

Ashok Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Sep-14-2022

Judge : K.Somashekar and T G Shivashankare Gowda

Appeal No. : CRL.A 590/2017

Appellant : Ashok

Respondent : The State Of Karnataka

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF SEPTEMBER, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA CRIMINAL APPEAL NO.590 OF 2017 BETWEEN: Ashok S/o Gangegowda Aged about 27 years Occ: Agriculturist R/o Dasarakallahalli Village Bhadravathi Taluk Shivamogga District - 577301. ...Appellant (By Sri. Umesh P. B - Advocate for Sri. Ravindra B. Deshpande - Advocate) AND: The State of Karnataka By Holehonnur Police Station Bhadravathi Taluk Shimoga District - 577227 Rep. by State Public Prosecutor High Court Buildings Bengaluru - 01. ...Respondent (By Sri. Vijayakumar Majage - Addl. SPP) 2 This Criminal Appeal is filed under Sec.374(2) of Criminal Procedure Code, praying to set-aside the judgment and order of conviction and sentence dated 02/04-02-2017 passed by IV-Addl. District and Sessions Judge, Shimoga, sitting at Bhadravathi in Sessions Case No.94/2015 (convicting for the offences punishable under Sections 302 and

201 of IPC) and acquit the appellant/accused of the charges leveled against him. This criminal appeal coming on for dictating judgment this day, K. Somashekar .J., delivered the following:

JUDGMENT

This appeal is filed challenging the judgment of conviction and order of sentence rendered by the Court of the IV Addl. District & Sessions Judge, Shimoga sitting at Bhadravathi in S.C.No.94/2015 dated 02/04.02.2017. By the aforesaid judgment, the Trial Court had convicted the accused / appellant herein for offences under Sections 302 and 201 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- for the offence punishable under Section 302 IPC with default clause and to further undergo simple imprisonment for a period of 4 years and to pay a fine of Rs.5,000/- for the offence punishable under Section 201 IPC along with default clause. Both the sentences were to run concurrently.

2. This appeal is filed challenging the judgment of conviction and order of sentence urging various grounds seeking intervention of the judgment of conviction rendered by the Trial Court and consequently to set aside the judgment of conviction rendered by the Trial Court and consequent upon setting aside the said judgment, to acquit the accused of the offences under Sections 302 and 201 of the IPC as reflected in the operative portion of the order.

3. Heard the learned counsel Shri Umesh P.B. for the appellant and so also the learned Addl. SPP for the State and perused the judgment of conviction rendered by the Trial Court in S.C.No.94/2015 inclusive of the material documents which were got marked at Exhibits P1 to P42 inclusive of MO-1 to MO-8.

4. The factual matrix of this appeal is as under: It transpires from the case of the prosecution that the appellant / accused and PW-1 / Hemavathi fell in love with each other and got married against the wishes of the parents of the appellant. Hence, it is stated that the parents of the appellant were not happy with the marriage of accused with PW-1 / Hemavathi. It is stated that after their marriage, appellant / accused started residing along with his wife and son in the house of his parents at Dasarakallahalli village, Bhadravathi Taluk. However, it is stated that

the mother of the accused Jayalakshmi used to abuse and quarrel with the accused and his wife on the ground that she was not doing household chores properly and was visiting her parental home frequently. Saying so, deceased is said to have frequently picked up a quarrel with the wife of the accused being her daughter-in-law. The accused was not able to tolerate the act of his mother Jayalakshmi. Hence, it is stated that he is said to have hatched a criminal conspiracy to get rid of his mother who was always picking up a quarrel with his wife. On 26.10.2014 at around 11.00 p.m., while the accused, his wife Hemavathi and his mother Jayalakshmi were present in the house, in the absence of his father namely Gangegowda who is examined as PW-4, accused Ashoka is said to have slapped his mother Jayalakshmi on her left cheek very harshly. Immediately, blood started oozing from her left ear as a result of which she fell down on the mat and succumbed to head injuries. Subsequent to the death of his mother, the accused with an intention to cause disappearance of evidence in order to screen himself from legal punishment, had wrapped the dead body of his mother with means of a mat, bed sheet, pillow and took the same in a power tiller bearing Reg.No.KA- 6 14/TA-0365 and Trailer No.0366 by putting fresh grass on the dead body and is said to have thrown her body into the Bhadra river by standing near the old bridge at Bhadravathi in Shimoga District. In pursuance of the act of the accused, on filing of a complaint by Hemavathi as per Exhibit P1, the criminal law was set into motion by recording an FIR as per Exhibit P36. In the FIR, offences under Sections 302 and 201 were lugged against the accused. Subsequent to setting the criminal law into motion, the I.O. had taken up the case for investigation and conducted thorough investigation and laid the charge-sheet against the accused. PW-16 / Manjunatha being the PSI, received the complaint at Exhibit P1 and based upon her complaint, recorded the FIR as per Exhibit P-36. PW-17 / Police Constable had apprehended the accused as per the direction issued by the I.O. on the basis that the accused had committed offences of eliminating his mother. PW-19 / R. Ramesh being another Investigating Officer had thoroughly 7 investigated the case and after completion of investigation, laid the charge-sheet against the accused before the Committal Court. Subsequent to laying of the charge-sheet by the I.O. as per the relevant provisions of the Cr.P.C., thereby the Committal Court had committed the case to the Court of the Sessions by passing

an order under Section 209 of the Cr.P.C. by following the requisite provisions. Subsequent to committing the case to the Court of the Sessions, the case in S.C.No.94/2015 was assigned. Subsequently the Trial Court after hearing on charge by the learned Public Prosecutor for the State, framed charges against the accused for offences punishable under Sections 302 and 201 of the IPC and thereby read over the contents in the charge relating to the substance. The accused did not plead guilty but claimed to be tried. Accordingly, it was recorded separately. Subsequent to framing of the charge in pursuance of the provisions of the Cr.P.C., the prosecution had examined the 8 witnesses in all PW-1 to PW-19 and got marked several documents at Exhibits P1 to P42 and so also marked material objects MO-1 to MO-8. Subsequent to closure of the evidence on the part of the prosecution, the accused was examined as specified under Section 313 Cr.P.C. for enabling the incriminating evidence appearing against him. Accordingly it was read over but accused denied the truth of the evidence of the prosecution adduced so far. Subsequent to recording the statement regarding declining the evidence of the prosecution witnesses, the accused was called upon to adduce defence evidence as contemplated under Section 233 Cr.P.C. However, the accused was not inclined to lead any defence evidence. Accordingly it was recorded.

5. Subsequent to closure of the evidence on the part of the prosecution as well as on the defence side by following the requisite provisions of the Cr.P.C., the Trial Court heard the arguments advanced by the 9 learned Public Prosecutor and so also the arguments advanced by the defence counsel and recorded the points that arose for its consideration and answered the same in the affirmative and thereby convicted the accused for offences punishable under Sections 302 and 201 of the IPC based upon the evidence of PW-1 in certain parts of the cross-examination got marked upon, as well as in the complaint at Exhibit P1 whereby accused had made extra-judicial confession before his wife PW-1 / Hemavathi relating to having committed the murder of his mother / Jayalakshmi and also having thrown the dead body in the Bhadra river.

6. Based upon the evidence of PW-1 / Hemavathi, certain portions of her statements have been got admitted through her cross-examination. However, this

witness has given a go-by to the version narrated in her cross-examination as well as in her complaint at Exhibit P1 which is marked on the part of the prosecution.

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7. PW-2 / Shilpa is a mahazar witness of Exhibit P2 of the spot mahazar said to have been conducted by Investigating Officer in the presence of panch witnesses. The said Exhibit P2 was got marked in the presence of PW-1 / Hemavathi, PW-2 / Shilpa and PW-3 / Nethrappa who are said to have endorsed their signatures. PW-2 and PW-3 are panch witnesses to the said mahazar Exhibit P2. Exhibit P3 is the rough sketch said to have been drawn by the authority relating to laying of the charge-sheet against the accused. PW-4 / Gangegowda is none other than the father of the accused and husband of deceased Jayalakshmi. PW-8 / Bebi is the wife of PW-5 / Raju, the uncle of the accused Ashoka. PW-7 / Pavithra is the daughter of the deceased Jayalakshmi. PW-9 / D.D. Rajappa is also a panch witness who was secured in whose presence the seizure mahazar was drawn as per Exhibit P14 by the Investigating Officer. 11

8. It is relevant to refer that PW-11 /Prema, PW-12 / Gangadhara, PW-14 / Shrinivasa have been secured as panch witnesses to act upon and the spot mahazar at Exhibit P4 was drawn in their presence. But the Inquest mahazar at Exhibit P23 was held over the dead body of Jayalakshmi in the presence of these witnesses and even one more spot mahazar was drawn at Exhibit P4 where the dead body was traced. But PW-19 / R. Ramesh is the I.O. who laid the charge-sheet against the accused but this witness has been cited as CW-25 in the charge-sheet laid by him. These are the evidence let in on the part of the prosecution. The Trial Court had given go-by to the versions of certain portions of their statements and they did not withstand the versions of their statements as well as the fulcrum of the mahazar conducted by PW-19 in their presence.

9. PW-16 / Manjunatha is the PSI who received the complaint based upon the say of Hemavathi and recorded an FIR as per Exhibit P36. Criminal law was 12 set into motion on the basis of the substance of the complaint at Exhibit P1. PW-17 / B.N. Kirankumar is the Police Constable who apprehended the accused / appellant and produced him before the Investigating Officer. PW-19 / Investigating

Officer had investigated the case thoroughly and during investigation, recorded the statement of witnesses and so also drew the spot mahazar at Exhibit P2 and another spot mahazar at Exhibit P4 where the dead body of Jayalakshmi was traced. The seizure mahazar at Exhibit P14 and so also the Inquest Mahazar at Exhibit P23 was conducted by the I.O. in the presence of panch witnesses and noticed injuries inflicted over the person of the deceased.

10. PW-19 / R. Ramesha is the I.O. who secured the post-mortem report at Exhibit P34 and secured the Opinion Report at Exhibit P35. These are all the material which have been secured by the I.O. during the course of investigation and laid the charge-sheet against the accused. Even certain portions of the voluntary 13 statement of the accused has been marked at Exhibit P39 and based upon the voluntary statement, seizure mahazar has been drawn by the I.O. in the presence of panch witnesses and he had seized materials marked as MO-1 to MO-8 relating to carrying of the dead body of Jayalakshmi from her house to the Old Bridge of Bhadra river in between Bhadravathi and Shimoga and threw the dead body of Jayalakshmi at Bhadra river to cause disappearance of evidence to screen from legal punishment. These are the evidence let in by the prosecution to prove the guilt of the accused. But the Trial Court has given more credentiality to the evidence of PW-4, PW-5, PW-7 and PW-8 who are the family members of the accused. It is stated that the said family members were eager to perform the marriage of the accused Ashoka with Tejaswini being the grand- daughter of the deceased Jayalakshmi. However, in view of the love affair of the accused with the complainant / Hemavathi, it is stated that differences of 14 opinion emerged between the family members consisting the parents of the accused and the accused. In spite of his parents opposing for their marriage, the accused Ashoka had married the complainant. Thereafter, the deceased Jayalakshmi who was dissatisfied with the complainant, was always picking up a quarrel with her. Hence, difference of opinion is said to have continued between them. In order to put an end to the same, it is stated that the accused / appellant herein had taken advantage of the circumstance of his father Gangegowda / PW-4 not being present at station at the time of the incident and is said to have hatched a criminal conspiracy to eliminate his mother Jayalakshmi. Accordingly, on the fateful day of the incident during night hours, the accused is said to have picked up a quarrel

with her and slapped on the cheek of his mother Jayalakshmi forcefully, as a result of which blood started oozing out of her ear and she had fell down unconscious and died on the spot. After her death, in 15 order to cause disappearance of evidence, the accused is said to have carried the dead body of Jayalakshmi in a Tiller and is said to have thrown her dead body in the Bhadra river. He had wrapped her dead body with a mat and bedsheet before throwing into the said river. Taking into consideration the evidence of PWs 1 to 7 including the evidence of PW-8, the Trial Court had given more credentiality as regards the involvement of the accused who has done to death his mother Jayalakshmi by assaulting her with means of his hands in view of the fact that she was frequently taunting his wife Hemavathi.

11. The provisions of Section 8 of the Indian Evidence Act with regard to the conduct of the accused soon after the alleged incident had taken place in his house, the mother of the accused was found missing from the house, is also required to be taken into consideration. The accused had not at all searched for 16 his mother and had not informed his neighbourers or his kith and kin regarding the missing of his mother but he had kept silent. His silence itself indicated that it was the accused and accused alone who was responsible for eliminating his mother. He had not made any earnest efforts or endeavour to search her and there is no rebuttal evidence on the part of the accused to show that he is an innocent person who had no intention to eliminate his mother. These are all the circumstances which have been taken into consideration by the Trial Court to convict the accused. More so, this accused who is none other than the son of the deceased Jayalakshmi, had done to death his mother by assaulting on her cheek. PW-15 / Dr. Ravikumara who issued the PM report as per Exhibit P34, on certain queries raised by the I.O. had given an answer as per Exhibit P35 which is his Opinion report. The evidence of official witnesses PWs 16, 17 and 19 have been taken into consideration. The totality of the 17 evidence of the prosecution as well as the totality of the circumstances and the evidence on the part of the prosecution to do away the death of Jayalakshmi by the accused has also been taken into consideration while convicting the accused. Even a close scrutiny of the evidence of PW-1 to PW-6 and PW-8 including the evidence of PW-9 in the light of certain admissions in their evidence and so also material admissions elicited during the

cross-examination done by the Public Prosecutor clearly indicates the theory of the prosecution is that the accused and accused alone had eliminated his mother and also clearly establishes the link in the chain of circumstances pointing towards the guilt of the accused beyond all reasonable doubt. Nothing worthwhile has been elicited even in the cross- examination of witnesses on the part of the prosecution and they have not withstood the examination carried out by the defence counsel. More so, there is nothing on record to probablise the theory set up by the defence 18 counsel or to rebut the evidence of the prosecution witnesses. In view of the specific circumstances, the Trial Court was of the opinion that the accused had failed to discharge his burden as contemplated under Section 106 of the Indian Evidence Act, 1872 and consequently presumed that though the entire case of the prosecution is based upon circumstances which prevailed at the time of the alleged date, time and place which are linked to each other, rendering to believe the theory of the prosecution that it is none other than the accused who was responsible for her elimination. On these evidence as well as on consideration of the facts and circumstances, the Trial Court had rendered a conviction judgment relating to the offences under Sections 302 and 201 of the IPC, 1860. It is this conviction judgment which is under challenge in this appeal seeking to allow the appeal and thereby to acquit the appellant from the offences leveled against him.

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12. Learned counsel Shri Umesh P.B has taken us through the evidence of PW-1 who is the author of the complaint at Exhibit P1 and even Hemavathi who is none other than the daughter-in-law of the deceased Jayalakshmi. It is Jayalakshmi who has filed the complaint as per Exhibit P1 and based upon her complaint, criminal law was set into motion. But the Trial Court has committed a serious error in convicting the accused on the prosecution evidence which indicates that they are highly interested, contradictory, unreliable as well as artificial to prove the guilt against the accused. Therefore, in this appeal it requires intervention. If not interfered with, certainly the accused who is the gravamen of the accusation would be the sufferer and also injustice would be caused to him. On this premise also, learned counsel seeks for intervention by setting aside the judgment of conviction rendered by the Trial Court. 20

13. The second limb of arguments advanced is that PW-1 / Hemavathi, the author of the complaint at Exhibit P1 even at a cursory glance of her evidence and so also narration made in her complaint, initially only a missing complaint was filed by the complainant being the daughter-in-law of deceased Jayalakshmi. But however, taking advantage of she being in the police station, the police are said to have obtained her signature on certain papers with the connivance of interested persons, in order to rope in the accused in the alleged crime in order to establish that the accused alone was responsible for causing the death of the deceased Jayalakshmi. It is due to the fact that accused Ashoka had fallen in love with Hemavathi and married her against the wishes of his parents and his mother Jayalakshmi was consistently abusing his wife since she was very much dissatisfied with their marriage. Hence, it is stated that the accused had hatched a conspiracy to do away with the life of his 21 mother and had acted accordingly, but it is faraway from the truth of the alleged incident.

14. PW-19 / R. Ramesh being the I.O., on completion of investigation, laid the charge-sheet against the accused before the Trial Court whereby the accused had faced trial and spot mahazar at Exhibit P2 and another spot mahazar at Exhibit P4 relating to having found the dead body of Jayalakshmi at the scene of crime, were drawn. But there are some omissions and contradictions in the evidence of PW-19 / I.O. and even there are some legal infirmities which can be seen in the evidence of the prosecution witnesses. Even the medical evidence as well as the FSL report does not reveal the exact cause of death of the deceased and thus homicidal death has not been proved by the prosecution by facilitating worthwhile evidence. On these circumstances, the Trial Court ought to have discarded the case of the prosecution and acquitted the accused for the offences under Sections 302 and 201 of the IPC, 22 1860. The counsel refers to Section 106 of the Indian Evidence Act to state that the prosecution without having discharged their initial burden of establishing a prima facie case against the accused that the accused and accused alone had committed the alleged offences, it cannot arrive at a conclusion rendering conviction judgment. It is contended that the Trial Court ought to have discarded the case of the prosecution on the ground that the recovery of articles and identification of the same are doubtful, which were alleged to have been seized by the I.O. at the instance of the accused on giving a disclosure statement.

All the prosecution witnesses or the panchas in respect of the alleged recovery, have not supported the case of the prosecution to any extent and same is seen in their evidence itself. Further, the alleged recovery has been shown only to suit the case of the prosecution in order to lug the case against the accused. Hence, in view of the prosecution case being based entirely upon the circumstantial evidence, the Trial Court ought to have extended the benefit of doubt to the accused and acquitted the accused for offences under Sections 302 and 201 of the IPC.

15. The FIR is said to have been recorded based upon Exhibit P1 filed by PW-1 / Hemavathi who is the daughter-in-law of the deceased Jayalakshmi and more so, PW-1 is none other than the wife of the accused Ashoka. It is contended that the prosecution has not proved the circumstances of the alleged overt-acts against the appellant as the prosecution case is based on circumstantial evidence and hence, the prosecution has failed to establish the chain of circumstances in order to link the appellant with the alleged crime. It is further contended that the alleged extra-judicial confession made by the appellant / accused before PW- 1 / Hemavathi cannot be relied upon by the prosecution to hold him guilty of the alleged offences, in view of the fact that PW-1 has not at all supported the case of the prosecution and she has entirely turned hostile to the case of the prosecution. Hence, the ingredients of Section 302 of the IPC have not been constituted relating to the murder of the deceased Jayalakshmi who is the mother of this accused. Further, the ingredients have not been proved by the prosecution to secure conviction in respect of the offences under Section 201 of the IPC relating to disappearance of evidence in order to screen from legal punishment by wrapping the dead body of Jayalakshmi with a mat and pillow which were carried in a tiller and was thrown into the Bhadra river and caused disappearance of evidence. On all these premise, the learned counsel for the appellant seeks for intervention of the grounds urged in this appeal by re- appreciating the evidence. If not, the accused being the gravamen of the accusation would be the sufferer and it would result in a miscarriage of justice to the accused. These are the contentions made by the learned counsel for the appellant seeking intervention of the impugned judgment of conviction in S.C.No.94/2015 and thereby seeking to set aside the judgment of conviction and consequently to acquit the accused for

offences under Sections 302 and 201 of the IPC, 1860.

16. Learned Addl. SPP for the State has taken us through the evidence of the prosecution witnesses and has relied on the evidence of PWs 4, 5, 7 and 8 in support of his case. There is no dispute about the death of Jayalakshmi and that her death had occurred in the house of the accused and within the four corners of the wall where the accused and Hemavathi were residing along with their male child. Even there is no dispute about the alleged incident narrated at Exhibit P1 and also taken place in his house in the night hours and just prior to the alleged incident, the accused, his wife, deceased and child were present and except them, nobody was present in the house. It is the accused who had slapped Jayalakshmi on her cheek with all force, as a result of which blood started oozing from her left ear 26 and thereafter she had fallen unconscious on the ground and died. A prudent man can infer that accused and accused alone has committed the murder of his mother Jayalakshmi. Subsequently, after committing the murder of his mother, in order to cause disappearance of evidence in order to screen himself from legal punishment, the accused had washed the floor and thereafter wrapped the dead body of his mother Jayalakshmi in a mat and took the same in his tiller and threw the dead body into the Bhadra river. The motive for the alleged crime is that the parents of the accused were not happy about Ashoka's marriage with PW-1 / Hemavathi since they had fallen in love with each other and married against the wishes of their parents. However, the family members of the accused had wished to perform the marriage of accused Ashoka with one Tejaswini, the granddaughter of Jayalakshmi. Therefore, Jayalakshmi and her husband Gangegowda who were the parents of the accused Ashoka, were not 27 happy about the marriage of PW-1 / Hemavathi with accused Ashoka and Jayalakshmi was in the habit of frequently finding fault with Hemavathi. Hence, some differences arose between them and an ill-will also developed. Hence, the accused Ashoka had hatched a criminal conspiracy to eliminate the deceased, his mother. Accordingly, on the fateful day during night hours, the accused had slapped on the cheek of his mother Jayalakshmi as a result of which she had fallen down on the ground and died on the spot. Immediately thereafter, in order to cause disappearance of evidence, the accused Ashoka is said to have wrapped her dead body in a mat and with the help of a bedsheet and had taken her body in a trailer and had thrown

it into the Bhadra river. Hence, he had caused disappearance of evidence in order to screen from legal punishment, which also has been rightly appreciated by the Trial Court and has convicted the accused for the said offences, considering the scope of Section 106 of the Indian Evidence Act, 1872 inclusive of the scope of Section 8 of the Indian Evidence Act relating to the conduct of the accused right after the alleged incident. The accused had not made any endeavour to trace his missing mother Jayalakshmi. The entire theory of the prosecution appears that he is the one who has done to death his mother. PW-15 being the Doctor who conducted autopsy over the dead body and issued the PM report as per Exhibit P24 had also issued his opinion report as per Exhibit P35 in answer to certain queries made by the I.O. The evidence of PW-15 as well as the evidence of the official witnesses PWs 16, 17 and 19 and the evidence of PW-1 to 6, PW-8 and PW-9 as well as the admission elicited from the cross-examination by the prosecutor when taken into consideration along with the totality of the circumstances, it clearly indicates that the evidence of all these prosecution witnesses not only corroborates each other but also clearly links the chain of 29 circumstances pointing towards the guilt of the accused beyond all reasonable doubt and accused alone had caused the death of his mother and eliminated her due to the torture given by her to his wife PW-1 / Hemavathi. The accused had failed to discharge his burden as contemplated under Section 106 of the Indian Evidence Act. There is a presumptive value in the entire case of the prosecution even though it is based upon circumstantial evidence.

17. At a cursory scrutiny of the evidence in the peculiar facts and circumstances of the case that the prosecution has let in evidence of several witnesses and even secured conviction, the judgment has been rendered by the Trial in view of the fact that the accused alone has committed the murder of his mother. Therefore, in this appeal, it does not arise to call for interference of the judgment of conviction rendered by the Trial Court in S.C.No.94/2015 and the learned Addl. SPP for the State justified the impugned judgment 30 of conviction rendered by the Trial Court where the accused alone could have committed the murder of his mother Jayalakshmi within the four corners of his house where the accused, his wife and deceased Jayalakshmi were alone present on the fateful day. These are the contentions made by the learned Addl. SPP for the State seeking dismissal of this

appeal.

18. In the context of the contentions made by the learned counsel for the appellant and so also the counter made by the learned Addl. SPP for the State, it is relevant to refer to the judgment of conviction and order of sentence rendered by the Trial Court in S.C.No.94/2015 relating to offences under Sections 302 and 201 of the IPC as well as the documents marked on behalf of the prosecution and defence.

19. The entire prosecution theory reveals that based upon the complaint at Exhibit P1, the murder of Jayalakshmi is proved by the Investigating Agency during investigation from the disclosure statement of 31 the accused and accordingly drew the spot mahazar at Exhibit P4. PW-1 / Hemavathi is the author of the complaint at Exhibit P1 and based upon her complaint, criminal law was set into motion and recorded the FIR as per Exhibit P36. The Investigating Officer / PW-19 drew the spot mahazar at Exhibit P2 and so also the spot mahazar at Exhibit P4, had even drawn the Seizure mahazar at Exhibit P14. The autopsy was conducted by PW-15 / Dr. Ravikumara who had noticed the injuries over the person of Jayalakshmi and issued the PM report at Exhibit P34. This Doctor had also given his opinion report as per Exhibit P35. The voluntary statement of accused has been got marked at Exhibit P39. But the entire case revolves around the narration made by PW-1 in her complaint at Exhibit P1. Accused is said to have made confession relating to causing death of his mother Jayalakshmi, before his wife PW-1. Hence, based upon the complaint at Exhibit P1, criminal law was set into motion and subsequently the 32 I.O. has taken up the case for investigation and thoroughly investigated the case and laid a charge-sheet against the accused under Sections 302 and 201 of the IPC, 1860 whereby the accused had pleaded not guilty and claimed to be tried. Subsequently, the domain is vested with the prosecution to prove the guilt of the accused by facilitating worthwhile evidence.

20. Even on a close scrutiny of the evidence of Doctor/PW-15 relating to Exhibit P34 issued by the Doctor relating to the dead body of deceased Jayalakshmi as well as the evidence of PW-19 / I.O., it is seen that the case of the prosecution has not been proved to arrive at a conclusion that the prosecution has proved the guilt against the accused beyond all reasonable doubt. The prosecution has failed to

establish the guilt against the accused by facilitating worthwhile evidence relating to Exhibit P2 of the spot mahazar and another spot mahazar at Exhibit P4. It is to be taken into consideration that all the prosecution 33 witnesses have turned hostile and they did not withstand the versions of their statements. PW-1 / Hemavathi, PW-2/ Shilpa, PW-3 / Nethrappa, PW-4 / Gangegowda being material witnesses on the part of the prosecution though they have been subjected to examination, but all of them have turned around from the narrations made in their statement. PW-5 / Raju who is the uncle of the accused and PW-7 / Pavitra, daughter of deceased Jayalakshmi and PW-8 / Babi, wife of PW-5, they are the witnesses who have been subjected to examination on the part of the prosecution to prove the guilt of the accused. But they did not withstand the versions of their statements in order to prove the fact that the accused committed the murder of the deceased Jayalakshmi by slapping on her cheek as a result of which she fell on the ground in the scene of crime and died.

21. As already stated, PW-1 / Hemavathi and accused fell in love with each other and got married. 34 But the parents of the accused were not happy with their marriage. Particularly, Jayalakshmi being the mother-in-law of Hemavathi was frequently finding fault with her and arguing with her. Same is seen in their evidence itself. On a close scrutiny of the evidence of PW-1 / Hemavathi, author of the complaint and the circumstance that the dead body of Jayalakshmi was thrown into the Bhadra river is the theory of the prosecution, but the prosecution has failed to establish the guilt against the accused beyond all reasonable doubt for securing conviction.

22. In this regard, it is deemed appropriate to refer to a judgment of the Honble Supreme Court of India in the case of Ram Niwas vs. State of Haryana (Crl.A.No.25/2012) wherein the Honble Apex Court has referred to a judgment in the case of S. Arul Raja vs. State of Tamil Nadu ((2010) 8 SCC233). In the said judgment, the relevant paragraph 48 reads thus:

35. 48. The concept of extra-judicial confession is primarily a judicial creation, and must be used with restraint. Such a confession must be used only in limited circumstances, and should also be corroborated by way of abundant caution. This

Court, in Ram Singh vs. Sonia ((2007) 3 SCC1: (2007) 2 SCC (Cri) 1)) has held that an extra-judicial confession while in police custody cannot be allowed. Moreover, when there is a case hanging on an extra-judicial confession, corroborated only by circumstantial evidence, then the courts must treat the same with utmost caution. This principle has been affirmed by this Court in Ediga Anamma vs. State of A.P. ((1974) 4 SCC443K1974SCC (Cri) 479)) and State of Maharashtra vs. Kondiba Tukaram Shirke ((1976) 3 SCC775:

1976. SCC (Cri) 514. It is significant to observe that A-1 has subsequently sought to retract this statement upon his arrival in Tamil Nadu. 36 23. The entire prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has been very well been crystallized in the judgment of this Court in Sharad Birdhichand Sarda vs. State of Maharashtra ((1984) 4 SCC116) wherein at paragraph 152 of the said judgment, the Honble Apex Court has held thus: 152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. The State of Madhya Pradesh (AIR 1952 SC343. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh ((1969) 3 SCC198) and Ramgopal v. State of Maharashtra (AIR371972 SC656. It may be useful to extract what Mahajan, J.

has laid down in Hanumant's case (supra):

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused

and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions 38 must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra* ((1973) 2 SCC793) where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they 39 should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency. (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

24. There has to be a chain of evidence so complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability the act 40 must have been done by the accused. It has been held that the circumstances should be of a conclusive nature and tendency. Further, the circumstances should exclude every possible hypothesis except the one to be proved. Suspicion, however strong it may be,

cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond all reasonable doubt. In the instant case, even in the given facts and circumstances of the case, we find that the prosecution has utterly failed to establish the chain of events to prove the guilt of the accused beyond all reasonable doubt. In that view of the matter and in the peculiar facts and circumstances of the case, we find that the judgment and order of conviction rendered by the Trial Court is not sustainable. Viewed from any angle by scrutinizing the evidence on record, we find that the said finding of the Trial Court requires to be 41 interfered with. If not interfered with, the gravamen of the accusation who is the accused would be the sufferer and so also it would result in an absolute miscarriage of justice.

25. However, keeping in view the evidence facilitated by the prosecution to prove the guilt of the accused, and more so, having regard to the judgment rendered by the Honble Supreme Court of India in the case of Sidhartha Vashisht @ Manu Sharma vs State (Nct Of Delhi) ((2010) 6 SCC1), it is seen that the accused who is none other than the son of the deceased Jayalakshmi, on the fateful day in the night hours, slapped on her face. As a result of that, she fell on the ground in the house, that is in the scene of crime and died. Subsequently it is alleged that accused had carried the dead body of his mother to Bhadra river and threw the dead body in a wrapped position to that river near Bhadravathi Old Bridge area with an intention to cause disappearance of evidence in order to screen 42 himself from legal punishment. The circumstance for committing her murder is that accused fell in love with PW-1/ Hemavathi and both of them got married and thereafter PW-1 was blessed with a male child. But the deceased Jayalakshmi who is none other than the mother-in-law of PW-1 and so also the mother of the accused, was not happy about their marriage even after they were blessed with a child. In view of that reason, it is alleged that accused had slapped Jayalakshmi on her cheek forcefully, which incident which took place in his house. As a result of that, she died. But the entire case of the prosecution even on a close scrutiny of the evidence, it is seen that there is no evidence forthcoming to prove the guilt of the accused. Despite of which the Trial Court had convicted the accused relating to offences under Sections 302 and 201 of the IPC, 1860. Whereas in the instant

case, the accused was in incarceration from the date of his arrest and it is almost all 7 years, 10 months and 14 days. In the given 43 peculiar facts and circumstances of the case and so also in view of the ratio of reliance stated supra, we are of the opinion that the period of sentence which appellant / accused has undergone since from the date of his arrest till this date, amounts to service of sentence, which would meet the ends of justice. The accused though was convicted for offences under Section 302 of IPC inclusive of Section 201 of the IPC, but there is no evidence forthcoming on the part of the prosecution for disappearance of evidence in order to screen himself from legal punishment. The offences even under Section 302 IPC absolutely is not forthcoming. Hence, in the peculiar facts and circumstances of the case even dwelling in detail through the evidence as well as the concept of Section 304 Part I and Part II of the IPC relating to reduction of sentence, which is also very remote chances but the period for which he has undergone sentence during the course of trial since from the date of his arrest, that period shall suffice 44 in order to meet the ends of justice. In view of the reasons and findings, we are of the opinion that the Trial Court has misdirected and misinterpreted the evidence facilitated by the prosecution and has failed to establish the guilt of the accused beyond all reasonable doubt. In view of the aforesaid reasons and findings, we proceed to pass the following:

ORDER

The appeal preferred by appellant / accused under Section 374(2) of Cr.P.C. is hereby allowed in part. Consequently, the judgment of conviction and order of sentence dated 02.02.2017 rendered by the trial Court in S.C.No.94/2015 is hereby set aside. Consequent upon setting aside the judgment of conviction rendered by the Trial Court, the accused is acquitted of the offences punishable under Sections 302 and 201 of the IPC, 1860. Registry of this Court is directed to forward a copy of the operative portion of the judgment to the 45 concerned Superintendent of jail authority where the accused is housed with a direction to set him at liberty forthwith, if he is not required in any other case. Ordered accordingly.
Sd/- JUDGE Sd/- JUDGE KS