



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 24<sup>TH</sup> DAY OF MARCH, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**AND**

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

**CRIMINAL APPEAL NO.100629 OF 2023 (C)**

**BETWEEN:**

SHRI GUDEPPA GADIGEPPA HITTALAMANI  
AGED ABOUT 36 YEARS,  
OCC. DRIVER CUM CONDUCTOR (KSRTC),  
R/O. CHIKKUMBI, TQ. SAUNDATTI, DIST. BELAGAVI.

- APPELLANT

(BY SRI. ASHOK R. KALYANASHETTY, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA  
THROUGH SAUNDATTI P.S.,  
R/BY. ITS STATE PUBLIC PROSECUTOR,  
ADVOCATE GENERALS OFFICE,  
HIGH COURT BUILDING, DHARWAD.

- RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO ACQUIT THE APPELLANT OF THE CHARGE PUNISHABLE UNDER SECTION 302 OF IPC BY SETTING ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 17.10.2023 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, BELAGAVI IN S.C. NO.338/2017 IN THE INTEREST OF JUSTICE AND EQUITY & ETC.

THIS CRIMINAL APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

VINAYAKA  
B V

  
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CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH  
AND  
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This Criminal Appeal is filed against the judgment of conviction and sentence for the offences punishable under Section 302 of IPC and sentence of life imprisonment with fine of ₹50,000/-.

2. The factual matrix of case of prosecution is that the deceased often used to visit her parents' house and hence accused suspected her chastity. That on 19.07.2017 when the deceased around 01.30 p.m. was about to leave the matrimonial house to go to her parents' house this accused picked up quarrel with the deceased, abused and assaulted her with an intention to take away her life and he pushed her down in the storeroom at his house wherein both of them were residing and pressed her neck with his leg due to which the victim died as a result of asphyxia due to throttling. Thereby the accused committed the offence of murder and subjected her for cruelty. Hence case is registered for both the offences u/S 498-A and 302 of IPC based



on the complaint given by the father, who came to know through somebody else, he went to Police Station, lodged complaint and law was set in motion. The I.O. investigated the matter and filed the charge sheet before the trial Court.

3. Having received the papers, matter was sent to the Sessions Court for trial. The trial Judge taken the cognizance of the case and secured the presence of accused before the Court. The accused is in custody throughout. He did not plead guilty and claims the trial. Hence prosecution examined PW1 to PW20 and also to substantiate the charges relies upon the documents at Exhibit P1 to P42 and MO1 to MO5 were also marked. On closure of the evidence, the accused was also subjected to statement u/S 313 Cr.P.C. The trial judge convicted the accused for the offences alleged against him, which was challenged before this court earlier in Criminal Appeal No. 100007/2019. This Court set aside the judgment vide order dated 03.02.2022 and remanded the matter on the ground that statement of accused was not properly recorded under Section 313 Cr.P.C. and accused has also not given any explanation, in paragraphs No. 25, 26, 27, 28, 29 of the judgment and also taken note in



paragraphs No.31 that accused is in judicial custody remitting the matter to hear the reply of the accused to the incriminating statement that accused being in company of the deceased at the time of the alleged incident, would contribute to further delay, and taking note of the same also made it clear that from the stage of recording of the statement of the accused under Section 313 of CrPC, the Sessions Judge dispose of the same, and also date is fixed for appearance on 25.02.2022 at 11 a.m. and directed the accused to participate in the further proceedings in the matter.

4. The learned Sessions Judge having considered the directions of this Court recorded the statement of accused u/S 313 Cr.P.C. afresh wherein the accused offered an explanation. Considering the material once again learned Sessions Judge disposed of the appeal on 17.05.2023. The trial judge once again convicted the accused for the offence of Section 302 IPC and acquitted the accused for 498-A of IPC and imposed the sentence, particularly taking into note of the explanation given by the accused is not proper and apart from that Section 106 of The Indian Evidence Act could be pressed into that the accused



has not explained the same since the death was taken place in his house and convicted the accused and sentenced. Being aggrieved by the conviction and sentence, the present appeal is filed before this Court.

5. The main contention of the counsel appearing for the appellant before this Court is that PW1 who is the complainant and also the father of the victim has not supported the case of the prosecution; and even PW16 who has been examined before the trial court, who is the scribe also not supported the case of the prosecution. The counsel also would submit that PW7, who is the mother of the victim also not supported the case of prosecution. However counsel would submit that PW15, who is the mother of the accused has been examined and she also not supported the case of the prosecution, and it is the specific defence that it was an accidental fall and she has sustained the injuries and she lost her life. But trial Court even in the absence of any supporting evidence of prosecution witness, committed an error mainly in coming to the conclusion that Section 106 of the Evidence Act is very clear that accused must explain the same and the same is not explained, and apart from that the trial



judge relies upon the evidence of PW7-I.O. and he only took the charge from CW24, who registered the FIR, but he has not been examined before the trial court.

6. The counsel also would submit that the Tahsildar was examined as PW19 and he also did not conduct the inquest but his subordinate has conducted the inquest, that too not at the spot, that is in the hospital. The counsel also would submit that the evidence of PW1, PW7, PW15 and PW16 not supports the case of the prosecution. Even time since death is also not proved so also the motive is not proved, and parents have not supported. The PSI who registered the case is also not examined, and when the complaint was given in terms of Exhibit P1 the very scribe denied the same and both PW1 and also the 16 has not supported the case, he only say that his signature was taken on the Exhibit P1 and when the very crime genesis is not proved, question of convicting the accused does not arise.

7. The counsel also would submit that the very presence of the accused at the spot is not proved and also he has given the explanation in the statement u/S 313 Cr.P.C. when the second time it was recorded after the remand that he was not in



the house at the time of the incident and having received the information he went to the house and found that she has sustained injuries. When all these materials were not supporting the case of prosecution, the trial judge committed an error.

8. Per contra, the counsel appearing for the State, that is Additional S.P.P in his argument would vehemently contend that the Court has to take note of the evidence of PW15, who is none other than the mother of the accused, she categorically deposes before the Court that when she left the house in order to graze the cattle at 10 o'clock, both accused and victim were there in the house; and when she came back at around 01.30 p.m. at that time also she noticed both the victim and the accused in the house, the same is not rebutted or not contraverted during the course of her cross-examination and no suggestion was made to PW15. Though PW15 has turned hostile, but to the extent of very presence of the accused along with the victim was narrated by PW15. Hence the evidence of PW15 could be relied upon for the last scene theory.

9. The counsel also brought to notice of this court that PW1 and PW7, i.e. father and mother, though have turned



hostile, categorically deposed that accused no. 1 only informed about the injuries sustained by the victim. The same amounts to additional chain link for the case of the prosecution, and giving of false information that she accidentally fell down and sustained injuries also one of the factor for convicting the accused.

10. The counsel would also submit that when the accused gives an explanation in the statement u/S 313 Cr.P.C. stating that he went along with one Gurunatha Nilappanavar to his land, and he said his friend has received the call from somebody else about the incident, and the accused came to the house on information. But the same is not spoken by PW13, Gurunatha Nilappanavar, who deposes before the court, not stated anything about that he was along with the accused when the information was received by the accused. Hence the explanation given by the accused under Section 313 Cr.P.C. cannot be accepted.

11. The counsel also brought to notice of this Court that PW9 also says that he came to know about this incident through PW1. All these materials were taken note of that the accused gave false information to each and every one even though he committed the offence of murder of his wife. The counsel would



submit that though trial judge not convicted for the offence under Section 498-A IPC, but in order to come to a conclusion that accused only done away the life of the victim, there are sufficient materials and the same has taken note of and would contend that the trial judge has not committed any error.

12. The counsel in support of his argument also relies upon the judgment of Apex Court reported in **(2006) 12 Supreme Court cases 254** in the case of **State of Rajasthan vs Kashi Ram**, wherein discussion was made with regard to Section 106 of the Indian Evidence Act, failure of accused to explain incriminating circumstances against him, which provides an additional circumstances in the chain of circumstantial evidence against him and this itself provides an additional link in the chain of circumstances proved against him. The counsel referring this judgment would contend that when the injured had sustained the injury in her house, where she was residing along with accused, the accused must have explained the same but he has not explained the same.

13. In reply to this argument, counsel appearing for the appellant would vehemently contend that PW16 informed PW1



and PW7 and not the accused and the same is evident in the complaint which is marked as Exhibit P1. Hence the very contention that accused gave false information to PW1 and PW7 cannot be accepted and so also PW1 and PW7 have not supported the case of the prosecution. The counsel also vehemently contend that if it is within the special knowledge of the accused then only the accused has to give an explanation under Section 106 of Evidence Act or otherwise question of giving any explanation does not arise. It is the specific case that accused was not in the house and he came to house only on receiving the information. When such being the case, very ingredients of Section 103, 104, 105 and 106 is very clear that it is not within the special knowledge of the accused. Hence question of invoking Sec. 106 of the Indian Evidence Act does not arise.

14. The counsel in support of his argument, relies upon the judgment in the case of **Vikramjit Singh @ Vicky Vs. State of Punjab**, reported in **2006 (12) SCC 306**. The counsel referring this judgment brought to notice of this Court that Section 106 of the Indian Evidence Act does not relieve the



prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts, which was within the special knowledge of the accused, may be shifted to the accused for explaining the same subject to certain statutory exceptions and the prosecution having not been able to prove its case beyond all reasonable doubt, the appellant is entitled for acquittal. Learned counsel also brought to notice of this Court the discussion made in respect of Section 313 of Cr.P.C., wherein it is held that circumstances, which according to the prosecution lead to proof of the guilt against the accused, must be put to him in his examination under Section 313 of Cr.P.C., and even though the matter was remanded by this Court having observed that the Trial Court has not properly recorded the statement of the accused under Section 313 of Cr.P.C., during the second time, the accused has given an explanation in the statement recorded under Section 313 of Cr.P.C., that he was not in the house.

15. The learned counsel would submit that it is the first and foremost duty of the prosecution to prove that the accused was in the house of the deceased and the same has not been



proved and therefore, the question of shifting the burden on the accused doesn't arise. The learned counsel also relies upon the judgment of the Hon'ble Apex Court in the case of ***Shambu Nath Mehra Vs The State of Ajmer*** reported in ***1956 SCC 199***, wherein also discussion was made with regard to Section 106 of the Indian Evidence Act and held that Section 106 is certainly not intended to relieve it of that duty. The burden of proof is on the prosecution. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts, which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience.

16. Having heard the counsel appearing for the appellant and also the counsel appearing for the respondent/State and also considering the grounds, which have been urged in the appeal as well as during the course of arguments, the points that would arise for consideration of this Court are as under:

- (i) *Whether the trial Court committed an error in convicting the accused for the offence punishable*



*under Section 302 of IPC and imposing the life imprisonment as well as fine of ₹50,000/- and whether it requires interference of this Court?*

*(ii) What order?*

17. Having heard the counsel appearing for the appellant as well as the respondent/State and also on perusal of both oral and documentary evidence available on record, there is no dispute with regard to the fact that the parents of the deceased, who have been examined as PW1 and PW7, have not supported the case of the prosecution and they have completely turned hostile.

18. The prosecution also mainly relies upon the evidence of PW15 and PW16. PW16 is the scribe of the complaint marked at Ex.P.1, but during the evidence, he says that the police have taken his signature to Ex.P.1 and the same is not in his handwriting and also he does not know, who wrote the said complaint. It is important to note that CW24, the PSI, who has received the complaint and registered the FIR has not been examined before the Trial Court and it is rightly pointed out by the counsel appearing for the appellant/accused that he has not



been examined. It is also important to note that the scribe/PW16 has also not supported the case of the prosecution but only he admits his signature and says that the police have taken his signature on Ex.P1-complaint. PW1, who is the complainant and father of the victim has also not supported the case of prosecution and hence, the prosecution has failed to prove the crime genesis before the Court.

19. Now the question before the court is that whether based on the evidence of PW17 and PW19, i.e. Investigating Officer and Tahsildar, the Court can convict the accused. No doubt, the counsel appearing for the State brought to notice of this Court the evidence of PW15, who is none other than the mother of the accused and she deposed that while leaving the house in order to graze the cattle, she found the accused and victim in the house and when she came back at around 01.30 p.m., she again found the accused and the victim in the house and she noticed that the victim had sustained the accidental injuries. No doubt it is the defence of the accused also that it was an accidental fall on account of which the victim sustained the injuries. It is pointed out by the counsel appearing for the



respondent/State that PW15 in her evidence has deposed that while leaving the house and when she came back to the house, she saw the accused and the victim were there in the house, but Court has to take note of the fact that according to the prosecution, the incident took place in between 01.30 p.m. to 02.30 p.m. and at that time whether the accused was in the house or not, none of the witnesses speaks about the same. Merely because PW15 has stated in her evidence that while leaving the house and when she came back, the accused and victim were there, the said evidence is not sufficient to convict the accused. It is important to note that the case of the prosecution is that the accused only has committed the murder of his wife. The charges leveled against the accused must be proved beyond reasonable doubt in a criminal case. It is also important to note that the evidence of PW15 is not disputed and we have already pointed out that defence also not cross-examined this PW15, but the same cannot be a ground to come to a conclusion that there is a role of the accused in the alleged incident.



20. We would like to rely upon the judgment of the Hon'ble Apex Court in the case of ***Sharad Birdichandra Sarda Vs. State of Maharashtra*** reported in ***1984 Cr.L.J., 1738***, as well as in the recent judgment of the Apex Court in State of ***Subramanya v. State of Karnataka*** reported in ***(2023) 11 SCC 255***, wherein five circumstances point out with regard to the coming to the conclusion on circumstantial evidence, the principles of Panchaseela have to be kept in mind while considering the case on circumstantial evidence. Considering the material available on record, this Court has to take note of whether the prosecution has proved the guilt of the accused and that each and every circumstance points towards the role of the accused.

21. In the case on hand, though PW1 and PW7, as pointed out by the counsel appearing for the respondent/State, have deposed that the accused only informed the same, but having perused the Ex.P.1/Complaint the contents of the same disclose that the PW16 only informed that the accused assaulted the victim, come and see her and hence, it is clear that the PW1 came to know about the same through the PW16 and not



through the accused and the contention of the counsel appearing for the respondent/State that PW1 and PW7 have deposed the same cannot be accepted. The very genesis of the crime came to the knowledge of PW1 through PW16. No doubt, the other circumstances pointed out by the counsel appearing for the respondent/State is that the explanation given by the accused is not in consonance with the evidence of PW13. No doubt, the PW13 not spoken anything about the same and he also turned hostile. He has not supported the case of the prosecution and explanation was given in the statement of the accused recorded under Section 313 of Cr.P.C., and that too second time when the matter was remanded to the Trial Court, the said explanation was given by the accused.

22. No doubt counsel appearing for the respondent/State brought to the notice of this Court that PW13 has not spoken anything that he was along with the accused when PW1 came to know about the incident over the phone of PW13 and when such deposition is not given by the PW13, whether it amounts to hold the accused guilty of the offence is a question before this Court. It is also important to note that the Trial Court has taken note of



Section 106 of the Indian Evidence Act. While considering Section 106 of the Indian Evidence Act, it is very clear that the injured had sustained the injury in the house of the accused, but the defence of the accused is that it was an accidental fall on account of which she sustained injury. Section 106 of the Indian Evidence Act could be invoked when it is in the special knowledge of the accused, and he must explain.

23. It has to be taken note that if an incident had taken place in the night when the accused and victim both of them were alone there in the house, then the special knowledge can be taken note of, but according to the prosecution, this incident had taken place in between 01.30 p.m., to 02.30 p.m., during the day time and even any person can intervene during the day time to the house of the accused. When such being the material on record and when there is no positive and cogent evidence before the Court to prove each and every circumstances that the accused only has committed the murder and the Panchaseela referred in the judgments cited supra is not established, only on suspicion, the Court cannot convict the accused.



24. It is also important to note that there is no any recovery at the instance of the accused. No doubt the medical evidence clearly discloses that it is a case of homicide and the appellant's counsel also not seriously disputes the same but only taking note of medical evidence that it is a case of homicide, it cannot be held that the accused only committed the murder.

25. There is no such evidence of linking circumstance before the Court. When the case of the prosecution rests upon the circumstantial evidence, each circumstance must be established by linking the circumstances and then only the Court can convict the accused. When such being the case, we are of the opinion that the Trial Court has committed an error in invoking Section 106 of the Evidence Act in coming to the conclusion that accused has not explained.

26. The counsel appearing for the appellant also relies upon the judgments referred supra wherein categorically the Hon'ble Apex Court held that first the prosecution must establish that the accused was very much present at the time of the incident at between 01.30 p.m. to 02.30 p.m. and merely because the evidence of PW15 found both of them while leaving



the house and when she came back, that itself cannot be a ground to hold the accused guilty of the offence. PW15 has also not supported the case of prosecution and even the relatives of the accused have not supported the case of prosecution, particularly PW1 and PW7, so also the scribe of the document of Ex.P.1/complaint i.e. PW16. Only on the basis of the evidence of the Investigating Officer as well as Tahsildar, the Court cannot convict the accused.

27. It is pointed out by the counsel appearing for the appellant that even PW19/Tahsildar has not conducted the inquest personally and instead he got it done through his subordinate and that too, the inquest was conducted in the hospital. The fact is that, the victim had sustained injury and lost her breath in the house itself but no such inquest was conducted in the house. All these glaring errors are found and even the PSI, who received the complaint from PW1 also was not examined and Ex.P.1-complaint is also not corroborated by any of the prosecution witnesses and very genesis of the crime is also not proved and when such being the case, the benefit of doubt needs to be extended in favour of the accused but the same is not



extended to the accused by the Trial Court. Hence, we are of the opinion that the Trial Court has committed an error in convicting the accused and sentencing him for life imprisonment. Accordingly, we answered the points in favour of the accused.

28. The deceased has two children, one was aged about 3 years and another one was aged about 2½ months at the time of the incident and now they are aged about 11 years and 8 years, respectively and hence, District Legal Services Authority, Belagavi is directed to consider the case under Section 357-A of Cr.P.C., for awarding appropriate compensation to the minor children of the deceased under the victim compensation scheme.

29. In view of the discussion made above, we pass the following:

### **ORDER**

The present appeal filed by the accused is allowed. Consequently, the judgment of conviction and sentence passed by the learned V-Additional Sessions Judge, Belagavi dated 17.10.2023 in Sessions Case No.338/2017 against the accused-



Gudeppa Gadigeppa Hittalamani for the offences punishable under Section 302 of IPC is set aside.

The accused, who is in custody, is set at liberty forthwith in view of his acquittal.

Fine amount deposited by the accused, if any, shall be refunded to the appellant-accused on proper identification.

The deceased has two children, one was aged about 3 years and another one was aged about 2½ months at the time of the incident and now they are aged about 11 years and 8 years, respectively and hence, District Legal Services Authority, Belagavi is directed to consider the case under Section 357-A of Cr.P.C., for awarding appropriate compensation to the minor children of the deceased under the victim compensation scheme and the said compensation amount shall be kept in fixed deposit in any nationalized bank till the minor children of the deceased attains the age of majority.



Registry is directed to communicate this order to the District Legal Services Authority, Belagavi, forthwith.

Registry is also directed to communicate the operative portion of the order to the concerned Jail Authorities through email, forthwith to set the accused at liberty, if he is not required in any other case.

**SD/-**  
**(H.P.SANDESH)**  
**JUDGE**

**SD/-**  
**(B. MURALIDHARA PAI)**  
**JUDGE**

BVV & YAN  
CT: PA  
LIST NO.: 1 SL NO.: 14