

**Prashantha Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Feb-23-2018

**Judge :** Ravi Malimath and K.Somashekar

**Appeal No. :** CRL.A 1268/2012

**Appellant :** Prashantha

**Respondent :** State of Karnataka

**Judgement :**

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF FEBRUARY, 2018 PRESENT THE HONBLE MR. JUSTICE RAVI MALIMATH AND THE HONBLE MR. JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.1268 of 2012 BETWEEN: PRASHANTHA S/O A.K. SHEKARAPPA, AGED ABOUT21YEARS, RESIDING AT ANJANAPURA VILLAGE, SHIKARIPURA TALUK, SHIVAMOGGA DISTRICT. (BY SRI. K.S. VISHWANATH, ADVOCATE FOR SRI. GANGADHARAPPA, ADVOCATE.) ... APPELLANT AND: STATE OF KARNATAKA, BY SHIKARIPURA RURAL POLICE, SHIVAMOGGA DISTRICT. ... RESPONDENT (BY SRI. VIJAYAKUMAR MAJAGE, ADDITIONAL STATE PUBLIC PROSECUTOR) --- 2 THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE

JUDGMENT

AND

ORDER

OF CONVICTION AND SENTENCE DATED 29.09.2012 PASSED BY THE PRESIDING OFFICER, FAST TRACK COURT - II, SHIVAMOGGA IN S.C.No.207 OF 2011- CONVICTING THE APPELLANT-ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC. THE APPELLANT-ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE AND ALSO TO PAY FINE OF RS. 5,000/- AND IN DEFAULT OF PAYMENT OF FINE, HE SHALL UNDERGO FURTHER IMPRISONMENT FOR A PERIOD OF 6 MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC. THE APPELLANT-ACCUSED PRAYS THAT HE BE ACQUITTED. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 01.02.2018, COMING ON FOR PRONOUNCEMENT THIS DAY, K. SOMASHEKAR J.

DELIVERED THE FOLLOWING:

## **JUDGMENT**

This appeal is directed against the judgment of conviction and order of sentence held by the Presiding Officer, Fast Track Court-II, Shivamogga, in S.C.No.207 of 2011 dated 29.09.2012, whereby the accused was convicted for the offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for life and also pay a fine of Rs.5,000/- and in default to undergo further imprisonment for a period of six months. 3 2. The brief facts of the prosecution case are as under: On 15.07.2011 at about 10.45 a.m., the complainant M.C. Murthy - PW-1 who is said to be the uncle of the deceased, had lodged a complaint with the Shikaripura police alleging that on receiving information through his wife regarding the murder of the deceased at Anjanapura village, himself, parents and brothers of the deceased had rushed to the poultry farm belonging to one Sureshnaika - PW-5, where they had found the headless body of the deceased near the poultry farm and after a search they had found his head lying

outside the fence. PW-15 on receiving a written complaint from the complainant, had registered a case in Crime No.160 of 2011 for the offence punishable under Sections 302 and 201 of the IPC. The CPI, Shikaripura Police who took up the investigation of the case had proceeded to the scene of occurrence of the murder along with panchas and conducted mahazar and had recovered blood stained mud, simple mud, woolen rug. He had further conducted inquest over the dead body 4 of the deceased in the presence of panch witnesses. Subsequently, the dead body had been sent to the Shikaripura Government Hospital for post-mortem examination. PW-21 being the Investigating Officer, had conducted the entire investigation and laid the charge sheet against the accused for the aforesaid offences. The charge has been framed against the accused for the offence under Sections 302 and 201 IPC, wherein the accused did not plead guilty but claimed to be tried. Subsequently, in order to establish the guilt of the accused, the prosecution in all had examined 21 witnesses as PW-1 to PW-21 and got marked several exhibits namely, Exhibit P-1 to P-19 and got marked material objects as MO-1 to MO-9. On receipt of information about the murder of the deceased from PW-1, the uncle of the deceased who lodged the complaint as per Exhibit P-1, law had been set into motion by recording an FIR as per Exhibit P-12 and so also a spot mahazar was conducted as per Exhibit P-2 by PW-21 in the presence of PW-1 and PW- 5 19. Another seizure mahazar was conducted as per Exhibit P-3 by PW-21 in the presence of PW-4 and yet another mahazar had been conducted by PW-21 as per Exhibit P-4 in the presence of PW-4. Subsequent to the closure of the evidence of the prosecution, the incriminating statement of the accused under Section 313 Cr.P.C. was recorded, where the accused had denied the truth of the evidence of the prosecution. Exhibit D1 is the contradictory statement which has been recorded, but the accused did not adduce any defence evidence as contemplated under law.

3. Subsequently, on hearing the arguments advanced by the prosecution and the learned counsel for the accused and on evaluating the entire evidence placed by the prosecution including the documents which had been got marked and so also the Material objects, the Trial Court has convicted the accused for the offence punishable under Section 302 IPC and has sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-. It is 6 this order and sentence

which is under challenge in the present appeal.

4. We have heard the learned counsel for the appellant and so also the learned Additional State Public Prosecutor for the State.

5. The point that arises for our consideration in this appeal is, Whether the Trial Court was justified in convicting the accused by its judgment dated 29.09.2012 in S.C.No.207 of 2011, for the offence punishable under Section 302 IPC and sentencing him to imprisonment for life?.

6. The learned counsel for the appellant has stoutly addressed arguments that there are no eye-witnesses who had evidenced the murder of the deceased by the accused by means of MO-4 long chopper by severing his head from the body. But the entire case of the prosecution rests upon circumstantial evidence. 7 PW-6 being a Grama Panchayath member, has spoken in his evidence that about six months prior to the death of Manjunath, at about 11.00 p.m., the uncle of the deceased had taken him to their house where they had informed about the illicit relationship of the mother of the accused, namely Rathamma with the deceased. In order to put an end to such an illicit relationship, PW-6 is said to have told the parties to meet the next day at the Panchayath to discuss the same. Therefore, it reveals that a quarrel ensued between Rathamma and the deceased in view of this issue. As a result, the father of the deceased Manjunatha had sent him to Shikaripura to work at Veerabhadreshwara Rice Mill. Though the deceased started working at Shikaripura about six months prior to the incident, however prior to two months of the said incident, the deceased had come back to Anjanapura where the accused and his mother Rathamma were residing and started working under Sureshnaika - PW-5. However, the aforesaid illicit relationship between Rathamma and deceased was about six to seven months 8 prior to the death of the deceased Manjunatha. This is said to be the motive behind the accused committing the murder of the deceased. PW-7 has also stated in his evidence regarding the said fact. But he has not stated before the police regarding the presence of the accused in the quarrel relating to the illicit relationship between the deceased and the said Rathamma being the mother of the accused. But he has stated that Panchayath was convened in the village in the presence of

Sangappa and Wazir Sab. Though PW-6 and PW-7 have been subjected to cross-examination, but the cross-examination of these witnesses has been dismantled by the Trial Judge and has held that the motive for commission of the offence has been proved by the prosecution by examining PW-3 as circumstantial witness. But, PW-3 did not support the case of the prosecution and the same has been seen in his evidence, as he was treated as a hostile witness. Subsequently, he has been subjected to cross-examination. He has admitted the relationship of the mother of the accused and the 9 deceased, in respect of which a panchayath was convened. It was admitted that the deceased started working at Veerabadreshwara Rice Mill at Shikaripura, as PW-4 had advised the deceased to stop the relationship and not to continue the relationship with the said Rathamma, mother of the accused. Therefore, the evidence of PW-1 so far as the author of the complaint at Exhibit P-1 and so also the evidence of PW-2, PW-3, PWs 6, 7 and 14 requires to be re-appreciated as their evidence has not been properly analyzed by the Trial Judge and has not been appreciated in a proper perspective. Otherwise to say, the Trial Court has misdirected the evidence and so also misread the entire evidence of these material witnesses and has erroneously come to the conclusion that the prosecution has succeeded in proving the guilt of the accused. The prosecution relied upon the circumstantial evidence as the last seen theory which has been projected but prior to the death of the deceased Manjunath, that is on 14.07.2011, the accused and the deceased were seen 10 together near the shop of PW-8 Hanumanthanaika @ Nanu. As regards the last seen theory placed by the prosecution, in order to prove the said facts, the prosecution has placed much reliance on the evidence of PWs. 2, 3, 7 and 8. But, on evaluation of their evidence, it is found that they are contrary to each other and are full of discrepancies. The theory has been put forth by filing a complaint as per Exhibit P-1 and so also the fulcrum at Exhibit P-2 - the spot mahazar as well as other seizure mahazars which are at Exhibits P-3 and P-4 conducted by PW-21 in the presence of PW-4, where he has subscribed his signatures. All these evidence require to be appreciated in a proper perspective, including the evidence of PW-11 being the Doctor who conducted autopsy over the dead body and issued a post-mortem report as per Exhibit P-8. PW-6 Sangappa has specifically stated in his evidence that after receipt of an information about the incident from the mother of

the deceased Manjunath, he had been to the scene of crime situated near the poultry farm of Suresh 11 Naika. But this witness has not supported the case of the prosecution, as he has specifically stated in the cross-examination that panchayath was not constituted to discuss the illicit relationship of Rathnamma, the mother of the accused and the deceased. Therefore, the learned counsel submits that this evidence is of no consequence. PW-7 had deposed that there was an altercation between the accused and the deceased. On the very next day, that there was a panchayath constituted in the village in the presence of Wazir Sab, after which the deceased Manjunath started working as a labourer in the Rice Mill in Shikaripura. Subsequently, that he had returned from the Rice Mill and the accused and the deceased started working together at Anjanapura in the poultry farm of PW- 5 Sureshnaika. But this evidence is contrary to the evidence of PW-6 being a member of the Grama Panchayath. PW-8 Hanumantha Naika @ Nanu has specifically stated in his evidence that on 14.07.2011 at about 8.30 p.m., the accused and deceased had together come to his 12 canteen wherein both were consuming liquor and that one Pramod had served liquor to them. In the canteen, himself and deceased brother Raja, accused and Pramoda were present. The deceased had told his brother Raja to go home and sleep. Raja had replied the deceased that he was to go home, since he was heavily drunk. Since the deceased was not in a position to independently go home, as requested by Raja, PW-8 and accused had taken the deceased Manjunath in their motor cycle and dropped him at the poultry farm. The key of the poultry farm was with the deceased and hence, the accused himself had opened the lock of the farm and had taken the deceased inside and made him sleep. Before the accused could open the door, the deceased had abused the accused in foul language telling him to open the door and Manjunath had also spoken about his illicit relationship with the mother of the accused. Saying that he would bring dinner for the deceased, the accused and PW-8 had left the poultry farm. Subsequently, the accused had dropped PW-8 near his canteen and thereafter had proceeded. 13 But on 15.07.2011, as usual when PW-8 was opening his canteen, people of Mathikatte had told him that somebody was murdered nearby the poultry farm. On hearing so, he had at once rushed to the poultry farm and saw that the dead body was lying without a head. But the head was lying nearby the electric pole and was identified

that it was of Manjunath. As he knew that there was an illicit relationship between the mother of the accused and the deceased and there was also a panchayath constituted, where an altercation took place. The learned counsel for the appellant submits that this evidence which is contrary to the evidence of PW-6 and PW-7, required to have been appreciated in a proper perspective by the Trial Court, which has not been done. Keeping in view the incisive cross-examination of these witnesses for the prosecution including the evidence of PW-14 who is stated to have constituted a panchayath relating to the illicit relationship of the mother of the accused and the deceased, the accused has been convicted. However, this PW-14 has specifically stated in 14 his cross-examination that the family members of the accused and the deceased Manjunath were in good terms. Despite this evidence, the Trial Court has erroneously come to the conclusion that the prosecution has proved the guilt of the accused by putting forth cogent, corroborative and positive evidence to probabalise that that accused had committed murder of the deceased by severing the head of the deceased by means of MO-4, long chopper. Therefore, the evidence on record needs to be re-appreciated, as there are inconsistencies and contradictions of the material witnesses insofar as the last seen theory of the accused as well as the deceased consuming liquor in the canteen of PW-8 and so also the allegation relating to the illicit relationship of the mother of the accused as well as the deceased and so also the voluntary statement at Exhibit P-19 said to be recorded by PW-21 and based upon his voluntary statement, MO-4 long chopper alleged to have been used by the accused, was seized by conducting a spot mahazar. 15 PW-21 was the Investigating Officer who has laid the charge-sheet against the accused by recording the voluntary statements of the accused as Exhibit P-19. PW-21 has stated that accused had led them along with panch witnesses to the scene of occurrence wherein he has produced the long chopper which was kept concealed. The same has been recovered from him in the presence of panch witnesses by conducting a seizure mahazar as per Exhibit P-4. MO-4 to MO-6 have been recovered by PW-21 based on the voluntary statements given by the accused in the presence of PW-4. In order to prove the said fact of recovery of Articles 4 to 6, PW-4 has been examined for the prosecution. PW-4 and the accused belonged to the same village. Though there is no enmity between PW-4 and the accused,

there is no reason to discard the evidence regarding seizure mahazar MO-4 to MO-6. This evidence requires to be re-appreciated in a proper perspective. 16 It is seen that the mahazars at Exhibits P3 and P4 and the evidence of PW-21 - Investigating Officer, run contrary to each other. After a lapse of eight days of the seizure mahazar, the articles had been sent to the FSL for chemical analysis. The prosecution has not proved all the circumstances relating to the chain of circumstances that the accused is alleged to have committed the murder of the deceased by severing the head from the body. Further, the prosecution has not proved the motive behind the commission of murder. As the case rests upon circumstantial evidence, the circumstance relating to the homicidal death, the motive, recovery of long chopper, seizure of blood stained clothes, are facts which require to be proved by the prosecution beyond all reasonable doubt. But the same has not been established by the prosecution by putting forth positive evidence. Though several witnesses have been examined, they have not supported the case of the prosecution. Therefore, the evidence requires to be re-appreciated. On all these grounds urged, the learned counsel for the appellant prays for setting 17 aside the impugned judgment of conviction and sentence held by the Trial Court by allowing the appeal.

7. Per contra, the learned Additional State Public Prosecutor for the State has taken us through the evidence of PW-1 who has lodged a complaint on 15.07.2011 at about 10.45 a.m., on getting information about the death of the deceased through his wife. Himself, the parents and the brother of the deceased had rushed to the scene of crime situated near the poultry farm where they had found the dead body of the deceased without head, and later they had found the severed head which was lying outside the fence. On the basis of the complaint, the case was registered and was then taken up for investigation. PW-1 conducted a spot mahazar as per Exhibit P-2 in the presence of PW-19. PW-21 conducted seizure mahazar as per Exhibit P3 and P4 in the presence of PW-4. All these witnesses including PW-21, the fulcrum of the aforesaid mahazars, have stated in their evidence as per 18 the averments of the complaint for having seized MO-4 long chopper alleged to have been used by the accused. In so far as PW-16 being the Scientific Officer working at the Forensic Science Laboratory, he has specifically stated in his evidence that on 25.07.2011, he received in all, 10 articles

and has subjected them to examination and had issued a chemical analysis report as per Exhibit P-13. This report reveals that Item Nos.2, 3, 4, 5, 6, 8, 9, 10 were stained with human blood. It further reveals that blood stain found on the aforesaid articles were found to be that of O Positive blood group. These articles were seized by the IO during the course of investigation. The mahazar at Exhibit P3 and P4 clearly establishes the recovery of MO-4 to MO-6 had blood stains and the said group was also established to be of O positive. The blood group of the deceased was of O positive and the blood group of the accused was found to be that of A positive. All the seized articles having been stained with the blood group of the deceased, the court 19 below had rightly come to a conclusion that the accused was the one who had murdered the deceased. The entire case rests upon circumstantial evidence as well as the evidence of PW-2, PW-3, PW-7 and PW-8. They are the material witnesses for the prosecution to substantiate the case against the accused wherein the accused and the deceased were last seen together near the canteen of PW-8, from where the deceased was taken to the poultry farm of PW-5 Suresh Naik, by the accused and PW-8. The prosecution has very much relied on these witnesses in so far as the circumstance of last seen theory. PW-2 being the brother of the deceased Manjunatha, has specifically stated in his evidence that on 14.07.2011 at about 9.00 to 9.30 p.m., that he himself and the accused were present near the canteen of one Pramod and PW-8 of Anjanapura village and that the accused and deceased had consumed liquor together. The brother of the deceased PW-2 had requested the accused to take the deceased to the poultry farm. The accused along with PW-8, had dropped the deceased at the poultry farm. This theory 20 has also been fortified by the prosecution witness PW-8 who has in his evidence disclosed that the deceased had abused the accused in foul language referring to his mother. This had made him very much annoyed and had hurt the feelings of the accused. Though the prosecution has not adduced any evidence to show that again accused went to the place of occurrence and had committed the murder, but from the evidence of PW-14 it is gathered that there was a Panchayath constituted since the mother of the accused, namely Rathamma and the deceased were having an illicit relationship with each other six to seven months prior to the incident. There was an altercation between the accused and the deceased in view of the said reason. All these

evidences established by the prosecution, prove the guilt of the accused that it was the accused alone who committed the murder of the deceased, that too brutally by severing his head from the body by means of MO-4 long chopper alleged to have been used by him. The said chopper has also been seized by PW-21 in the presence of PW-4 based upon the voluntary statement 21 of the accused as per Exhibit P-19. MO-1 to MO-6 which have been seized are also at the instance of the accused based upon his voluntary statement. PW-4 is said to have subscribed his signature to Exhibits P3 and P4 of the seizure mahazar stated to be conducted by PW-21. This evidence has been appreciated by the Trial Judge in a proper perspective. Further, though these witnesses have been subjected to cross-examination by the defence counsel, nothing worthwhile has been elicited to disbelieve their evidence. Hence, the learned Additional State Public Prosecutor for the State submits that in view of the heinous offence committed by the accused, there are no justifiable grounds as well as merits in this appeal and hence the judgment and sentence of the Trial Court needs no interference and hence prays for dismissal of the appeal by confirming the impugned judgment of conviction and sentence held against the accused under Section 302 IPC.

8. On hearing the learned counsel for the parties and on a careful evaluation of the material on record, it is seen 22 that the prosecution has placed much reliance on the evidence of PW-1, PW-2, PW-3, PW-6, PW-7 and PW-14. As at the cost of repetition, it is required to summarize the evidence of these witnesses one after the other. PW-1 being the author of the complaint at Exhibit P-1 had lodged the complaint that a dead body was lying near the poultry farm of PW-5 Suresh Naika. On receipt of the written complaint, PW-15 had registered a crime against the accused in Crime No.160 of 2011 for the offences under Sections 302 and 201 of the IPC. Subsequently, investigation had been taken up by PW-1 who laid the charge-sheet against the accused for the aforesaid offences. The accused is said to be facing trial for the said offences, before the Trial Court. No doubt, there are no eye-witnesses to the incident. But, the prosecution mainly rests upon circumstantial evidence in order to prove the homicidal death of the deceased. PW-11 was the Doctor who conducted autopsy over the dead body and issued a post-mortem report as per Exhibit P-8. The Doctor had received two separate parts of the body, the upper part 23 measuring about 21 cm. and lower part which

was measuring about 138 cm. and he found that there was decapitated wound with sharp margins measuring about 22 cms., which is indicated in the post-mortem report at Exhibit P-8. The Doctor had opined that death was due to the hemorrhage and shock and both parts, that is head and body belonged to the same person as there is good matching of both the parts regarding texture and colour. The long chopper MO-4 which was used was sent by the Investigating Officer who issued an opinion report as per Exhibit P-9. PW-11 being the Doctor who conducted autopsy over the dead body and issued a post-mortem report as per Exhibit P-8, had opined that it can be safely accepted that the death of deceased is a homicidal death. Further, on examining the long chopper produced by the Investigating Officer, the Doctor had opined that the death could have been caused by the said MO-4 long chopper. The evidence of these medical witnesses for the prosecution has not been dismantled by the cross- 24 examination. Therefore, it can be accepted that the deceased was murdered by using MO-4 long chopper. The motive behind committing the murder of the deceased by the accused was that the mother of the accused namely Rathamma had an illicit relationship with the deceased in respect of which a panchayath was also held in the present of PW-14 Wazir Sab. Hence, annoyed by the illicit relationship of his mother, the accused had developed an ill-will against the deceased and had been waiting for an opportunity to murder him. Hence, the said murder has been committed out of vengeance. This fact is also supported by the evidence of PW-4 who has stated in his evidence that he himself happened to see the deceased along with Rathamma at the backyard, that is dunghill. On seeing their relationship, PW-4 is said to have beaten the deceased. On a cursory glance, it reveals that PW-4 being the material witness for the prosecution, we find no reason to discard his evidence. With regard to the seizure of MO-4 to MO-6, the Trial Court has appreciated the evidence of the prosecution witnesses 25 where the prosecution has successfully proved the recovery of MO-4 to MO-6 which were seized by the Investigating Officer based on the voluntary statement of the accused as per Exhibit P-19. PW-5 was the owner of the poultry farm where the alleged incident had taken place. The incident took place on 14.07.2011 and the theory has been placed by the prosecution that the accused as well as the deceased were together seen consuming liquor in the canteen, including his

brother PW-2 Raju and the accused was the one who committed the brutal murder of the deceased Manjunatha by severing his head from the body and the body was lying at the scene of crime and the head was lying nearby the fence on the poultry farm of PW-5 Suresh Naika. This evidence has been appreciated by the learned Trial Judge in a proper perspective in order to prove the guilt of the accused by placing cogent, corroborative and acceptable evidence to probabalise that the accused had committed brutal murder of the deceased by decapitation of the head from the body. 26 The mother of the accused had an illicit relationship with the deceased as a result of which the accused had developed an ill-will against the deceased, is the motive for commission of offences.

9. Therefore, for the aforesaid reasons, we are of the view that there are no justifiable grounds as urged by the learned counsel for the appellant to call for interference the judgment of conviction and sentence held against the accused and there is no material placed to dismantle the evidence placed by the prosecution, even though material witnesses have been subjected to cross-examination at length. We find no perversity in the judgment of the Trial Judge convicting the accused by analytically appreciating the evidence on record. Therefore, we have no hesitation to confirm the judgment of conviction and sentence held against the accused by dismissing this appeal as being devoid of merits.

10. Though any sentence has not been passed by the Trial Court as regards the offence under Section 201 IPC relating to disappearance of evidence, it is seen that 27 the head of the dead body was not concealed somewhere else, but the same was just found at a distance. Hence, it does not amount to disappearance of evidence and the Trial Court was right in not awarding sentence in respect of the offence under Section 201 IPC.

11. For the aforesaid reasons and findings, we proceed to pass the following order: The point framed by this court is answered in the positive and the appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure is hereby dismissed. Consequently, the judgment of conviction and sentence passed by the Fast Track Court-II, Shivamogga, in S.C.No.207 of 2011

dated 29.09.2012 for the offences punishable under Section 302 of the IPC is hereby affirmed. Sd/- JUDGE KS Sd/- JUDGE

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