B. PRABHAKARA SASTRY, J.**, delivered the following:

JUDGMENT

The present appellant has been convicted by the Court of the Principal Sessions Judge at Chikkamagaluru (hereinafter for brevity referred to as "Sessions Court") for the offence punishable under Section 302 of the Indian Penal Code, 1860, (hereinafter for brevity referred to as "IPC") and was sentenced accordingly by its impugned judgment and order dated 26-09-2015 passed in Sessions Case No.107/2014. Challenging the said judgment of conviction and order on sentence, the accused/ appellant has preferred this appeal.

2. The summary of the case of the prosecution is that, on 30-06-2014 at about 2:00 p.m., the complainant - Sri.D.P. Yogeesh (PW-1), while had been to a Government forest called "Jarly Honda" which was near his garden land to fetch some Bamboo to put up a cattle shed, noticed in the pathway a dead body of a lady. He identified the said lady as the one who was found in the company of the present accused herein. Suspecting that she has been murdered by somebody, he lodged a complaint before the Police as per Ex.P-1. Registering the said complaint in their Station Crime No.70/2014 for the offence punishable under Section 302 of IPC against an unknown accused, the Police continued the investigation.

3. It is the contention of the prosecution that during investigation, the Investigating Officer came to know that the deceased was one Smt. Sharada who was identified as the second wife of the accused by the

localites and that on 29-06-2014, while the accused and his second wife Sharada were going towards Kumbhatthi Colony to the house of the sister of the accused, some dispute had arisen between them. In the process, the accused making use of a club and a stone available in the place, assaulted said Sharada on different parts of her body which resulted in her death. Coming to the said conclusion, the complainant – Police filed a charge sheet against the accused for the offence punishable under Section 302 of IPC.

4. Accused was charged for the offence punishable U/s.302 IPC. Since the accused pleaded not guilty, the trial was held, wherein the prosecution in order to prove the alleged guilt against the accused, examined in all 18 witnesses from PW-1 to PW-18, got marked documents from Exs.P-1 to P-20 and got produced Material Objects from MO-1 to MO-10. On behalf of the accused, neither any witnesses were examined nor any documents were got marked.

5. After hearing both side, the learned Sessions Judge by his impugned judgment of conviction dated 26-09-2015 convicted the accused/appellant for the offence punishable under Section 302 of IPC and by his order dated 30-09-2015 sentenced him accordingly. It is against the said judgment of conviction and order on sentence, the appellant/accused has preferred this appeal.

6. The Lower Court records were called for and the same are placed before this Court.

7. Heard the arguments from both side and perused the materials placed before this Court.

8. For the sake of convenience, the parties would be henceforth referred to as per their ranks before the Sessions Court.

9. Among the 18 witnesses examined by the prosecution, PW-1 – Sri. D.P. Yogeesh is the complainant. The said witness has reiterated the contents of his

complaint even in his Examination-in-chief by stating that about ten months prior to the date of the incident on the 30th day of the month, at about 11:00 a.m., when he had been to a Government forest land to fetch some bamboo, he saw a dead body of a female fallen on the ground. After identifying the said dead body as that of the wife of the accused, he not only informed the jurisdictional Police over telephone but also went to the Police Station that afternoon at 2:00 p.m. and lodged a complaint as per Ex.P-1.

The witness has further stated that after he lodging the complaint, the Police visited the spot to whom he shown the spot. The Police drew a scene of offence panchanama as per Ex.P-2 and from that place, they collected blood-stained mud and sample mud which the witness has identified at MO-1 and MO-2 respectively. Stating that the Police also got two photographs of the deceased lady taken, the witness has identified those two

photographs at Exs.P-3 and P-4. Except making denial suggestions to him in his cross-examination, nothing could be elicited in favour of the accused in the said cross-examination.

10. PW-2 – K.P. Rangappagowda has stated that he was present and acted as a panch to several of the panchanamas drawn by the Police with respect to the murder of deceased Sharada.

The witness has stated that on 30-06-2014, at about 3:00 p.m., the Police drew a scene of offence panchanama on the spot shown by PW-1 from where apart from drawing a panchanama as per Ex.P-2, they also collected blood-stained mud and sample mud which the witness has identified at MO-1 and MO-2 respectively. He has also identified the photographs at Exs.P-3 and P-4 as the photographs taken in the spot of the dead body.

The witness has further stated that the Police also drew an inquest panchanama in his presence as per

Ex.P-5. In the process, he noticed the injuries found on the dead body.

The witness has further stated that thereafter, he was summoned to the Police Station where one of the Police Constables presented the clothes found on the dead body of the deceased which were seized by drawing a seizure panchanama in his presence as per Ex.P-6. The witness has identified a blouse, saree, and a petty-coat said to be belonging to the deceased and said to be seized in his presence under Ex.P-6 at MO-3, MO-4 and MO-5 respectively.

The witness has further stated that, on the next day in the afternoon at 12:00 noon, the Police had summoned him to their Police Station where the accused was also present. The clothes worn by the accused which were blue colour jeans pant and black colour full-arm shirt had sustained blood. The Police got those clothes undressed from the accused by providing him an alternate dress and

seized them by drawing a seizure panchanama as per Ex.P-7. Apart from identifying the panchanama, the witness has also identified those two clothes at MO-6 and MO-7 respectively.

The witness further stated that on the same day, the Police took him and one Sri. Eraiah and the accused to a pathway adjoining the garden of Sri. Shankaralingegowda. The accused shown them a spot as the one where he had committed the murder and also shown a club which had broken into three pieces and a stone, stating those articles were used by him in assaulting the deceased. The Police sized those articles by drawing the seizure panchanama as per Ex.P-8. Apart from identifying the seizure panchanama, the witness has also identified the club (three pieces) at MO-8 and a stone at MO-9. He has also stated that he has put his signature to the slip attached to MO-8 and MO-9. The

denial suggestions made to him in his cross-examination were not admitted as true by this witness.

11. PW-3 – Janaki in her evidence has stated that, the accused is her younger brother and CW-9 – Subhashini is her daughter. The accused had married one Smt. Yashodha from which marital life, they got four children. Apart from it, the accused was also having an illicit relationship with one Sharada, from whom he got one girl child. Though the said Yashodha was living separately with her children, the accused was residing with Sharada at a different place.

The witness has further stated that now and then the accused used to bring Sharada to the house of her sister Rathna and the said Sharada is no more. On the date of death of said Sharada in the evening at about 6:30 p.m., the accused had been to her house when she and her children were there. At that time, the accused told her that he had finished the fate of Sharada in

Halasuru Road. Immediately she joined by her daughter Subhashini rushed towards the spot mentioned by the accused. They were followed by the accused. In the spot, they noticed the dead body of deceased Sharada. The accused threatened them that they should not disclose about the same before anybody, otherwise, what fate deceased Sharada had met would be attainable by them also. The witness has stated that when she noticed the dead body of Sharada, she noticed the injury on the forehead of Sharada. Thinking that on the next day, they would reveal about the same to one Sri. Eraiah, they spent their night.

The witness has also stated that next day, the Police by drawing a panchanama had shifted the body from the place. However, she pleaded her ignorance as to why the accused had caused death of said Sharada by assaulting her.

Though the witness was subjected to a detailed cross-examination from the side of the accused, but her evidence given in Examination-in-chief could not be shaken in her cross-examination. On the other hand, the witness had given some more details in her cross-examination apart from her evidence in Examination-in-chief.

12. PW-4 – Subhashini who is undisputedly the daughter of PW-3 and niece of the accused has stated that the deceased Sharada was the second wife of her maternal uncle i.e. the accused. She was studying in V Standard when Sharada died. On the date of death of Sharada which had fallen on a Sunday, the accused had been to their house at about 6:30 p.m. in the evening. When she joined by her mother were there at home, he called them and stated that he had assaulted Sharada who had lost her conscious and fallen but did not give the reason as to why he had assaulted her. Immediately,

joined by her mother and followed by accused, she rushed to the spot mentioned by the accused only to see the dead body of Sharada. While coming back, the accused also threatened them of dire consequences in case they disclosed the same to any body. The witness has also stated that she too had noticed the injury on the forehead of the deceased. Even in her cross-examination from the side of the accused, she adhered to her original version.

13. PW-5 – Jannaiah has only stated that he knows both accused and the deceased and that the accused has committed the murder of deceased Sharada about ten months prior to the date of his evidence. He has also stated that he has seen the dead body of the deceased Sharada. Barring this, the witness could not throw any further light on the case of the prosecution.

14. PW-6 – D. Venkatesh has claimed himself to be working as a 'Cashier' in 'Kalmakki Wine Shop' at a place

called 'Kadlemakki Balehonnuru' since four years. He has stated that he knows the accused who had come to his shop in the afternoon at about 2:15 p.m. on 29-06-2014. Though he did not know as to who that lady was, however, the accused had purchased one quarter of whisky from his wine shop. On the next day morning, the Police had brought the accused to the wine shop when he identified the accused as the one who had visited his wine shop along with a lady on the previous day afternoon. He came to know that the very same lady who had accompanied the accused on the previous day was the one who was murdered.

In his cross-examination, attempts were made to elicit from him that being a Cashier in a Wine Shop, where several customers visit every day, he could not able to remember the accused, however, the witness shown that he was remembering the accused as he was a regular customer.

15. PW-7 – Koushik who claims to be a resident of a place called 'Konanagadde', Halasuru has stated that he knows the accused since a year earlier to the alleged incident and he also knows his wife Sharada. On 29-06-2014 at about 2:15 p.m., while he was going to his land, on the way, he saw both the accused and deceased Sharada talking to themselves in a loud voice and quarrelling *inter se*. When questioned by him, the accused told them that it was their family matter. On the next day, he came to know that the said Sharada was murdered. In that regard, he had given a statement before the Police. The denial suggestions made to him in his cross-examination were not admitted as true by this witness.

16. PW-8 – Yashodha, who is the wife of the accused has stated that, from the marital life with the accused, she has got four children. Earlier, she was living along with the accused in a place called

'Kaaragadde', Devagodu village and residing there. At that time, the accused came in contact with deceased Sharada and both of them started loving each other. As the accused also brought the said Sharada to their house, all of them were living together for some time. On this, at the advise of the planter, she and her husband along with their children shifted their residence to a place called 'Bellur'. However, the accused continued his contact with the said Sharada. Subsequently, because of the quarrel between herself and Sharada, she decided to shift her residence, as such, along with her children, she left that place and returned to Kaaragodu Estate.

The witness has also stated that now and then the accused was visiting her at Kaaragodu Estate and was giving some money towards her expenses. When she had been to market day (santhe) at Balehonnuru, she met both accused and deceased Sharada. On the next day, she came to know that the said Sharada was murdered and

through Sri. Rangappagowda, she came to know that it was her husband who had committed the said murder.

In her cross-examination, the witness has given some more details of the alleged illicit relationship between her husband and deceased Sharada.

17. PW-9 – Syed Imthiyaz, in his evidence has stated that, he has been earning as an Autorickshaw driver and is running his own Autorickshaw and now and then, the accused used to engage his services. On the date of incident, in the afternoon at about 2:30 p.m., they engaged his services near KEB Office at Balehonnuru. Accordingly, he dropped them to Konanagadde, near Halasuru circle and collected his fare. From there, the accused had to go by walk towards his house. Next day, he came to know through Police that, the said Sharada was murdered. He had informed the Police that, on the said day in the afternoon of the date of incident, the accused and his wife Sharada had travelled

in his Autorickshaw and both of them were quarrelling with each other.

In his cross-examination, though it was suggested that he would not listen to what the passengers in the autorickshaw would speak, but, he maintained that the accused and deceased Sharada had rented his autorickshaw in the afternoon of the date of incident.

18. PW-10 – Manju L. Nayaka claiming himself to be the neighbour of the house of the accused has stated that, he knows both accused and deceased Sharada. Incidentally, deceased Sharada was from his place. He stated that the accused and deceased Sharada Bai were living in the same house as husband and wife. He came to know that Sharada Bai was murdered.

The witness also stated that while the accused and deceased Sharada were living together, several times, after consuming liquor, they were quarrelling with each other.

In his cross-examination, the witness has given some more details about his native place and that of deceased Sharada and reiterated that both hail from the same place.

19. PW-11 – D. M. Sathish, a Writer in Baaluru Estate has stated that the accused was working in their Estate in the year 2014 and Sharada was living with him as wife. It is only through Police, he came to know that she was murdered. The witness has clearly stated that the accused and said Sharada were living in the same house.

In his cross-examination, nothing favourable to the accused could be elicited.

20. PW-12 – Govinda Naik, the brother-in-law of deceased Sharada has stated that the deceased was the wife of his late brother Krishna Naik. The deceased had been towards Chikkamagaluru to work in a Coffee Plantation.

The witness has further stated that, on coming to know about the death of Sharada @ Haali Bai through CW-21 – Jaami Bai, he went to the complainant Police Station where he identified the deceased Sharada through photographs at Exs.P3 and P4 and came to know that the deceased was murdered.

21. PW-13 – Ravichandra has stated that as an Assistant Engineer in Public Works Department, he had prepared a sketch of the scene of offence as per Ex.P-9, at the request of the Police and delivered the same to them.

22. PW-14 – Dr. Sudhindra - the Medical Officer in Primary Health Centre at Jayapura has stated that, on 30-06-2014, at the request of the complainant – Police, he has conducted Post-Mortem examination on the dead body of one lady identified as Sharada, aged about 40 years. He has conducted the Post-Mortem examination at the Mortuary of Primary Health Centre, Baalehonnuru.

The witness has given the details of the injuries said to have been noticed on the dead body and has opined that the death was due to sub-dural haemorrhage as a result of injury to brain. He has identified the Post-Mortem report given by him at Ex.P-10.

After seeing three pieces of club at MO-8 and a stone at MO-9 in the Court, the witness has stated that he had seen those articles earlier on 31-08-2014 since they were placed before him by the complainant - Police for his opinion and after verifying those articles he has given his opinion as per Ex.P-12, opining that the injuries mentioned in the Post-Mortem report at Ex.P-10 were possible if a person was assaulted with those articles at MO-8 and MO-9

In his cross-examination, it was not denied or disputed that he had conducted autopsy of the diseased. When a suggestion was made to the effect that if a person falls from a tree, the injuries mentioned in

Ex.P-10 are possible, to which, the witness has admitted the said suggestion as true.

23. PW15 – K.N. Rangaswamy - the Range Forest Officer of Baalehonnuru has stated that at the request of the Police, he had issued them a report as per Ex.P-13 stating that the location of the offence falls in Survey Nos. 96 and 45 of Halasuru village, which is in the 'declared forest area'.

24. PW-16 –G. Nageshappa- a Police Constable of the complainant-Police has spoken about his apprehending the accused on 01-07-2014 and producing him before the Investigating Officer along with his report at Ex.P-16. He has identified the accused in the Court.

25. PW-17 – K.R. Raghu - the then Police Sub-Inspector of the complainant - Police Station has stated that on 30-06-2014 in the afternoon at about 2:00 p.m., he received a complaint as per Ex.P-1 lodged by PW-1.

Registering the said complaint, he prepared an FIR as per Ex.P-17 and handed over further investigation to CW-41.

26. PW-18 (CW-41) - Sri. Sadananda M. – the then Circle Inspector of Police of Narasimharajapura Circle in his evidence has stated that, while he was working in the said Circle as a Circle Inspector of Police from January-2014 to May-2015, the complainant - Police was coming within his jurisdiction. He took up further investigation from PW-17 on 30-06-2014. On the same day, he visited the scene of offence and drew a scene of offence panchanama as per Ex.P-2 in the presence of panchas and upon the spot shown to them by PW-1 – T.P. Yogeesh. From the place of offence, he seized blood stained mud/soil and a sample mud/soil separately. He has identified them as MO-1 and MO-2 respectively. He has also stated that he got the photographs of the spot taken as per Exs.P-3 and P-4 and also drew a rough sketch of the spot as per Ex.P-18.

The witness has further stated that he recorded the statements of several witnesses on the same day and also sent the body of the deceased to its Post-Mortem examination and got the same done. Thereafter, he seized the clothes found on the deceased which were produced before him through a Police Constable of the complainant Police Station. In that regard, he has drawn a seizure panchanama as per Ex.P-6. The witness has identified the seized clothes at MO-3 to MO-5.

The witness has also stated that on 01-07-2014, PW-16 who was deputed for apprehension of the accused produced the accused before him along with a report at Ex.P-16. He enquired the accused and recorded his Voluntary Statement.

The witness stated that, in his Voluntary Statement, the accused has volunteered to state that he has been wearing the very same clothes which he was wearing at the time of commission of the crime. Further, if he is

taken, he would show the place where he has kept the club and a stone used in the commission of the crime. The said portion of the Voluntary Statement of the accused was marked at Ex.P-19.

The witness has further stated that after recording the Voluntary Statement, he got the dress worn by the accused produced before him by providing him an alternate dress and seized those dress worn by the accused which were blue colour jeans pant and a black colour full-arm shirt, both stained with blood. The witness has identified those two clothes at MO-6 and MO-7 respectively and the seizure Mahazar at Ex.P-7.

The witness has further stated that pursuant to the Voluntary Statement given by the accused, he, joined by the panchas, followed the accused who took them to a Government forest land in a place called 'Jarly Honda', from there, he took them to a Kachcha (rough) pathway leading to the garden of Sri.Shan karalingegowda. On the

said path, at a particular place, the accused stopped and shown them the same place as the place of offence and also produced a broken club which had broken into three pieces and a fist-size stone which was seized by this witness by drawing a seizure panchanama as per Ex.P-8. The witness has identified the said sticks and stone at MO-8 and MO-9 respectively.

Further, the witness has also stated that during the course of investigation on different dates, he has recorded the statements of several witnesses and also got prepared a sketch of the scene of offence as per Ex.P-9 through the Authority of the Public Works Department (PWD). He also sent the seized articles for its scientific examination to the Forensic Science Laboratory (FSL) and after completing the investigation, he has filed the charge sheet against the accused.

27. In the light of the above evidence of the parties, it is the argument of the learned counsel for the

accused/appellant herein that, admittedly there is no eye witness to the alleged incident, as such, the entire case of the prosecution is based on circumstantial evidence.

Learned counsel submits that none of the evidence of the prosecution witnesses inspires any confidence to believe. Even according to the prosecution, when the accused is said to have gone to his sister's house, he stated that the deceased had fallen in the forest land, the same would go to show that the accused had no intention to cause the death of deceased Sharada.

Learned counsel also submitted that no witnesses are shown to have stated that they had noticed blood stains on the clubs and the stone, said to have been seized from the place of offence.

He also submitted that the nexus between the injuries found on the deceased and the alleged weapons recovered has not been established by the prosecution.

With respect to the evidence given by PW-3 and PW-4, learned counsel submitted that, admittedly, both of them were very close relatives of the accused, as such, they are interested witnesses and therefore, their evidence cannot be believed.

Learned counsel also raised a doubt in his argument that, if the complainant (PW-1) has found the dead body of the deceased in the pathway, in a forest land, why not at the earliest point of time the same was not noticed by any other pedestrian walking in the said pathway. As such, the evidence of PW-1 that he saw the dead body in the pathway, is also not believable.

He also submitted that the blood Group of the accused and the deceased was not established by the prosecution.

Finally he submitted that since the prosecution has utterly failed to show that the accused had any intention to cause the death of the deceased Sharada, it cannot be

held that the accused has committed murder of deceased Sharada with any motive behind the alleged act, as such, the prosecution has failed to prove the alleged guilt against the accused and if at all the prosecution evidence is to be believed, then, at the best the offence that would be proven would be the one falling under Section 304, Part-II of IPC, but not Section 302 of IPC.

28. Learned High Court Government Pleader appearing for the respondent – State in his arguments submitted that even though the case of the prosecution is admittedly not based upon the evidence of eye witnesses, but, the prosecution could successfully establish the circumstantial evidence in proving the guilt of the accused.

He submitted that the relationship between the accused and the deceased that they were living together, though not married, as husband and wife, is not in dispute. The death of deceased Sharada as a result of

the injuries found on her body which were caused by an assault is not disputed. In that background, the evidence of the prosecution witnesses, more particularly, PWs.3, 4, 6, 7 and 9 would establish beyond all reasonable doubts that it was the accused and accused alone who has committed the murder of Sharada, as such, the judgment under appeal does not warrant any interference at the hands of this Court.

29. From the evidence of the parties, the undisputed facts remain that the legally wedded wife of the accused is Smt. Yashodha, i.e. PW-8 and the deceased Sharada who was acquainted with the accused very much initially had subsequently started living with the accused, as such, both accused and deceased Sharada were living together as though they were husband and wife. It is also not in dispute that said Sharada met an unnatural death in the afternoon of 29-06-2014 and her dead body was found near the

garden land of one Sri.Sankaralingegowda in Jarly Honda forest land in a pathway which was coming within the jurisdiction of the complainant - Police. The very same place where the dead body of the deceased Sharada was found, is agitated as the place of offence by the prosecution.

30. In that regard, the evidence of PW-1, PW-2, PW-3, and PW-4 are quite reliable. PW-1 says that he had found the dead body of Sharada in the said place. PW-2 has stated that the scene of offence panchanama was drawn in his presence as per Ex.P-2. PW-3 and PW-4 have stated that it was in the same place they noticed the dead body of the deceased Sharada in the evening of 29-06-2014 after they were said to have been given an information about the incident by none else than the accused himself and thus the place of offence stands established by the evidence of the above witnesses.

31. Added to that, the undisputed evidence of PW-13 and PW-15 that the sketch of the scene of offence was prepared as per Ex.P-9 by PW-13 and the report stating that the place of offence falls within the Government forest land as per the report given by the Range Forest Officer at Ex.P-13 further corroborate the evidence of PWs.1, 2, 3 and 4 regarding the place of offence. Thus, the place of alleged offence has been established by the prosecution.

32. The next question would be, whether the death of deceased Sharada is homicidal. It is in that regard, the first witness who is given the knowledge of the death of Sharada who suspect it to be a murder is none else than once again PW-1 - D.P. Yogeesh, i.e. the complainant. However, there is no basis for his conclusion that the death of deceased was a murder, except he noticing couple of injuries on the person of the deceased.

33. The material about the nature of death of the deceased was first available with PW-2, who is admittedly a panch for inquest panchanama. The said witness has stated that the inquest panchanama in this case on the dead body of the deceased Sharada was drawn in his presence as per Ex.P-5. His evidence would go to show that the panchas to the inquest panchanama have found the dead body of Sharada in the spot and as depicted in Ex.P-2 and by the external appearance of the dead body of the deceased, it could have been suspected as though it was a murder. Accordingly, the panchas to the inquest panchanama have opined. However, merely based upon an inquest panchanama, the Court cannot conclude the nature of death as homicidal. In order to arrive at any such conclusion, it is required to analyse the further evidence available in that regard.

34. The other two witnesses who have spoken about they seeing the dead body and the nature of death

are PW-3 - Janaki and PW-4 - Subhashini, who admittedly are the mother and daughter. In relation to the accused, PW-3 is his elder sister and PW-4 is his niece. Both of them have stated that when they saw the dead body of Sharada on the pathway in the forest land, they noticed injuries on her forehead. Both of them though have stated that Sharada was murdered, but the same was based upon the injuries said to have been noticed by them on the person of the deceased.

35. The evidence that is available to conclude regarding the nature of death of deceased Sharada would be the evidence of PW-14 - the Doctor. As already observed, the said Doctor has stated that he has conducted autopsy on the body of the deceased on 30-06-2014. He has stated that on examination, he noticed about seven injuries on the dead body. Those seven injuries are as below:-

1. *Two cut wounds over the left eye brow of 1 inch. By bone deep x 1/4th inch.*
2. *Abrated wound measuring 6 inch. On the right side of the neck.*
3. *2 cut wounds over the left breast of half an inch x 1/4 inch by skin depth.*
4. *Contusion over left fore arm at two spots of 2 inch x 2 inch size.*
5. *Below the left knee there is a contusion of 3 inch x 2 inch.*
6. *Contusion of 6 inch x 4 inch below the right knee.*
7. *Contusion of 2 inch x 2 inch over the right thigh.*

After considering the nature of injuries, the witness (PW-14) has opined that according to him, the death was due to sub-dural haemorrhage as a result of injury to brain. Further, the same witness has also stated that he had examined the weapons alleged to have been used in the commission of the crime and which were sent to him for their examination and opinion.

The witness has stated that those two articles were MO-8 and MO-9 i.e. club and a stone and after verifying those articles, he opined that the injuries mentioned in the Post-Mortem report are possible if a person is assaulted with MO-8 and MO-9. Though a suggestion was made to this witness that similar injuries are also possible to be caused when a person falls from a tree, but since the said suggestion was confined only as a suggestion to the Doctor without there being any circumstantial corroborative evidence to show that the deceased had fallen from a tree, the said suggestion cannot be taken as a cause for her death.

As such, what can be concluded from the evidence of PW-1, PW-2, PW-3, PW-4, PW-8 and PW-14 is that, the death of deceased Sharada though was unnatural, it was due to an assault made upon her by another person by making use of the articles at MO-8 and MO-9, as such, the said death was homicidal.

36. The next question that remains for consideration is, whether the homicidal death of said Sharada was committed by none else than the accused and accused alone and whether that act amounts to a murder?

In that regard, it is only the available circumstantial evidence which the Court is required to analyse and appreciate.

The Hon'ble Apex Court in the case of ***Reena Hazarika Vs. State of Assam reported in 2018 SCC online SC 2281***, with respect to criminal trial in a case based on circumstantial evidence was pleased to observe that in a case of circumstantial evidence, the prosecution is required to establish the continuity in the links of the chain of circumstance, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last seen theory, *sans* the facts and evidence in a case, will not suffice to shift

the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a *prima facie* case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a *prima facie* case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given. It is keeping the guidelines of this case in mind, the evidence placed on record in this matter is required to be analysed.

Admittedly, the complainant was not a witness to the incident in any manner, except he noticing the dead body and lodging a complaint. Though he has stated that he suspected that the deceased was murdered, but, that is only his suspicion and nothing more.

The other evidence upon which a link to the death of the deceased to the accused may be verified is that of

the evidence of PW-6, PW-7 and PW-9, since the case of the prosecution is based upon a last-seen theory.

The evidence of PW-6 establishes that he being a Cashier in a Wine Shop had sold a particular quantum of whisky to the accused in the afternoon of the date of the incident that was on 29-06-2014, at which time, the accused is said to have accompanied the deceased Sharada. Though it was attempted to elicit in his cross-examination that the witness could not remember the name of all customers who visit his shop, but the witness supported his statement by identifying the accused stating that the accused being a regular customer to his shop, he identifies the accused clearly and remembers him. The said statement which remains undenied makes it to believe that, in the afternoon of 29-06-2014, PW-6 had seen the deceased lastly in the company of the accused.

37. The next witness who speaks about seeing the accused in the company of the deceased just prior to the incident is PW-7 -Koushik. As observed above, he, in his Examination-in-chief has stated that, on 29-06-2014, in the afternoon at about 3:15 p.m., while he was going towards his garden, he saw the accused and the deceased talking *inter se* in a loud voice and going in the pathway there. He also stated that both the accused and the deceased were also quarrelling *inter se* and that he enquired the accused to get a reply that it was their family matter. The said evidence of PW-7 cannot be disbelieved for the reasons firstly that undisputedly both the deceased and the accused were known to the said witness since a year prior to the date of the incident.

Secondly, undisputedly, the house of the said PW-7 is also in the very same vicinity at Konanagadde, Halasuru, where the incident had taken place.

Thirdly, the statement of PW-7 that on 29-06-2014, he was going to his garden land also cannot be disbelieved because being an agriculturist, he being in his garden land in the afternoon, cannot be disbelieved. On the other hand in his cross-examination, his routine as an agriculturist has been elicited which timing he has mentioned in his cross-examination tallies to the one at which point of time he has noticed the deceased and the accused going together. As such, there is no reason to disbelieve the evidence of PW-7.

Thus all these further go to corroborate the prosecution evidence and make one to believe that the accused and deceased were found lastly in the company with each other in the place of the incident.

The above evidence of PW-6 and PW-7 can be further considered in the light of the evidence of PW-9 who is undisputedly an owner-cum-driver of an

Autorickshaw. His evidence that the accused was a regular customer to him and was using his services now and then has not been denied or disputed in his cross-examination. On the other hand in his cross-examination, he has given further details of where normally he parks the Autorickshaw to attract the customers. The said witness has clearly stated that on the date of incident, in the afternoon, the accused joined by deceased Sharada had used his services to go to Konanagadde, Halasuru circle from near KEB Circle at Baalehonnuru. In that regard, the witness has also collected a fare of ₹50/- from them. Thus, the evidence of PW-9 further corroborates the evidence of PW-7 that, the accused and deceased were together in that afternoon and after visiting the Wine Shop, they have availed the services of the autorickshaw being run by PW-9.

Added to that, the very same PW-9 has also stated that the accused had to cover a distance by walk before going to his house. This undisputed evidence of PW-9, who had knowledge about the accused who was his regular customer, would further go to corroborate the evidence of PW-7 that, he saw the accused and deceased going in a pathway near his garden land. Thus, the prosecution evidence placed before the Court through PWs. 6, 7 and 9 makes it believable beyond any reasonable doubt that, on the date of alleged incident, just prior to the incident, the accused was found in the company of the deceased Sharada.

38. PW-3 and PW-4 are none else than the elder sister and niece of the accused respectively. Both of them have uniformly stated that in the evening of the date of alleged incident, the accused having gone to their house had confessed about his alleged guilt by stating that he had finished the fate of deceased Sharada. It is

not just the accused made such a statement but he had also given them the details as to where he had committed the said act. Thus, both PW-3 and PW-4 immediately could able to rush to the spot followed by none else than the accused himself. After visiting the spot, both these witnesses found that what statement accused had made was proved as they could notice the dead body of Sharada. Therefore, it is not a mere alleged Voluntary Statement that has to be considered, but, as a consequence of the same, they could able to go to the spot also, otherwise, PW-3 and PW-4 would not have either known about the incident or seen the dead body. The said statements of PW-3 and PW-4 that, after hearing from the accused, they rushed to the spot and saw the dead body of deceased Sharada in that place, since have not been denied or disputed from the accused' side, it further establishes that the accused had confessed about his alleged guilt before them, as such,

they could able to rush to the spot. In this form, the further links in the chain of circumstances have been properly established by the prosecution.

The evidence of PW-3 and PW-4 is also believable for the reason that undisputedly they are the very close relatives of the accused. Had they any interest in screening the offender, they would have suppressed the fact of voluntary confession made before them by the accused. On the other hand, being family members of the accused, when they have come before the Court and stated about the voluntary confession made by the accused before them, which led them to visit the dead body, further inspires confidence to believe their version. It is also not the case of the defence that PW-3 and PW-4 had any enmity against the accused. As such also, there is no reason to disbelieve the evidence of PW-3 and PW-4.

39. The next consequence in the chain of circumstance is with respect to the recovery said to have been made in the instant case at the instance of the accused and the seizure of clothes said to have been worn by the accused at the time of commission of the crime.

40. The evidence of PW-2 shows that it was the accused who led the Police, this witness and one Sri. Eraiah to the place of offence and shown them the said place and also a broken club and a stone stating that those articles were used in the commission of the crime. Apart from stating so, the witness has identified the seizure panchanama under which, those articles were seized at Ex.P-8 and his signature therein at Ex.P-8(a). He has also identified those articles at MO-8 and MO-9 respectively.

Further, the very same witness has also stated that when he saw the accused in the Police Station on the

next day of the incident, the clothes worn by him were found blood stained. It was in his presence the Police by providing him an alternate dress, seized the clothes which he was wearing at that time. The witness has identified the Mahazar under which those articles were seized at Ex.P-7 and those two clothes at MO-6 and MO-7 respectively. The evidence of PW-2 in that regard could not be shaken in his cross-examination from the side of the accused.

41. As has come in the evidence of the Investigating Officer - PW-18, the articles seized in this case were sent by him for their chemical examination to the Forensic Science Laboratory (FSL). The report of Forensic Science Laboratory including the Serology report were marked at Exs.P-14 and P-15. The report at Ex.P-14 clearly goes to show that the blood stained mud seized under Ex.P-2, the clothes worn by the deceased at the time of her death and the clothes worn by the accused

which were seized in the presence of PW-2 under Ex.P-7 and also the stone recovered and seized at the instance of the accused under Ex.P-8 were also found blood-stained. The Serology report at Ex.P-15 further goes to show that those blood stains were human blood with 'O' Group. Even though the blood Group of the deceased could not be determined since the Serology report says that it was dis-integrated, but, the fact that the blood and its Group found on the dress material worn by the deceased at the time of her death and the blood stains and its Group found on the clothes worn by the accused when they were seized, belonged to the human blood only and of the same blood Group. The last-seen theory of the prosecution further gets strengthened and gives no scope to disbelieve that it was the accused and accused alone who has committed the alleged act of death of the deceased.

Added to this, the blood stains found on the stone which was also found from the place of incident at the

instance of the accused also has got the same Group of blood upon it. The Doctor has opined that those two articles, MO-8 and MO-9 could cause the injuries found on the deceased. Thus, the established fact that the evidence of witnesses that the deceased Sharada was living with the accused and on the date of the incident, just prior to the incident, both accused and deceased were found in the company of each other not at one place, but at more than one place, i.e. in the Wine Shop and thereafter, while catching the Autorickshaw run by PW-9 and thereafter near the garden land of PW-7-Koushik, fully establishes that as per the time sequence also, it corresponds to the incident and it was accused and accused alone who was in association and company of the deceased at that time. Since the accused has produced the stick and a stone before the panchas and the clothes that were worn by the accused also stained with blood of the deceased, the

same would go to prove beyond all reasonable doubts that, the death of the deceased Sharada caused due to assault has been caused by none else than the accused himself.

43. The only question that remains is, whether the act of the accused can be considered as a murder punishable under Section 302 of IPC?

It is on this point, the learned counsel for the appellant vehemently submitted that the prosecution has utterly failed to establish the motive behind the alleged commission of crime. Learned counsel submitted that not even a single witness has anywhere whispered about the existence of motive on the part of the accused at the time of the commission of the crime.

Learned High Court Government Pleader on the said point though attempted to substantiate that the deceased being the kept-mistress of the accused, she was not

sailing smoothly with the first wife of the accused, as such, quarrel used to take place, but the learned counsel could not able to substantiate his statement by drawing the attention of this Court to any portion of the oral evidence of any of the prosecution witnesses or towards any of the documents marked as Exhibits.

On the other hand, a deep analysis of the evidence of the prosecution witnesses would go to show that including none else than the wife of the accused who was examined as PW-8, none of the witnesses have spoken anything about the intention of the accused to cause the death of deceased Sharada. Had really there been any intention on the part of the accused to eliminate her or any incident taken place earlier which could have led the accused to determine to cause her death, then, PW-8 being none else than the wife of the accused and PW-3 and PW-4 being none else than the elder sister and niece of the accused, any one of them atleast should have a

hint in that regard. Since none of the witnesses have spoken anything about the intention, on the other hand, the evidence of PW-7 would go to show that when he saw lastly the deceased in the company of the accused, both of them were quarrelling and that he enquired the reason for the same would go to show that accused had no pre-meditation to eliminate deceased Sharada. On the other hand, the reason for the accused assaulting deceased Sharada and causing her death would be only due to a quarrel he had with her just couple of minutes prior to the incident.

Therefore, it can be concluded that even though the accused and the deceased used to quarrel now and then, their quarrel just few minutes prior to the incident has led the accused to all of a sudden assault Sharada though having no intention to cause her death. Thus, when prosecution has failed to prove the motive behind the commission of the crime or intention on the part of the

accused for committing the crime in a case based purely upon circumstantial evidence, the proven act of the accused in causing the death of Sharada cannot be fit into the definition of 'murder' defined under Section 300 of IPC.

44. The above analysis would go to show that the essentials of circumstantial evidence as observed by the Hon'ble Apex Court in ***Reena Hazarika's case (supra)*** has been established by the prosecution in the instant case and could able to prove beyond reasonable doubt that the accused has caused the death of the deceased Sharada and that it was a case of culpable homicide.

Thus, the act of the accused would squarely fall within the definition of 'culpable homicide' under Section 299 of IPC and its punitive Section would be the second part of Section 304 of IPC.

Thus, the prosecution could only able to prove that the accused was guilty of an offence of culpable homicide not amounting to murder, punishable under Section 304, Part-II of IPC.

45. The Sessions Court without analysing the evidence with respect to *mens rea* in its proper perspective has jumped to a conclusion that merely because the accused was proven to be found lastly in the company of the deceased and that they were having a quarrel quite often, it concluded that the accused had determined to eliminate her and as such, he caused her murder. Since the said conclusion of the Sessions Court now is found to be an erroneous one, in view of the above analysis made, the impugned judgment deserves interference only to the extent of holding the accused guilty of the offence punishable under Section 304 Part-II and acquitting him of the alleged offence punishable under Section 302 of IPC.

46. Since the sentence imposed by the learned Sessions Court is also for the offence punishable under Section 302 of IPC, the same also requires a re-consideration as such.

Accordingly, we proceed to pass the following:-

ORDER

- [i] The appeal is allowed;
- [ii] The judgment of conviction dated 26-09-2015 and order on sentence dated 30-09-2015, passed by the learned Principal Sessions Judge at Chikkamagaluru, in Sessions Case No.107/2014, holding the accused/appellant – Ravi @ Chinna @ Raja S/o. Manjesh, aged about 39 years, guilty of the offence punishable under Section 302 of the Indian Penal Code is hereby set aside;
- [iii] However, the accused/appellant is held guilty of the offence punishable under

Section 304, Part II of the Indian Penal Code,
1860;

[iv] The sentence of life imprisonment and the order of payment of fine of ₹10,000/- ordered by the Sessions Court for the offence punishable under Section 302 of IPC including the default sentence, is hereby set aside.

47. Heard both side regarding quantum of sentence.

Though the learned counsel for the accused/appellant submits that the appellant is a father of four children and has got responsibility to take care of his family, the learned High Court Government Pleader strongly opposed the same, stating that the circumstance of the case warrants imposing maximum punishment for the accused.

48. It is the sentencing policy that the sentence ordered should not be either exorbitant or for name sake for the proven guilt. It must be proportionate to the guilt for which the accused is found guilty of.

49. Considering the facts and circumstances of the case, the accused shall undergo simple imprisonment for a period of eight years and also pay a fine of a sum of ₹5,000/- and in case of default in payment of fine, he shall undergo an additional simple imprisonment for a period of three months.

The period of imprisonment already undergone by the accused be given a set-off under Section 428 of Code of Criminal Procedure, 1973.

The order of the Sessions Court with respect to disposal of the Material Objects, i.e. MO-1 to MO-10 remains unaltered.

Registry to furnish an entire copy of this judgment free of cost to the accused/appellant immediately and also transmit a copy of this judgment to the Sessions Court along with the Lower Court Records, without delay.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BMV*