IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 4TH DAY OF SEPTEMBER, 2020

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PRESENT

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

CRIMINAL APPEAL No.200088/2014

BETWEEN:

Ashok S/o Lakshamappa Hosur
Age: 47 years, Occ: Agriculture
R/o Devar Gennur
Tq & Dist: Bijapur

... **Appellant**

(By Sri Mahantesh Patil, Advocate for
Sri Shivanand V. Pattanshetti, Advocate)

AND:

The State of Karnataka
R/by Addl. SPP, High Court of
Karnataka, Gulbarga Bench
(Through Babaleshwar P.S.)

... **Respondent**

(By Sri Prakash Yeli, Additional SPP)

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to admit the appeal, call for the records from the Court below and set aside the judgment of conviction and order of sentence dated 16.06.2014 and 21.06.2014 respectively, passed by the II Addl. Sessions Judge, Bijapur,

in S.C.No.166/2012 and acquit the appellant/accused in the interest of justice and equity.

This appeal having been heard, reserved for judgment on 27.08.2020 and coming on for pronouncement of judgment this day, ***P.Krishna Bhat J.***, delivered the following:-

JUDGMENT

Whether the conviction entered by the learned Second Additional Sessions Judge, Vijayapur in S.C.No.166/2012 by his judgment and order dated 16.06.2014 convicting the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (for short 'IPC') will pass muster on the gold standard proof beyond reasonable doubt is the question that falls for our determination in this case.

2. The question arises in the following fact situation:

One Rachappa the deceased is the father of PW.1 – Mahesh and PW.3 – Sunanda. On 18.05.2012 at about 9.00 a.m. he left the house on his motorcycle ostensibly

for collecting ROR of his property in Babaleshwar. He did not return home in the evening. His children and wife thought he might have stayed with his friends and without further thoughts they spent the night only to receive the shocking news at 7.00 a.m. on the next morning from Babaleshwar police that Rachappa was lying dead on Kambagi – Nandyal road in Kanaboor village adjoining the land of PW.5 – Sadashiva. Immediately, PWs.1and 3 and their mother rushed to the spot where they were joined by PW.11 who is the maternal uncle of PWs.1 and 3. Thereafter, PWs.1 and 11 went to the police station where PW.1 lodged the complaint which was received by PSI – PW.12 and a case was duly registered. Investigation was taken up by PW.13 and on conclusion of the investigation, he filed charge sheet against the appellant for the offences punishable under Sections 302 and 201 of IPC. The motive alleged is the loan of Rs.50,000/- advanced by deceased to accused, which, he did not want to repay

and hence wanted to get rid of deceased himself to avoid liability. The case was duly committed and after following requisite formality of framing charges and affording reasonable opportunity to the accused, learned Trial Judge gave his judgment dated 16.06.2014 holding the accused guilty of the offences punishable under Sections 302 and 201 of IPC. It is this judgment that is called in question in the present appeal.

3. During trial PW.1 to PW.13 were examined. Exs.P1 to P22 were marked. MOs.1 to 14 were also marked. For the defence Ex.D1 was marked. Defence did not choose to examine any witness on its behalf.

4. The fact that the death of deceased Rachappa is homicidal in nature is fully supported by the medical evidence and it has not been seriously challenged by the learned counsel for the appellant. To put it briefly Ex.P10 the postmortem report which was prepared based on the autopsy conducted by PW.7 on

the dead body of Rachappa clearly shows that there were four external injuries, all of which were on head and face and there was not even a scratch on the rest of the body. Even the internal injuries noticed were the fractures of skull bones and the brain matter coming out etc. which are all internal organs above the neck. The only other internal injury noticed was the contused status of testis at lower pole both right and left and during the cross-examination by the learned counsel for the appellant it was elicited that such an injury could be caused on account of hitting the private part with knee of a person. The absence of injuries on other parts of the body and these peculiar nature of the injuries noticed by us hereinabove is indicative of the fact that death was clearly due to homicidal acts.

5. There are no eyewitnesses to the incident. The only witness, examined as eyewitness (PW.5) has completely turned hostile.

6. The contention of learned counsel for the appellant/accused is that the evidence let in by the prosecution is woefully inadequate to prove the entire chain of circumstance for constituting the offence of murder and therefore the learned Trial Judge has committed a serious error in finding the accused guilty of the offences charged against him. He submitted that the circumstances alleged by the prosecution namely, loan transaction constituting motive for committing the offences, last seen together, recovery evidence, matching of bloodstain on the clothes of the deceased and accused have not been proved beyond reasonable doubt.

7. The learned Additional SPP, per contra, contended that the appellant had borrowed a loan of Rs.50,000/- from the deceased and he was enraged on account of deceased frequently asking to repay the same and therefore on 18.05.2012 at about 7.30 p.m. he accompanied the deceased on his motorcycle and thereafter with the intention of committing his murder

had pushed him on the road in Kanaboor village on Kambagi – Nandyal road by the side of the property of PW.5 and thereafter committed his murder by bashing his head with a boulder. He submitted that the entire chain of circumstance has been proved during the trial through the evidence of witnesses and the learned Trial Judge who had the advantage of watching the demeanor of the witnesses having entered a finding of guilt of the accused, there is no warrant for interference with the same.

8. It is trite law that standard of proof applicable in cases which are criminal in nature before finding of guilt can be entered is proof beyond reasonable doubt. It is stated on high authority that a person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. It is further observed that concepts of probability, and the degrees of it, cannot be expressed in terms of units

to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. What degree of probability amounts to "proof" is an exercise particular to each case. Doubts would be called reasonable if they are free from a zest for abstract speculation. To constitute reasonable doubt, it must be free from an over emotional response. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice. ***[1988 (4) SCC 302 – State of U.P. vs. Krishna Gopal]***.

9. The process of ascertaining whether a case is proved by the standard of proof beyond reasonable doubt essentially is an exercise of assessing the evidence taking a pragmatic and ground realities oriented approach and the standard is neither one of the over credulous nor one of the doubting Thomas . It is often said in this context and it bears reminding that

"fouler the crime, higher the proof" ***(Sharad Birdhichand vs. State of Maharashtra – 1984 (4) SCC 116*** – paragraph No.180; ***Mousam Singha Roy and Others vs. State of W.B. – (2003) 12 SCC 377*** – paragraph No.28).

10. We need to remind ourselves the caution administered by *Vivian Bose J.* regarding the correct approach to be made, while assessing the evidence in this case in view of the fact that the manner of commission of the offence was ghastly in nature which would shock the conscience of the community reported in ***AIR 1952 SC 159 – Kashmira vs. State of Madhya Pradesh***.

> *"2. The murder was a particularly cruel and revolting one and for that reason it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law."*

11. We also feel it appropriate to recall to our mind the warning addressed by *Baron Alderson* to the jury in *Reg. vs. Hodge* which was quoted with approval by Hon'ble Supreme Court of India in ***AIR 1952 SCC 343 – Hanumant, Son of Govind Nargundkar vs. State of Madhya Pradesh*** -- paragraph No.10)

> *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."*

12. The Hon'ble Supreme Court of India has reiterated the above time tested principles of law in ***Arjun Marik and Others vs. State of Bihar - 1994 Supplement (2) SCC 372*** – paragraph Nos.14 and 15).

13. Motive for commission of the offence is alleged to be a loan of Rs.50,000/- taken by appellant from the deceased about a year prior to the incident and not returning the same which led the appellant deciding to take away the life of the deceased for avoiding the liability.

14. Careful perusal of the evidence discloses that PW.1 the son of the deceased has stated that he had not seen the deceased, who is his father, advancing the loan to the accused and further the deceased was in the habit of making entry of such transactions in a small diary maintained through his eldest daughter (eldest sister of PW.1). The said eldest sister of PW.1 has not been examined before the Court. The diary in which the loan transaction has been entered is also not produced before the Court. The lame excuse given by PW.1 for non-production of the same before the Court is that the police did not ask for the same and therefore it was not produced. Even PW.3 the daughter of the

deceased and elder sister of PW.1 has not seen the loan transaction between the deceased and the accused. PW.11 who is the maternal uncle of PWs.1 and 3 resides in another village and he only says that he was aware of loan transaction between the accused and the deceased. It is therefore difficult to accept the fact that there was loan transaction between the accused and the deceased especially when PW.1 has spoken about such transaction having been entered in a diary and the diary not being produced before the Court. When the best evidence on the matter is withheld from the Court perforce, the Court has to disbelieve the existence of such transaction on the ground that if the diary were to be produced it would have gone against the prosecution.

15. The other circumstances relied upon are the circumstance of last seen together and recovery of bloodstained clothes of the accused and the deceased. On the aspect of last seen together, learned Sessions Judge has conceded that there is discrepancy in the

evidence of PW.11 who is the only witness to speak about the same (paragraph No.17 of the judgment). PW11 and CW.5 – Paramanada are stated to be two witnesses who had seen the accused accompanying the deceased on the motorcycle on Kambagi – Nandyal road near the scene of occurrence at about 7.30 p.m. on 18.05.2012. The incident is said to have taken place at about 9.00 p.m. on that night. As per the evidence placed on record, distance from the place where PW.11 and CW.5 had seen the deceased and the accused together and the scene of occurrence is stated to be about two kilometers and it could be covered in five minutes on a motorcycle. CW.5 has not been examined before the Court. PW.1 had stated that PW.11 who is his maternal uncle had arrived at the scene of occurrence at about 8.00 a.m. on 19.05.2012 and thereafter they had gone together to the police station to lodge the complaint and yet PW.11 did not disclose having seen the deceased and the accused together on

the previous evening about one and half hours before the alleged incident and therefore it does not find a mention in the complaint also. For the first time PW.11 discloses about he having seen the accused and the deceased on the previous evening when he gave statement before PW.16 during the inquest proceedings at about 11.30 a.m. on 19.05.2012. In view of the above discrepancy, it is difficult to hold that the circumstance of PW.11 seeing the accused in the company of the deceased at about 7.30 p.m. on 18.05.2012 is proved beyond reasonable doubt.

16. In regard to recovery of bloodstained clothes of the accused on 21.05.2012 at his instance along with a diary MO.10 is concerned, PW.2 is the panch witness. PW.2 has supported the case of the prosecution. If one were to go by the version of PW.2 and PW.13, MO.10 was seized from the motorcycle box belonging to the accused at his instance on 21.05.2012. However, PW.13 says that he had not shown MO.10 pocket diary

to PW.1 during the investigation. He further says that it was in his knowledge that a constable on finding a pocket diary in the pocket of deceased Rachappa, identified the dead body and based on the same he informed the complainant (PW.1). PW.13 has stated that the diary, based on which constable has collected the information of the complainant was not MO.10. At paragraph No.30 of his judgment, learned Trial Judge has noted the contents of MO.10 and he is certain that the only contents in the same were some mobile phone numbers According to PW.11, police had shown MO.10 to PW.1 at about 8.00 a.m. on 19.05.2012 itself (page No.81 of the paper book). PW.3 has also stated that after seeing MO.10 the police had telephoned to PW.1 on 19.05.2012. Evidence clearly shows that MO.10 diary was in the hands of the police and the same was seen by PWs.1, 3 and 11 on 19.05.2012 itself. If that is so, it is not explained as to how PW.13 came to recover MO.10 at the instance of accused under Ex.P3 in the

presence of panch witness PW.2 on 21.05.2012 from the property of the father of the accused along with MO.11 – number plate, MO.12 - pant and MO.13 - Shirt, the latter two being the bloodstained clothes of the accused himself. This creates a serious doubt about authenticity and genuineness of the recovery said to have been made by PW.13 at the instance of the accused under panchanama Ex.P3. It is entirely probable as observed by the Hon'ble Privy Council in ***Pulukuri Kotayya and Others King Emperor (AIR 1947 PC 67 – para – 9 per Sir John Beaumont)***, this case is an instance of coming to fruition the well founded apprehension of 'persuasive powers of the police will prove equal to the occasion .....'.

17. Courts have to be extremely cautious to ensure that no leeway is provided to those incharge of investigation to use their "persuasive powers" and thereby such statement from the accused is extracted taking advantage of their previous knowledge about

certain incriminating materials connected to the offence being available at a particular place and thereafter the same is fastened on the frightened and hapless accused with disastrous consequences on him.

18. If recovery of the bloodstained clothes is tainted, the matching of the blood group in the clothes of the deceased and the accused in this case has no probative significance whatsoever. This unfortunately has escaped the notice of the learned Sessions Judge.

19. In view of the above discussion, it is difficult to hold that the prosecution has succeeded in proving the chain of circumstances beyond reasonable doubt and therefore the finding of the learned Sessions Judge is required to be interfered with. Hence, the following:

ORDER

The appeal is allowed. The judgment of conviction and order of sentence passed by the learned Second Additional Sessions Judge, Vijayapur in S.C.166/2012

dated 16.06.2014 is set aside and as a consequence appellant stands acquitted. His bail bonds are cancelled and sureties are discharged. He is directed to be set at liberty forthwith.

Sd/-
JUDGE

Sd/-
JUDGE

Srt