

**Sri Durugappa Vs. State By**

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**SooperKanoon Citation :** [sooperkanoon.com/1234160](https://sooperkanoon.com/1234160)

**Court :** Karnataka

**Decided On :** Sep-16-2022

**Judge :** K.Somashekar and T G Shivashankare Gowda

**Appeal No. :** CRL.A 800/2016

**Appellant :** Sri Durugappa

**Respondent :** State By

**Judgement :**

CRL.A.800/2016 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE16H DAY OF SEPTEMBER 2022 PRESENT THE HON'BLE MR. JUSTICE K. SOMASHEKAR AND THE HON'BLE MR.JUSTICE T.G.SHIVASHANKARE GOWDA CRIMINAL APPEAL No.800 OF 2016 BETWEEN: SRI. DURUGAPPA, S/O HANUMANTHAPPA, R/O AVARAGOLLA VILLAGE, DAVANAGERE TALUK, DAVANAGERE DISTRICT - 577 001. ... APPELLANT (BY SRI JAVEED.S., ADV.) AND: STATE BY ARASIKERE POLICE STATION, DAVANAGERE, REPT. BY STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BANGALORE - 560 001. ... RESPONDENT (BY SMT RASHMI JADHAV., HCGP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE

JUDGMENT

DATED 20.10.2015 AND SENTENCE DATED 21.10.2015 PASSED BY THE I ADDL. DIST. AND S.J., CRL.A.800/2016 2 DAVANAGERE IN S.C. No.102/2014 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S302 AND 201 OF IPC. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 23.08.2022 AND COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY, T.G.SHIVASHANKARE GOWDA J., DELIVERED THE FOLLOWING:

## **JUDGMENT**

This Appeal is directed against the judgment of conviction and order of sentence dated 20.10.2015 rendered by the Trial Court in Sessions Case No.102/2014, sentencing the appellant / accused to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months for an offence under Section 302 of the Indian Penal Code, 1860 (in short 'IPC') and simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month for the offence under Section 201 of IPC. CRL.A.800/2016 3 2. Heard the arguments of Sri.Javeed.S., learned counsel representing the appellant/accused and Smt.Rashmi Jadhav, learned HCGP representing the respondent/State. Perused the impugned judgment and the evidence relied by both sides.

3. The case pleaded by the prosecution is that, the appellant/accused (hereinafter referred to as 'the accused') was married to one Smt.Anitha. Both were residents of Hiremegalagere village of Davangere taluk. The accused was addicted to bad vices, such as, drinking alcohol, it was a routine everyday and for this reason, his wife was not entertaining him for physical contact and for this reason, he used to quarrel against her that she is not coming in contact physically with him and hence, he was suspecting her fidelity and doubted that she had an illicit relationship with some one else and due to this, he had a motive against her to commit her murder and was prosecuting ill-will. CRL.A.800/2016 4 4. On

02.04.2014 at about 7.00 p.m., when the deceased Anitha had gone to attend the nature call near tank canal, the accused in prosecution of his intention to commit her murder has purchased a blade from the shop of PW-16/Parashurama and followed the deceased and on canal bund, he took out a quarrel against her that she is not coming for physical contact and that she had an illicit relationship with someone else and caught-hold of her and pushed her to the ground and by means of blade purchased from the shop of PW-16, he slit the throat and committed her murder. In order to destroy the evidence so as to screen from the allegation of murder, he thrown the dead body near a tree and put weeds and concealed the dead body and had returned back to village. From there, the accused came to Renuka Bar and Restaurant situated at Hiremegalagere village, at that time, while he was purchasing liquor, PW-14/Ninganagouda Patil CRL.A.800/2016 5 observed that there were bloodstains on his cloth and he was keeping 'Thali' in his shirt pocket. PW- 13/Nagappa Chandrappa had seen the deceased going to attend the nature call towards the canal and PW- 7/Bullapurada Mallikarjuna and PW-12/Swandera Ningappa had seen the accused following the deceased towards canal bund.

5. PW-10/Shasappa, the father of the deceased on the next day morning came to know about the incident and set the criminal law into motion by filing a complaint under Ex.P2. PW-18/Gururaja, PSI of Arasikere Police Station registered the FIR/Ex.P8 and apprehended the accused, recorded voluntary statement of the accused, bloodstained cloths of accused was seized under Ex.P14/mahazar, later conducted the spot panchanama in the presence of PW- 1/K.Basavarajappa and PW-2/Kariya Dandeppa and thereafter, conducted the inquest in the presence of CRL.A.800/2016 6 PW-4/Hanumanthamma. The accused took the Police to the spot and shown the blade used for commission of the offence as per M.O.3/blades where mahazar/Ex.P3 was drawn and blood stained soil was also collected. During the course of investigation, spot mahazar was drawn as per Ex.P6 in the presence of PW-9/Anjinappa and PW-10/Shasappa, where the betel lime-box used by the accused as per M.O.4, bloodstained broken bangle pieces of the deceased as per M.O.5 and bloodstained soil as per M.O.6 were also seized under Ex.P6/mahazar. The accused is in judicial custody since 05.04.2014.

6. PW-23/R.Hanumanthappa is the Investigating Officer, who recorded the statement of the witnesses and PW-19/Rudrappa, CPI collected the revenue record pertaining to the scene of offence as per Ex.P7 from PW-11/Shivakumar-Village Accountant and after completion of the investigation filed the charge sheet CRL.A.800/2016 7 before the Committal Court i.e., the Court of learned J.M.F.C., Harappanahalli.

7. The learned J.M.F.C., Harappanahalli, on receipt of the charge sheet taken cognizance of the offences and registered a case in C.C.No.532/2014. After compliance of Section 207 of Cr.P.C., a case has been committed to the Court of Sessions under Section 209 of Cr.P.C. hence, case has been registered in S.C.No.102/2014 by the learned District and Sessions Judge, Davanagere and made over the matter to the I Additional District and Sessions Judge, Davanagere, for trial.

8. Before the committal court, the presence of the accused was secured and the accused was provided with legal aid by District Legal Services Authority, Davanagere and thereafter, a standing counsel was appointed to defend the accused. After hearing both sides, learned Sessions Judge directed the accused to CRL.A.800/2016 8 answer the charge for the offences punishable under Sections 302 and 201 of IPC and on the charge-framed was read over to the accused in a language known to him, he pleaded not guilty and claims to be tried. Hence, to bring home the guilt of the accused, prosecution has relied upon the oral evidence of PWs-1 to 23, documents as per Exs.P1 to P18 and material objects as per M.Os.1 to 13. Subsequently, the accused was questioned under Section 313 of Cr.P.C. By explaining the incriminating circumstances found in the prosecution evidence, the accused did deny the said evidence and the circumstances claiming that he has not committed the murder of his wife. Thereafter, on behalf of the accused, no defence evidence has been led nor any witnesses are examined as contemplated under Section 233 of the Code of Criminal Procedure, 1973. CRL.A.800/2016 9 9. The trial court after hearing both sides, considering the material evidence placed before it, passed the impugned judgment holding that the accused is guilty of the alleged offences on 20.10.2015 and after hearing both sides on 21.10.2015 passed the sentence. Aggrieved by the order of conviction,

the accused has come up before this court on the ground that there is an allegation against him that he used to consume alcohol and used to quarrel with the deceased everyday on petty reasons and also suspected her chastity persistently and used to abuse and assault her on many occasions. But the trial court has not appreciated the evidence of prosecution witnesses, in particular, the evidence of PW-12/Swandera Ningappa, PW-13/Nagappa Chandrappa, PW-14/Ninganagouda Patil and PW- 15/Veerabhadrapa, regarding they watching the deceased going towards canal on the tank bund, he CRL.A.800/2016 10 following the deceased but their evidence do not specific about the identification of the accused at the time of alleged incident. The trial court had erroneously came to the conclusion that the accused is guilty of the offence, instead of observing that the real culprit may be some other person, as the case is based on circumstantial evidence and there are no eyewitnesses. The trial court has considered the FSL report as prime evidence while convicting the accused, though he did not commit such an offence and there is no proper appreciation of FSL evidence by the trial court. Hence the impugned order of conviction needs to be set aside and the accused needs to be acquitted of the alleged charges levelled against him.

10. Sri.Javeed, learned counsel for the appellant/accused argued that absolutely there was no evidence that the accused was doubting the fidelity of the deceased, had any intention to commit her murder, CRL.A.800/2016 11 the accused was a drunkard and for this reason, the deceased was keeping him away and an innocent person, who was working in agricultural field, was arrested and he was fixed in the case and there is no proper evidence which is able to connect the accused to the crime, as there is no eye-witness and the entire case is based on circumstantial evidence. Learned counsel taken us to the evidence of PWs-10, 12, 13, 14, 15 and PW-16, which is not reliable and there is no proper recording of voluntary statement and there is no proper link to connect the accused to the crime by enunciating "last seen theory" and recovery is not established and therefore, secondary hypothesis is possible in this case, hence, it is a fit case falls within the purview of benefit of doubt and the prosecution has not proved the guilt beyond reasonable doubt for conviction. CRL.A.800/2016 12 11. On the contrary, Smt.Rashmi Jadhav, learned HCGP contended that the entire case of the prosecution rests upon the circumstantial evidence. There is proper evidence

through PW-10/Shasappa-father of the deceased and PW-7/Bullapurada Mallikarjuna, who have seen the accused drinking alcohol and quarrelling with the deceased and doubting her fidelity. PW- 16/Parashurama is the shop owner from whose shop the accused did purchase the blade before commission of the offence. It is PW-13/Nagappa Chandrappa, who saw the deceased on 02.04.2014 at 7.00 p.m. going towards canal bund of the Hiremegalagere tank and soon after that, PW-7/Bullaplurada Mallikarjuna saw the accused following the deceased and PW-12/Swandera Lingappa saw the accused returning from tank bund when PW-12 had gone to attend the nature call where he had seen the bloodstains on his cloths and on the next day, he came to know about the death of the CRL.A.800/2016 13 deceased. PW-14 is the Bar Manager of Renuka Bar and Restaurant at Hiremegalagere where, after the commission of offence, the accused went for purchase of liquor in bloodstained cloth. Thereafter he had also gone to the Hotel of PW-15 for tea in the early morning of 3.3.2014 where the accused was wearing mud- stained cloth, both PW-14 and PW-15 have seen 'Thali' of the deceased in the bloodstained shirt pocket of the accused and this would point out the "last seen theory" being supported by all these witnesses and after his arrest, there is a voluntary statement as per Ex.P16 leading to recovery of the blade/weapon of offence, the bloodstains on the cloths of the accused, bloodstains on the weapon of the offence, bloodstains collected at the spot have been subjected to FSL where the material objects such as, M.Os.3, 5, 6, 8, 9, 10 and 11 carry 'O' group human blood and nothing more is required to connect the accused and it is the accused alone, who CRL.A.800/2016 14 followed the deceased on the alleged date of incident and committed the murder on the ground that the deceased did not cooperate with the accused for physical contact and he doubted her fidelity on the assumption that she had an illicit relationship with someone else and thereby hatching a plan to eliminate the deceased, and committed murder and thereby the prosecution has proved the case beyond all reasonable doubt and thereby the finding recorded by the trial court is based on a cogent, reliable and positive evidence and the order of sentence is on par with the gravity of the offence and it calls for no interference.

12. Having heard the arguments of both sides, we gave our anxious consideration to the facts of the case and also the evidence on record relied upon by the

prosecution.

13. PW-10/Shasappa is the father of the deceased and he is the complainant, who set the law into motion. CRL.A.800/2016 15 His evidence points out that the marriage of the deceased was performed with the accused 10-11 years prior to the incident wherein the accused used to drink alcohol, used to quarrel with the deceased, abusing in a filthy language and beating her and on several occasions, they pacified them and advised the accused to mend his way, but he did not mend his ways. He came to know that on the alleged date of incident at 6.00 p.m., when the deceased had gone to attend the nature call near bypass canal where the accused followed her and by means of blade slit her throat and concealed the dead body with the weeds. On the next day morning, he came to know about the same, visited the spot and saw the dead body of his daughter and filed the complaint under Ex.P2. In his presence, the Police have drawn Ex.P1/mahazar and they also enquired the accused and it is the accused, who led the Police to the spot and shown the place of incident and CRL.A.800/2016 16 also the Police have seized the broken bangle pieces of the deceased as per M.O.5 and lime-box which belongs to accused as per M.O.4 at the spot.

14. PW-3/Basavaraj is the cousin brother of the deceased and nephew of PW-10. According to him, the deceased was married to the accused and in the month of April 2014, he came to know that the accused has beaten the deceased to death on the tank bund and hence he visited the spot and saw the dead body of the deceased and as instructed by PW-10, he has scribed Ex.P2/complaint and took the LTM of PW-10 so as to give it to Police.

15. PW-1/K.Basavarajappa and PW-2/Kariya Dandappa, who are the panch witnesses to Ex.P1/spot mahazar. Their evidence did point out that one year prior to 2015, the wife of the accused i.e., deceased Anitha has died and they saw the dead body on tank bund inside the weeds. The Police have visited the spot CRL.A.800/2016 17 and drawn Ex.P1/mahazar by seeing the dead body where they have attested the same.

16. PW-4/Hanumanthamma, a fellow resident of Hiremegalagere village had witnessed the inquest drawn under Ex.P3 at CG Hospital, Davangere where she

had observed injuries on the neck of the deceased.

17. PW-5/Parashurama, the younger brother of the deceased had seen the dead body of the deceased at Hiremegalagere bypass lake tank bund, it was concealed in the weeds and he had seen the injuries on the neck of the deceased and he has explained that the accused being a drunkard used to assault the deceased daily. When his sister had gone to attend the nature call, the accused had followed her and committed her murder. In this regard, he has given a statement before the Police.

18. PW-6/Rangappa Anjinappa has seen the dead body of the deceased near tank bund and he had CRL.A.800/2016 18 noticed the injuries on the neck of the deceased. From the spot, body was shifted to hospital at Davangere and he came to know that the accused had committed the murder of the deceased. Though he stated so to some extent he turned hostile to the prosecution. He has admitted in the cross-examination that the accused was in the habit of drinking arrack and he heard from the people that when the deceased had gone to attend the nature call, the accused had committed her murder.

19. PW-7/Mallikarjuna, who is the fellow resident of Hiremegalagere village, stated that ten months prior to March 2015, he was sitting on the canal at 6.00 p.m. At that time, he saw that the deceased was going towards canal for attending the nature call. One minute later, he saw the accused following the deceased. PW-7 interacted with the accused and accused told him that he is going to cleaning yard and on the next day, he came to know about the death of the deceased and he CRL.A.800/2016 19 has visited the hospital and has seen the dead body of the deceased.

20. PW-12/Swandera Lingappa knew the accused as well as the deceased and is the resident of Hiremegalagere village. On the alleged date of incident at about 7.00 p.m., he had gone near the tank bund for attending the nature call and at that time, the accused came against him and he saw bloodstains on his cloth and he enquired with the accused as to why such stains on his cloth, but the accused without responding him left the spot and later he came to know that the accused has committed the murder of the deceased by slitting her throat and he saw the

dead body and "Thali" in the neck of the deceased was found missing. According to PW-12, the accused being a coolie used to drink liquor everyday and in the evening, he used to quarrel with the deceased and on several occasions, PW-12 pacified him and at that time, the accused used CRL.A.800/2016 20 to tell him that one or the other day, he is going to kill the deceased. Ultimately, according to PW-12, the accused committed the murder of the deceased. According to him, the Police visited the spot and it is the accused, who took the Police to the spot and produced M.O.3/blade and also produced the shirt at M.O.8 and lungi at M.O.9, which were stained with blood and seized by the Police.

21. PW-13/Nagappa Chandrappa, the fellow resident of Hiremegalagere village, on the alleged date of incident at about 7.00 p.m. he was going towards his village from bypass road, at that time, he saw the deceased going to attend the nature call towards bypass and accused following the deceased and on the very day at about 9.00 p.m., he saw the accused going towards Bar and on the next day morning he came to know about the death of the deceased and he visited the tank bund, saw the dead body of the deceased with CRL.A.800/2016 21 slitting throat near a tree in the weeds and according to him, the accused used to quarrel with the deceased in a drunken status on the pretext that she is having illicit relationship with someone else, later the accused brought the Police to the spot where the accused shown the place to the Police and produced M.O.3/blade and it has been seized by the Police.

22. PW-14/Ninganagouda Patil, who is the Manager of the Renuka Bar and Restaurant at Hiremegalagere village. According to him, on 02.04.2014 at 9.00 p.m., he saw the accused visiting his Bar asking for Brandy, he was wearing a shirt stained with mud. After purchase of the Brandy, when the accused tried to pay money from his shirt pocket, he saw 'thali' coming out of the shirt. PW-14 asked whether he has quarreled with his wife or anything went wrong, but the accused did not respond to him but left the Bar along with liquor bottle. Later on the next day, CRL.A.800/2016 22 the Police came to his Bar and he disclosed to them the visit of the accused on the previous night and purchase of Brandy and leaving the Bar. The Police took him to the spot where he saw the blade/M.O.3, the dead body of the deceased and the cloths, which the accused was wearing, as

per M.O.8 and M.O.9 and the same were given to the Police.

23. PW-15 is running a Hotel at Hiremegalagere village and on the next day of the incident at about 5.30 a.m. the accused came to his Hotel and drank tea. At that time, he saw the cloths worn by the accused stained with mud and he also saw 'thali' in his shirt pocket. At about 7.00 a.m. on the same day, he came to know about the alleged incident and Police enquired about visit of the accused in his shop. He came to know that the accused has committed the murder of deceased and concealed the dead body. According to PW-15, M.O.10 is the Thali, which he had seen in the pocket of CRL.A.800/2016 23 the accused and M.Os.8 and 9 are the mud-stained cloths worn by the accused during his visit to his shop.

24. PW-16/Parashuram is the Kirani shop owner at Hiremegalagere village. One year two months prior to the date of incident, at about 4.00 p.m., the accused had gone to his shop to purchase two blades as per M.O.3 and later he came to know about accused committing the murder of his wife by slitting her neck by means of blade. He came to know that the accused used to assault the deceased suspecting her character, he visited the spot and saw the dead body concealed in the weeds of the tank bund with neck injuries.

25. PW-18/Gururaj, PSI on 03.04.2014 received Ex.P2/complaint from PW-10 and registered Ex.P8/FIR and forwarded the same to his superiors on the very day between 10.00 and 11.00 a.m. and he visited the spot where the dead body was lying, saw CRL.A.800/2016 24 Ex.P1/mahazar, prepared Ex.P9/spot sketch and on the very day between 11.15 a.m. and 12.00 noon, in the presence of complainant, he has drawn mahazar as per Ex.P6 and seized the bloodstained broken bangle pieces, lime-box and bloodstained soil as per M.Os.4 to 6 and in the presence of panchas. On the very day between 1.00 p.m. and 3.00 p.m., in the presence of PWs-4 and 5, he did conduct inquest mahazar on the dead body as per Ex.P3 and recorded the statement of the witnesses.

26. PW-23/R.Hanumanthappa, C.P.I. did depose that on 04.04.2014, he has arrested the accused and at that time, he had observed bloodstained cloths on the person of the accused. In the presence of panchas, he has seized the same under Ex.P14/mahazar, M.Os.8 and 9 are the said cloths. At that time, he had also seen

'Thali' at M.O.10 in possession of the accused. Same was also seized. The evidence of PW-23 also CRL.A.800/2016 25 indicates that he has recorded the voluntary statement of the accused as per Ex.P16. In pursuance of the same, accused took him and the panchas to Hiremegalagere canal where he has produced M.O.3/blade and also shown bloodstained soil as per M.O.1 and the same was seized as per Ex.P5/mahazar and the seized articles were forwarded to FSL for examination.

27. PW-22/Lingegouda, the Scientific officer, Regional FSL, Davanagere, on 30.04.2014 has received the articles seized in this case, such as, M.Os.1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13. He has examined them and found 'O' group human blood on the weapon of offence at M.O.3 and the cloths worn by the accused as per M.Os.8 and 9. In this regard, he has issued his report as per Ex.P11.

28. PW-19/Rudrappa, the then CPI, who did collect khata extract as per Ex.P7 from PW-11/Shiva CRL.A.800/2016 26 Kumar and also perused Ex.P11/FSL report and collected the opinion of the Medical Officer as per Ex.P12 that injury found on the neck of the deceased can be possible by means of M.O.3/blade and thereafter filed the charge sheet against the accused.

29. PW-20/Dr.Tulasi Naik is the Medical Officer of Chigateri Hospital, Davanagere, who conducted Postmortem examination on the dead body of the deceased. His evidence did point out that on 3.4.2014 as per the request of the Police, he has conducted the Postmortem on the dead body of the deceased between 3.30 and 5.30 p.m., where he has found the cut injury measuring 12 x 5 x 3 cm. on the front portion of the neck of the deceased with blackening of the injury where he observed antemortem cut in Tracheal and Esophagus. He opined that the deceased has died due to shock and hemorrhage and the death has occurred within 16 to 24 hours of the Postmortem examination CRL.A.800/2016 27 and he has issued Ex.P13/Postmortem report. He has also examined M.O.3/blade produced by the Police and gave his opinion as per Ex.P12 that M.O.3/blade can cause the injury found on the neck of the deceased.

30. PW-17/Honnurswamy, Police Constable, who is the carrier of the FIR to the court.

31. PW-21/K.Manjappa, Police Constable, who carried the dead body for Postmortem examination and returned the body to the family members of the deceased.

32. PW-11/Shivakumar is the Village Accountant who issued the extract as per Ex.P7 regarding Sy.No.393 of Hiremegalagere village where the alleged incident took place on Bhadra canal, there is no dispute as to the place of incidence. PW-11, 17 and 21 are the other formal witnesses, whom the prosecution has relied upon. CRL.A.800/2016 28 33. Having heard the arguments of learned counsel Sri.Javeed S., for the appellant and the learned HCGP for the State and on consideration of the evidence, as the case of the prosecution rests on the circumstantial evidence, the chain of circumstances that has been pointed out by the evidence to hold that the accused is guilty of the charges, is as follows: (1) Homicidal death of the deceased; (2) On the date of incident, the deceased, at 6.00 p.m. going near the canal of tank bund to attend the nature call; (3) The accused was found following the deceased in a shortest span of time; (4) The accused returning back from tank bund canal with bloodstains on his cloths; (5) Visit of the accused to Renuka Bar and Restaurant for purchasing of liquor with bloodstained cloths and 'Thali' of the deceased in his pocket; CRL.A.800/2016 29 (6) Visit of the accused to Hotel to have tea on the next day morning of the alleged incident along with 'Thali' of his deceased wife in his pocket; (7) Tracing of the dead body of the deceased in the morning of 03.04.2014 at Tank canal bund; (8) Seizure of M.O.3/blade at the instance of accused and presence of 'O' group human blood on the cloths of the accused, broken bangle of the deceased and the weapon of offence i.e., M.O.3; and (9) The accused purchasing M.O.3/blade from the shop of PW-16 on the date of incident soon before the incident.

34. Let us analyze the evidence of the prosecution in respect of the above points before proceeding further. Reg: Point No.1:

35. It is the specific case of the prosecution that the death of the deceased was homicidal in nature. The defence did not deny the death of the deceased wherein the defence of the accused did point out that somebody CRL.A.800/2016 30 might have committed the murder of the deceased and he was not responsible. As found

from the material witnesses, on 02.04.2014 at about 7.00 p.m., deceased was last seen by PW-13/Nagappa Chandrappa, whose cross-examination did not demonstrate anything to doubt his veracity. As seen from the evidence of the complainant and other witnesses, the dead body of the deceased was traced on the next day morning and it has been subjected to autopsy. PW-20/Dr.Tulasi Naik is the Medical Officer of Chigateri Hospital, Davanagere, who conducted the Postmortem and his evidence did point out the injuries found on the neck of the deceased measuring 12x5x3 cm and issuing of Ex.P13/Postmortem report with an opinion as per Ex.P12 that the deceased has died due to the injury that has been caused by means of M.O.3/blade on the neck of the deceased and the deceased has suffered neck injury 16 to 24 hours before her death and the CRL.A.800/2016 31 cause of her death was due to hemorrhage with shock as a result of the cut injury on the throat of the deceased. The Postmortem examination was conducted at 5.30 p.m. on 03.04.2014 wherein the alleged incident is said to have taken place at 7.00 p.m. on 02.04.2014. Hence, the period of 16 to 24 hours of the death of the deceased take back to the alleged time of incident. During the course of cross-examination, there was no denial by PW-20 that the deceased was not died due to injury caused on her neck by means of M.O.3, except suggesting that, a sharp-edged knife can also cause such injuries. Such a suggestion makes no difference as the inquest mahazar as per Ex.P3 and evidence of PW-3/Basavaraja did point out the neck injury on the dead body of the deceased. Hence, the totality of the medical evidence and also the panch witnesses, who have seen the dead body, point out that there are no other chances of the deceased CRL.A.800/2016 32 circumventing to the death other than the injury that she has suffered. Hence, the material on record did point out that the deceased has suffered homicidal death on account of the neck injury. Reg: Point No.2:

36. The second set of chain is that last seen of the deceased going near canal bund of Hiremegalagere lake at 6.00 p.m. on 02.04.2014. In this regard, the prosecution has relied upon the evidence of PWs-1, 2, 10, 12, 13 and 18.

37. PW-13/Nagappa Chandrappa, who is a fellow resident of Hiremegalagere village, has deposed that one year two months prior to 29.06.2015 at 7.00 p.m., when he was coming towards Hiremegalagere village from bypass road, he had

seen the deceased Anitha going towards bypass for attending the nature call. The cross-examination of PW-13 did not deny that he has not witnessed the deceased going to attend the nature CRL.A.800/2016 33 call at 7.00 p.m. on the said date. Hence, the uncontested testimony of PW-13 did point out that he had seen the deceased going towards bypass road canal bund to attend the nature call at 7.00 p.m. on the alleged date of incident. Testimony of this witness is seen natural and attribution can be made against him. This evidence takes support from PW-7/Bullapurada Mallikarjuna, who too had seen the deceased going towards canal at 6.00 p.m., on the alleged date of incident. Hence, the natural witnesses did confirm the movement of the deceased in the evening of the alleged date of incidence.

38. PW-10/Shasappa, the father of the deceased did depose before the court that he came to know that while his daughter had gone towards bypass canal to attend the nature call at 6.00 p.m. did suffer death on the alleged date of incident. Hence, the information so received by PW-10 stands corroborated from the CRL.A.800/2016 34 evidence of PW-7 and PW-13 and therefore, the prosecution is able to explain its version that on the date of alleged incident at about 7.00 p.m., the deceased had gone towards canal of Hiremegalagere lake. Reg: Point No.3:

39. Another link of the prosecution is that, the accused was following the deceased on the alleged date of incident. In this regard, the prosecution has relied upon the evidence of PW-7/B.Mallikarjuna and PW- 13/Nagappa Chandrappa. The evidence of PW-13 did point out that after he witnessing the deceased going towards the canal bund of bypass of Hiremegalagere lake, few minutes later, he saw the accused following the deceased.

40. PW-7 has deposed that, while he was sitting near the canal at 6.00 p.m., had seen the deceased going to attend the nature call, he had also witnessed CRL.A.800/2016 35 one minute later, the accused following the deceased. Further, PW-7 had an interaction with the accused, at that time, accused told him that he is going towards cleaning yard. On the next day morning, both PW-7 and PW-13 came to know about the death of the deceased. The cross-examination of PWs-7 and 13 did point out anything as to why they are deposing false against the

accused. They are not the relatives of either the deceased or the accused nor enemies of the accused. PWs-7 and 13 are the fellow villagers, independent persons and it is quite natural that in a village, people like PW-7 and PW-13 going for nature call in the evening towards canal. Hence, their presence at that place is very natural. Hence, their evidence clearly explains that PWs-7 and 13 have witnessed the accused following the deceased towards canal on the evening of the alleged date of incident. CRL.A.800/2016 36 Reg: Point No.4:

41. An another chain of link is that, the accused alone was returning back to the village from the canal bund with bloodstains on his cloths. In this regard, PW-12/Swandera Ningappa has deposed that, at about 7.00 p.m. when he was returning after attending the nature call, he saw the accused coming against him and at that time, he had seen with torch-light the bloodstains on the cloth of the accused. PW-12 had an interaction with the accused and asked him why bloodstains on his cloth, but the accused did not respond to him and he went away. PW-12 came to know about the death of the deceased on the next day morning. The cross- examination of PW-12 though brought out that he did not inform PW-10/father of the deceased. Since PW-12 was not aware of the alleged incident, he did not feel necessary to inform PW-10. Hence, his conduct cannot be termed as unnatural. The evidence of PW-12 is so CRL.A.800/2016 37 quite natural, we do not find any reason to disbelieve his version.

42. As seen from the prosecution evidence, the bloodstained cloths of the accused, which were seen by PW-12, has been seized under Ex.P14/mahazar, which are marked as M.Os.8 and 9. PW-8/Jayappa is the panch witness to the seizure of the bloodstained cloths of the deceased, who did depose on oath about the seizure of cloths from the person of the accused under Ex.P5/mahazar. Thus, the evidence of PW-12 takes corroboration from the evidence of PW-8 and M.Os.8 and 9, which are the said cloths. Hence, the factum of the accused returning from canal bund towards Hiremegalagere village with bloodstained cloths in the evening of the alleged incident has been explained by the prosecution. CRL.A.800/2016 38 Reg. Point No.5:

43. An another chain of link is, the accused visiting Renuka Bar and Restaurant for purchase of the liquor on the very same night and in this regard, PW-14/Ninganagouda Patil, the Manager of Renuka Bar and Restaurant at Hiremegalagere village, on oath, deposed that on 02.04.2014 at about 9.00 p.m., he has sold Brandy bottle to the accused in his Bar and at that time, the cloth of the accused was stained with water and mud. At the time of giving bill amount, the accused while removing money from his shirt pocket, he saw 'Thali'. PW-14 had an interaction asking whether the accused had quarreled and came to Bar, but the accused did not respond and left along with Brandy bottle from the Renuka Bar. Later PW-14 came to know in the morning about the death of the deceased. The cross-examination of PW-14 did not point out anything why he is deposing against the accused and nothing is CRL.A.800/2016 39 shown that PW-14 is an interested person and his evidence is untruthful. Reg: Point No.6:

44. An another link that the prosecution proposed is, the visit of the accused to the Tea shop of PW- 15/Veerabhadrapa at 5.30 a.m. on the next day. In this regard, PW-15 has deposed that at 5.30 a.m., on the next day, he saw the accused coming to his Tea shop, at that time, PW-15 observed the mud on the shirt of the accused. At that time, he had seen 'Thali' in the shirt pocket of the accused. PW-15 by 7.30 a.m., he came to know that somebody came enquiring about the accused on the ground of murder of the wife of the accused near bypass canal. Therefore, he had visited the spot, seen neck injury and the dead body was in the weeds. PW-15 identified M.O.10 is the 'Thali' which he had seen in the shirt pocket of the accused, which came out while the accused removing money from his pocket CRL.A.800/2016 40 to pay Tea bill and M.Os.8 and 9 are the cloths which were stained with mud. The cross-examination of PW- 15 did not point out anything except the accused visiting his shop at 5.30 a.m. on the next day of the incident. Hence, visit of the accused to the Tea shop of PW-15 with 'Thali' in his shirt pocket with mud-stained cloths has been explained by the prosecution. Reg. Point No.7:

45. An another link of the chain of circumstances is, tracing of the dead body on the canal bund on the next day morning of the alleged incident. In this regard, PW-10/Shasappa, father of the deceased, who came to know about the death of the

deceased, got scribed the complaint/Ex.P2 through PW-3/Basavaraja and set the law into motion. PW-10 and all the fellow villagers have visited the spot and found the dead body of the deceased. At the same time, the accused was found missing and he was brought to the spot by the CRL.A.800/2016 41 Police where he has shown the place where the dead body was traced and also the bloodstained blade and it has been recorded under Ex.P1/mahazar in the presence of PWs-1 and 2.

46. PW-18/Gururaja, PSI, on 03.04.2014 received Ex.P2/complaint from PW-10 and registered Ex.P8/FIR and at about 10.00 a.m., he visited the spot and conducted Ex.P1/mahazar in the presence of PWs-1 and 2 and prepared the Ex.P9/sketch and also drawn Ex.P6/panchanama in the presence of PW-10. At that time, he had collected bloodstained bangle pieces, lime- box used by the accused and bloodstained soil as per M.Os.4 to 6. The evidence of the panch witnesses and also PWs-3, 7, 10, 12, 13, 14 and 15 did point out that on 03.04.2014, in the morning, the dead body of the deceased was retrieved from the spot. The defence did not suggest any secondary hypothesis about tracing of dead body except that the accused was not responsible CRL.A.800/2016 42 for death of the deceased. Hence, there is no dispute in this regard, as such, the prosecution is able to explain the retrieval of the dead body of the deceased on the morning of 03.04.2014. Reg. Point No.8:

47. An another chain of link is, the seizure of blade at the instance of the accused. In this regard, PW-23/R.Hanumanthappa, PSI deposed that on 04.04.2014, he has arrested the accused and he has observed bloodstained cloths as per M.Os.8 and 9 on the person of the accused, who was also holding M.O.10/Thali in his possession. Hence, the same is seized under Ex.P14/mahazar in the presence of PW- 8/Jayappa. The evidence of PW-8/Jayappa stands in support of the prosecution that he has seen the accused in the presence of PW-23/PSI at Harapanahalli Police Station where the accused took him and the Police to the place of incident where he saw the blade as per CRL.A.800/2016 43 M.O.3 and sample of the soil with bloodstains at M.O.1 and the same was seized under Ex.P5/mahazar. The cross-examination of PW-8 and PW-23 did not point out anything which gives room to any doubt on the version of the prosecution. Ex.P16 is the voluntary statement of the accused recorded by PW-23 and it is the

accused, who led PWs-8 and 23 as per Ex.P16/his voluntary statement and shown the place of incident and produced M.O.1/bloodstained soil and also M.O.3/blade. The same has been seized under Ex.P14. Hence, the seizure of the blade at the instance of the accused under Ex.P5/mahazar and seizure of the bloodstained cloths of the accused under Ex.P14/mahazar did explain by the evidence. Reg. Point No.9:

48. The prosecution has proposed one more link i.e., purchase of M.O.3/blade by the accused from the shop of PW-16. PW-16/Parashurama is running a Kirani CRL.A.800/2016 44 shop at Hiremegalagere village. At about 4.00 p.m. on the date of alleged incident, the accused did visit his shop and purchased two blades i.e., M.O.3. Later he came to know about the murder of the deceased and also he came to know about the alleged murder. The evidence of PW-8 and 23 did point out the seizure of M.O.3 from the spot at the instance of the accused. Except denial that the accused did not visit the shop and purchased M.O.3/blade, nothing is elicited to accept that the accused did not visit the shop of PW-16 for purchase of M.O.3/blade.

49. Hence, the links that has been pointed out by the prosecution do have support from the prosecution evidence. Now the court has to consider, whether these links can form part of the chain of link leading the chain of circumstances towards the accused and pointing him and him alone excluding any secondary hypothesis. CRL.A.800/2016 45 MOTIVE:

50. As proposed, the entire case of the prosecution rests upon the circumstantial evidence. In a case rests on circumstantial evidence, 'motive' plays a crucial role. 'Motive' is a double-edged weapon, which will cut either side of the case, if it is proved or not. In a case standing on circumstantial evidence, proof of motive is very very important. In this regard, the prosecution has relied upon the evidence of PWs-12 and 13 and also PW-10. PW-10 is the father of the deceased, who deposed that the accused used to consume liquor everyday and used to beat the deceased and on several occasions, the accused was advised not to continue the same, but he did not mend his ways. PW-5/Parashurama, the brother of the deceased has deposed in support of his father that the accused drinking liquor,

used to quarrel with the deceased everyday. PW-10 and PW-5 are the father and son, CRL.A.800/2016 46 who are the interested witnesses. Hence, it is relevant to refer to the evidence of neutral witnesses.

51. PW-12/Swandera Lingappa deposed about the habit of the accused, i.e., drinking alcohol and quarreling with the deceased. Since he had minor children, PW-12 advised the accused not to quarrel with his wife and same is the version of PW-13, whose evidence did point out that the accused was doubting the character of the deceased that she is having an illicit relationship with someone else and he used to quarrel with the deceased by drinking alcohol. The accused purchasing the liquor at Renuka Bar regularly has been explained by PW-14. The evidence of independent witnesses did point out the character of the accused in drinking alcohol everyday, quarreling with the deceased that she had an illicit relationship with someone else is forthcoming against the accused. Importantly the evidence of PW-12/Swandera Lingappa CRL.A.800/2016 47 specifically pointed out that though he advised the accused not to quarrel with the deceased, but the accused proclaimed that he is going to kill the deceased one or the other day. Much less the entire village knew about the accused's family life and for this reason, whenever fellow villagers interact with the deceased, they ask her whether there is any quarrel between the husband and wife. Hence, the evidence of these independent witnesses specifically points out that the accused was having clear doubt against the character of the deceased. It is the specific charge against the accused that the deceased was not permitting to have physical contact with the accused for the reason that he became drunkard which prompted the accused to doubt the character of the deceased. Hence, the motive so proposed by the prosecution takes the support from the evidence of PWs-10, 12, 13 and 14 and therefore, it will cut the defence. Therefore, the motive proposed by the CRL.A.800/2016 48 prosecution is being explained to the satisfaction of the court.

52. Thus, the totality of the evidence did point out that on 02.04.2014 between 6.00 p.m. and 7.00 p.m. the deceased has gone near the canal of tank bund for attending the nature call wherein the accused followed her having purchased M.O.3/blade from the shop of PW-16 and later the accused returning with bloodstains on his cloths, gone to the Bar, purchased Brandy, when he paid the

bill, PW-14 saw the 'Thali' in his pocket and also going in the early morning to a Tea shop keeping 'Thali' in his shirt pocket and thereafter the death of the deceased was unearthed in the morning.

53. It is pertinent to note that, the seizure of the bloodstained cloths of the accused and sample bloodstained soil from the spot and seizure of M.O.3 at the instance of voluntary statement of the accused as per Ex.P16 and the opinion of the Medical Officer that CRL.A.800/2016 49 the injury found on the neck of the deceased was the cause for the death and it was caused by means of M.O.3/blade and the FSL report did point out the bloodstains found on the cloths of the accused, broken bangle pieces of the deceased, sample soil collected at the spot, cloths of the accused stained with 'O' group human blood. The entire defence did not point out anything except the allegation that the deceased having some relationship with somebody, someone might have committed the murder of the deceased and he is not responsible for the same, but the defence failed to penetrate the prosecution evidence. Now the evidence of the prosecution is analyzed having regard to the possible links in the case. Keeping these links, chain can be formed with each link connecting to each other with proper relevancy. Evidence is so natural not a single link become weak, so as to allow the defence to break it. Hence, the chain of circumstances pointed out CRL.A.800/2016 50 by the prosecution having clear independent links and each one of the links connect each other and there is no break in the chain of circumstances. Thus, the chain of circumstances has been explained as suggested by the prosecution, which points out towards the accused and accused alone, wherein an inference can be drawn from the above proved facts that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

54. Now the points for consideration having regard to the defence are: (i) The accused has no intention to commit murder, but inspite of the motive, whether the prosecution is able to explain that the accused has intentionally committed the murder of his wife within the ambit of Section 300 of the Indian Penal Code, 1860 and, CRL.A.800/2016 51 (ii) Whether the act of the accused is a culpable homicide not amounting to murder?.

55. In this regard, it is very relevant to refer to the medical evidence where PW-20 did not point out that the injury that has been sustained by the deceased, in the ordinary course, would be sufficient for cause of death of the deceased. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Shivappa Budappa Kolkar @ Buddappagol -vs- State of Karnataka and Others<sup>1</sup> wherein it has been held that there is no medical evidence to establish that the injury inflicted by itself would be sufficient to cause death in the ordinary course of nature. But merely PW-20 did not depose nor prosecution able to elicit that the injury sustained by the deceased in the ordinary course is sufficient to 1 AIR 2004 SC5047CRL.A.800/2016 52 cause death. But taking into consideration the totality of the injury, slit throat of the deceased by means of M.O.3/blade was the reason for the deceased to breath her last. Therefore, the medical evidence sufficiently explains that the injury inflicted on the deceased would be sufficient to cause death of the deceased in the ordinary course of nature. It is pertinent to note the omission committed by the prosecution as well as Trial Court that while recording the evidence of Medical Officer, the prosecution did not elicit from such witness the possibility of deceased sustaining such injury even in the ordinary course is sufficient to cause her death. But the learned Trial Judge too failed to elicit the same by putting court question as contemplated under Section 165 of the Indian Evidence Act, 1872. Though such matter is not fatal in nature, it cannot be ignored.

56. Averting to the secondary argument of the learned defence counsel that the accused has no CRL.A.800/2016 53 intention to commit murder of his wife, he does not want to lose his wife but in the fit of anger, there may be chances of the alleged incidence and thereby the offence will not fall under Section 302 of IPC, 1860. In this regard, it is relevant to refer to the judgment laid down by the Hon'ble Apex Court in State of Andhra Pradesh -vs- Rayavarapu Punnayya<sup>2</sup> wherein, while clarifying the distinction between the murder and culpable homicide and their consequences, the Hon'ble Apex Court held as under:

"In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally . . . 'culpable homicide not amounting to murder'. For the purpose of fixing

punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of Section 304.

57. In the matter of State of Karnataka -vs- Veluswamy @ Swamy<sup>3</sup>, the Division Bench of this court while convicting the accused for the offence under Section 304(1) of IPC, who was suspecting the fidelity of his wife used a club for assaulting his wife, has held that the accused was deprived of self-control in view of provocation by the deceased and that the trial court has rightly held that the accused committed the offence and hence, the trial court was justified in imposing seven years' imprisonment by convicting the accused under Section 304 Part I of IPC.

58. In Subhash -vs- State of Haryana<sup>4</sup>, the Hon'ble Apex Court has held that the evidence available on record did not suggest that there was any intention of causing the death of the deceased and that the case fell under Part-II of Section 304 of IPC. The appellant committed the offence of culpable homicide not amounting to murder. The accused was accordingly convicted under Part II of Section 304 of IPC and sentenced to undergo R.I. for seven years.

59. Now in view of the settled principle of law, admittedly, the entire case of the prosecution rests upon the circumstantial evidence. Except PW-12 before whom the accused proclaimed that he is going to kill the deceased on one or the other day, his evidence would point out that the accused used to drink alcohol everyday and used to quarrel with the deceased doubting her character. There was no physical assault on the deceased in previous quarrel but it was a routine one,

which everyone taken it as casual. As seen from the material on record, the deceased was not allowing the accused to have CRL.A.800/2016 56 physical contact with him as he was a drunkard and for this reason, the accused was enraged being deprived of physical contact with his wife and therefore, the intention to commit murder, as claimed by the prosecution, is not forthcoming as the provocation that the deceased given to the accused in not coming in physical contact with him leading to petty regular quarrel. It is trite law that Part II of Section 304 of IPC comes into play when the death is caused by doing an act with knowledge that it is likely to cause death, but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death. The intention of the accused to commit the murder of the deceased is not explained through required evidence. Therefore, the trial court has lost sight that the case falls within the purview of Exception-1 of Section 300 of IPC, so as to bring home the guilt of the accused for the offence punishable CRL.A.800/2016 57 under Section 304 of IPC. In fact, the evidence did point out and suggest that the alleged incident was without any intention and it is because of fit of anger that has been created by the deceased in refusing physical contact with the accused. Thus, in our opinion, the offence committed by the appellant/accused was only 'culpable homicide not amounting to murder'. Under these circumstances, we are inclined to bring down the offence from first degree 'murder' to 'culpable homicide not amounting to murder' punishable under Second Part of Section 304 of IPC.

60. As regarding the offence punishable under Section 201 of IPC is concerned, the evidence did point out that soon after the commission of the alleged incident, the accused did throw the dead body near the tree and in order to conceal the evidence, did cover the dead body with weeds and thereby he has tried to CRL.A.800/2016 58 screen himself from the alleged offence and thereby committed the offence under Section 201 of IPC, as rightly observed by the trial court and the finding recorded by the trial court holding that the accused is guilty of the offence punishable under Section 201 of IPC needs to be accepted, but sentence shall be held concurrently.

61. Thus, on total consideration of the material on record, having regard to the submission made by the learned counsel for the accused and also the learned

HCGP, the prosecution is able to explain the offence against the accused under Part II of Section 304 and Section 201 of IPC. Hence, the order of imposing sentence of life imprisonment needs to be modified.

62. Having regard to the age of the accused, who is having two children to look after and the accused is in incarceration since 05.04.2014 and he has CRL.A.800/2016 59 already undergone sentence from more than 8 years 5 months 12 days, which is sufficient sentence for the offence under Part II of Section 304 and the sentence of imprisonment awarded by the trial court for the offence punishable under Section 201 of IPC is sufficient and calls for no interference, therefore, the period already undergone is sufficient sentence for the accused to undergo and more so, shall be held to run concurrently. Accordingly, the appeal deserves to be allowed in part. In the result, we pass the following order: The appeal filed by the accused under Section 374(2) of Cr.P.C., 1973, is partly allowed. The accused is convicted of the offence under Part II of Section 304 and 201 of IPC. The period of 8 years 5 months 12 days undergone by the accused in incarceration is held sufficient sentence for the offence punishable under Part II of Section 304 and simple imprisonment for one CRL.A.800/2016 60 year and fine of Rs.1,000/- and in default of fine, simple imprisonment of one month for the offence punishable under Section 201 of IPC. Both the sentences shall run concurrently. Hence, Registry is directed to inform the concerned Jail Authority to set him at liberty forthwith, if he is not required in any other case. Sd/- JUDGE Sd/- JUDGE KNM/-

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