

Thimmaiah Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Jul-14-2023

Judge : K.Somashekar and Rajesh Rai K

Appeal No. : CRL.A 500/2018

Appellant : Thimmaiah

Respondent : The State Of Karnataka

Advocate for Pet/Ap. : Sri. G.M.Ananda

Judgement :

- 1 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF JULY, 2023 PRESENT THE HON'BLE MR JUSTICE K.SOMASHEKAR AND THE HON'BLE MR JUSTICE RAJESH RAI K CRIMINAL APPEAL No.500 OF 2018 BETWEEN: THIMMAIAH, S/O LATE KUMBAIAH, AGED ABOUT69YEARS, OBANAHALLI, C.N.DURGA HOBLI, KORATAGERE TAUKE, TUMKUR DISTRICT-572 129. APPELLANT (BY SRI. G.M ANANDA, ADVOCATE) AND: THE STATE OF KARNATAKA BY KORATAGERE POLICE, REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT BUILDING, BENGALURU-560 001. RESPONDENT (BY SRI. VIJAYAKUMAR MAJAGE, SPP-II) THIS CRL.A. IS FILED U/S.374(2) OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED

JUDGMENT
AND

ORDER

OF CONVICTION DATED 09.09.2016 PASSED BY THE IV - 2 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADHUGIRI IN S.C.NO.5042/2014 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S302 AND 201 OF IPC. THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence rendered by the Court of IV Addl. District and Sessions Judge sitting at Madhugiri in Tumkur District in S.C. No.5042/2014 dated 09.09.2016, whereby convicted the accused for the offences punishable under Sections 302 and 201 of IPC, 1860 and directed to undergo imprisonment for life and sentence to pay a fine of Rs.5,000/- and in default of payment of fine amount, he shall undergo simple imprisonment for period of 1 year for the offence punishable under Section 302 of IPC. The accused shall undergo simple imprisonment for a period 3 years and sentenced to pay a fine of Rs.5,000/- and in default of payment of fine amount, he shall undergo simple imprisonment for a period of 1 year for the offence punishable under Section 201 of IPC. The sentences awarded in both the counts of the offences shall run concurrently.-. 3 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 2. Heard Sri G.M.Ananda, learned counsel for the appellant and Sri Vijaykumar Majage, learned SPP-II and perused the judgment of conviction and order of sentence rendered by the trial Court in S.C.5042/2014.

3. The factual matrix of this appeal are as under. It is transpired in the case of prosecution that on the intervened night of 15.06.2014 and 16.06.2014 at 8.00 p.m. to 6.00 p.m., the accused, who suspected fidelity of his wife namely

Girijamma, strangled the neck of Girijamma with means of ligature material i.e., rope and committed her murder. Subsequent to committing her murder, he hanged her body to the ceiling so that it looks like herself committed the suicide. In pursuance of the act of the accused, on filing of the complaint by the complainant as per Ex.P1, the criminal law was set into motion by recording FIR as per Ex.P21 for the aforesaid offences. Subsequently, the Investigation Officer taken the case for investigation and thorough investigation has been carried out and during investigation, the Investigation Officer conducted mahazar as per Ex.P2 in the presence of panch witnesses and also held inquest over the dead body of Girijamma as per Ex.P4 and also the seizure mahazar as per - 4 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Ex.P13. During investigation, the Investigation Officer recorded the voluntary statements of accused as per Ex.P24 and based upon his voluntary statement, the Investigating Officer proceeded for investigation according to the relevant provisions of law and recorded the statements of witnesses inclusive of securing the post-mortem report at Ex.P14 and laid the charge sheet against the accused before the committal Court. Subsequently, the committal Court passed an order as contemplated under Section 209 of Cr.P.C. and committed the case to the Court of Sessions for trial. Accordingly, the case in S.C.No.5042/2014 came to be registered.

4. On prima-facie material find against the accused, learned Sessions Judge framed the charges against the accused for the offences punishable under Sections 302 and 201 of IPC, whereby the accused declined the charges leveled against him.

5. Subsequent to framing of the charges against the accused for the aforesaid offences, the prosecution in order to prove the guilt of the accused, let in the evidence by subjecting PW.1 to PW.33 for examination and got marked several documents at Exs.P1 to P26 and so also got marked Mos.1 to - 5 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Mo.10. Subsequent to closure of the evidence on the parts of the prosecution, the incriminating statement as under Section 313 of Cr.P.C has been recorded by the trial Court, wherein the accused declined the evidence of the prosecution adduced so far. Subsequently, the

accused was called upon to enter the defence evidence as contemplated under Section 233 of Cr.P.C., but the accused did not come forward to adduce any defence evidence.

6. Subsequent to closure of the entire evidence on the parts of the prosecution and so also on the parts of the defence side, the trial Court heard the arguments of the learned Public Prosecutor and counter arguments advanced by the defence counsel.

7. PW.1, who is none other than the daughter of deceased Girijamma and the accused, deposed in her evidence that she has seen the incident said to have been narrated in the complaint. She further deposed that the accused, who is none other than his father, suspected the fidelity of her mother and because of that reason, there was some altercation took in between them and to that effect, there was panchayath - 6 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 constituted in the presence of one Ramachandrappa and Mahalingappa and despite of the advise by the elderly persons to both the accused and the deceased, the accused continued to quarrel with his wife Girijamma and even earlier, there was some incident took in between the deceased and the accused. Resultant of that, the accused caused some injuries to Girijamma. Therefore, she was taken to hospital at Tumkur to providing a treatment and even after the treatment also, the accused was developing some animosities with his wife Girijamma. But on the fateful day, the accused committed the murder of the deceased by strangulating her neck with means of rope and he hanged her body to the ceiling so that it looks like herself committed the suicide, Therefore, PW.1 lodged complaint as per Ex.P1 and based upon her complaint, the criminal law was set into motion. During investigation, the Investigation Officer drew the spot mahazar at Ex.P2 and also seized Mo.1-sari and Mo.2-rope. But PW.1 has been subjected to cross examination on the parts of the defence side. However, nothing worthwhile has been elicited from her mouth. She supported the case of the prosecution. This evidence has been appreciated by the trial Court. Further, this evidence - 7 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 corroborates with the evidence of PW.2, who is the panch witness to inquest conducted over the dead body and the spot mahazar at Ex.P2. But these two witnesses have been categorically stated in their evidence relating to role of the accused and also done to the death of his wife and created the incident as herself committed suicide. But 8. PW.3, who is the witness have been secured relating to the sport mahazr and also inquest mahazar, did not supported the case of the prosecution. Mere because, he did not supported to the case of prosecution, it cannot be turn out the evidence of PW.1 and PW.2 relating to the contents made in complaint at Ex.P1.

9. PW.5, who is none other than the son of the accused-Thimmaiah and the deceased Girijamma, has not spoken about the incident as narrated in the complaint and his evidence is contrary to the evidence of PW.1. However, this witness has not been supported to the case of the prosecution relating to his mother was strangulated by his father. But PW.5 fell in love with a girl and got married and thereafter, he was residing separately in the same local area. Therefore, his - 8 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 evidence does not mean much as he had no contact with the deceased Girijamma and the accused to know about the affairs of their family even though they are his parents.

10. PW.6 is the wife of PW.5 and also daughter-in-law of the accused and the deceased. This witness also turned around to her statements and she did not stated in her evidence relating to the family affairs of the accused and the deceased whether they are in good terms or not. Mere because PW.5 and PW.6 have not supported the case of the prosecution, it cannot be turned around the evidence of PW.1, who is the author of the complaint-Ex.P1 and so also being the daughter of the accused as well as the deceased. But MO.1 to Mo.10 said to have been seized by the Investigation Officer during the course of investigation. During the course of recording of 313 statement by the trial Court, the accused answered each of the questions. He also stated that his wife Girijamma hung herself with MO.1-ligature material and there was blood oozing from her nose and he tried to remove it with MO.10 and he pushed the chair aside. These are all the statement

even though it has given by accused during the course of recording of 313 statement, it would required to be discussed in a subsequent - 9 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 stage keeping in view the evidence. This observation was made by the trial Court to arrival of the conclusion. But the accused admits that MOs were found at the scene of crime. Therefore, it does not lie in his mouth now to claim otherwise even keeping in view Section 106 of the Indian Evidence Act, 1872 relating to his special knowledge.

11. PW.10 is the co-villager of the accused-Thimmaiah and this witness stated that there was some quarrel took place in between the accused and the deceased on the premise that the accused was suspecting fidelity of the deceased and then this accused taken away her life by strangulating her neck and made it in a pretext that she herself committed the suicide by hanging. However, this witness turned hostile to the case of the prosecution. But the evidence of PW.10 is contrary to the evidence of PW.1.

12. PW.11 is also co-villager of accused-Thimmaiah and this witness stated in his evidence relating to some quarrel developed by the accused about his wife Girijamma on the premise of suspecting her fidelity. These are all the evidence which finds place on the record inclusive of the evidence of - 10 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 PW.12, who is none other than the sister of deceased Girijamma and she has supported the case of prosecution. But in her cross examination, she denied whatever the evidence let in by the prosecution to prove the guilt against the accused. However, she has stated that the accused Thimmaiah assaulted the deceased Girijamma with means of stick and also caused some injuries and done to her death with means of some ligature material. PW.13 and PW.14, who are the sisters of deceased Girijamma, stated in their evidence relating to the act of the accused and causing death of the deceased Girijamma. But, in the cross examination, they stated that the deceased was suffering from some sickness and stomach pain frequently. These are all the evidence which finds place in the cross- examination of all these witnesses, but they totally denied the theory set up by the defence counsel.

13. PW.15 is another daughter of the deceased Girijamma and the accused-Thimmaiah. She supported the case of the prosecution.

14. The aforesaid witnesses supported the case of prosecution and their evidence has been appreciated by the - 11 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 trial Court inclusive of the evidence of PW.13, who being the Investigation Officer, registered the case against the accused based upon the complaint at Ex.P1 and thereafter, the investigation has taken up by PW.33 and during the course of investigation, he conducted the entire investigation, drew spot mahazar as per Ex.P2, conducted inquest mahazar over the dead body as per Ex.P4 and recorded the voluntary statement of accused as per Ex.P24.

15. If the deceased Girijamma had perhaps stood on the chair and hung herself, the length of the rope between her neck and also the ceiling would have been short. But it is not the case of the prosecution. Moreover, if the accused tried to bring her down, then he must have untied the knot at ceiling from there to the neck of deceased. But the undisputed photo at Ex.P5 indicates that there are atleast two knots at the ceiling and they are not undone. These are all the negative to the claim of the accused persons even for establishing the case in the cross examination. However, the trial Court had appreciated the evidence and also in conformity with the facts at Ex.P1-the complaint. But there is no dispute in respect of the accused was taken a plea that on the fateful day, he was - 12 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 present in the field by letting the water. But there is no evidence which finds place on the parts of prosecution even for taken into consideration and whatever the contentions as made by the learned counsel for the accused. But the trial Court had appreciated the evidence and rightly arrived at the conclusion that the accused deserves for conviction for the offences punishable under Sections 302 and 201 of IPC1860 16. Whereas, the trial Court, appreciating the evidence available on record, specifically said that the prosecution has successfully proved that the death of the deceased Girijamma is homicidal and the accused strangled her neck with means of MO.1-rope and created the incident as herself committed suicide. Therefore, the trial Court

convicted the accused for the heinous offences punishable under Sections 302 and 201 of IPC relating to disappearance of the evidence screening from the legal punishment. Therefore, the trial Court rendered conviction judgment which is reflected in the operative portion of the order. It is this judgment, which has been challenged under this appeal by urging the various grounds.-. 13 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 17. Whereas Sri G.M.Anand, learned counsel has addressed his arguments by referring the evidence of PW.1 relating to the contents in the complaint-Ex.P1 and so also the role of the accused-Thimmaiah, who is none other the husband of the deceased-Girijamma. But to bring home the guilt of the accused, it is the domain vested with the prosecution to prove the guilt against the accused by facilitating worthwhile evidence. But the trial Court had rendered the conviction judgment without looking into the evidence of PW.1, who is the daughter of the accused and the deceased and PW.13 to PW.15, who are the sisters of the deceased, in proper perspective. PW.5 is none other than the son of the deceased and the accused/appellant. If any such quarrel took place in between the deceased and the accused, certainly it was in the knowledge of PW.5, but he did not support the case of the prosecution relating to the accused had committed the murder of his mother. There are no eyewitnesses on the parts of the prosecution relating to the alleged incident as narrated in the complaint filed by the complainant. Therefore, the prosecution has failed to establish the guilt against the accused by facilitating the worthwhile evidence i.e., positive, consistent - 14 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 and corroborative evidence relating to the alleged incident taken place in the house of the deceased and the accused. But no witnesses on the parts of the prosecution have been specifically stated in their evidence that the accused had committed the murder of the deceased-Girijamma with means of Mo.1-legature material i.e., the rope by strangulating her neck and made her body to sat on the chair and creating a doubt in the mind of the public in that local area that herself committed suicide. But the prosecution has failed to prove the presence of the accused at the scene of crime and also at particular time which is stated in the complaint as well as in the prosecution materials. But the accused even though being the husband of the deceased, in

respect of the company of the deceased in the night, the conclusion arrived by the trial Court that it only a conjectures and surmises.

18. It is the specific case of the accused that on the alleged date of incident, as narrated in the theory of the prosecution and even the theory which has submitted in terms of the charge sheet by the Investigation Officer, the accused was not in the house and he had been to the field to letting the water to the crops. But in respect of this statement, the - 15 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 prosecution has totally failed to bring home the evidence strongly and also sufficient evidence to arrival of the conclusion by the trial Court to render the conviction and that too for the offence punishable under Section 302 of IPC inclusive of Section 201 of IPC.

19. The second limb of the arguments that has been advanced is that the trial Court has erroneously come to the conclusion by considering the fact that PW.1, being the daughter of the deceased and the accused, has not filed any complaint against the accused for the earlier quarrel took place in between the accused and the deceased. In the absence of such particular material, it cannot be inferred even on the materials which have been facilitated by the prosecution to prove the guilt of the accused. But this accused was developing some quarrel with his wife- Girijamma frequently on suspicion of fidelity, which is in terms of character. But the prosecution has not facilitated the worthwhile evidence to secure the conviction relating to the murder of the deceased Girijamma. But on considering the age of the deceased and the accused, it is highly improbability to make such allegation against the deceased, who is aged lady. This aspect was not considered by - 16 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 the trial Court while rendering the conviction judgment. Therefore, in this appeal, it requires re-appreciation of the evidence and also revisiting the impugned judgment of conviction and order of sentence. If not intervened, certainly the accused, who is the graveman of the accusation would be the sufferer and also there shall be some miscarriage of justice would occur.

20. Lastly, the learned counsel submits and taken us to the contents in Ex.P6 to P11, which are the statements made by the witnesses during the course of investigation before the Investigation Officer. But these witnesses did not support the case of the prosecution to certain extent. Absolutely, their statements do not bear their signature even though they are the authors of those documents. Despite of which, the trial Court has given more credentiality to their evidence and also the contents at Exs.P6 to P11 and erroneously come to the conclusion that the prosecution has proved the guilt against the accused beyond all reasonable doubt.

21. PW.11 and PW.14, who are the witnesses on the parts of the prosecution, stated in their evidence that the - 17 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 accused was very much present in the morning hours in the scene of crime i.e., his house, when they came to saw the dead body of Girijamma. But, the Head Constable and also Investigating Officer has given a different version in their evidence with regard to the presence of the accused- Thimmaiah at the particular movement of timing. Thus, these material contradictions indicate that the accused has not involved in the alleged offences. But the trial Court rendered the conviction judgment without assigning the justifiable and sound reasons. Therefore, in this matter, it is relevant to re- look the entire materials on record and also revisiting the impugned judgment of conviction and order of sentence rendered, if not, certainly the accused, who is the graveman of the accusation, would be the sufferer. On this premise, learned counsel seeks to allow the appeal by setting the judgment of conviction and order of sentence rendered by the trial Court.

22. In support of his contention, learned counsel has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Satye Singh and another vs. State of Uttarakhand reported in (2022) 5 SCC438 wherein it referred the judgment of Sharad Birdhichand - 18 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Sarda vs. State of Maharashtra reported in (1984) 4 SCC116and held as under:

"15. ..This Court while drawing the distinction between must be and may be observed as under in para 153: 153. A close analysis of this decision would show that the following conditions 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 v. State of Maharashtra [(1973) 2 SCC793:

1973. SCC (Cri) 1033]. where the 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 should not be explainable on any other hypothesis except that the accused is guilty, - 19 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 (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. In the aforesaid judgment, the Hon'ble Supreme Court referred the reliance of State of U.P. v. Ashok Kumar Srivastava reported in (1992) 2 SCC86and held as under:

"17. The said principles have been restated in a catena of decisions. In State of U.P. v. Ashok Kumar (1992) 2 SCC86 it has been observed in para 9 that: 9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if

the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused - 20 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise. It further placed reliance on the case of Majendrana Langeswaran vs. State (NCT of Delhi) and another reported in (2013) 7 SCC192 this Court having found the material relied upon by the prosecution inconsistent and the infirmities in the case of the prosecution, considered number of earlier decisions, and held that the conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

23. Keeping in view the aforesaid reliances, it is made clear that it is applicability to the present case on hand. Section 106 of the Indian Evidence Act relates to the special knowledge of the accused, who is facing the trial that too for the heinous offences under Sections 302 and 201 of IPC.

24. But in the case on hand, the prosecution failed to prove the basic facts as alleged against the accused and the - 21 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 burden could not be shifted on the accused by pressing into service the provisions contained in Section 106 of the Indian Evidence Act, 1872. These are all the reliance placed by the learned counsel for seeking intervention and to set aside the impugned judgment of conviction and order of sentence rendered by the trial Court.

25. It is further contended and also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of State of Punjab vs. Kewal Krishan

reported in 2023 SCC OnLine Sc 746, wherein it held as under in paragraph 17:

"17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.

26. This reliance is aptly applicable to the present case on hand relating to the theory put forth by the prosecution to prove the guilt against the accused. But in a case based on - 22 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 circumstantial evidence, not only each of the incriminating circumstances have to be proved beyond reasonable evidence, but those incriminating circumstances must constitute a chain so far complete that there is no escape from the conclusion. But in the instant case, the prosecution even though let in the evidence of the witnesses i.e., the daughter, the son and the sisters, they are the relatives of the deceased and the accused. But their evidence founds to be inconsistency and also contradictory to each other and there shall be some discrepancies. On this premise alone, intervention is necessary, if not, certainly the accused would be the sufferer and also there shall be some miscarriage of justice would occur.

27. It is further contended and placed reliance on the judgment of Pradeep Kumar vs. State of Chhattisgarh reported in (2023) 5 SCC350 wherein, the Hon'ble Supreme Court referred the reliance of Babu vs. State of Kerala reported in (2010) 9 SCC189 and the landmark case of Sharad Birdhichand Sarda vs. State of Maharashtra reported in (1984) 4 SCC116 specifically in paragraph 153, wherein it is capitulated by the Hon'ble Supreme Court of India to arrival of a conclusion held that normally, we do not interfere - 23 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 with the concurrent findings of fact of the courts below. We step in only in exceptional cases or where gross errors are committed, overlooking crying circumstances and well- established principles of criminal jurisprudence leading to miscarriage of justice. Hence, it becomes our bounden duty to correct such findings in view of the principles enunciated in Ramaphupala Reddy vs. State of A.P. reported in (1970) 3 SCC474 Balak Ram vs. State of U.P. reported in (1975) 3 SCC219 and Bharwada Bhoginbhai Hirjibhai v. State of Gujarat reported in (1983) 3 SCC217 28. These reliances have been placed and contended by learned counsel that it requires intervention in this appeal, if not, the appellant who is the convicted accused, who is old age person and he is in incarceration from the date of his arrest, would be the sufferer. Therefore, it requires intervention by considering the grounds which have been urged in this matter and also re-appreciating the evidence inclusive of the impugned judgment of conviction and order of sentence. Consequently, set aside the impugned judgment of conviction rendered by the trial Court by allowing this appeal.-. 24 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 29. On controverted arguments addressed by the learned counsel for the appellant which is stated supra, learned SPP-II taken us to the photograph of the deceased Girijamma, wherein she was in the sitting position lying on the wall and a rope was tied to her both hands, which are tied to the ceiling beam in the scene of crime. If she had committed suicide by standing on a chair as contended by the accused and even such kind of the contention taken by the counsel on behalf of the accused, then the length of the rope from the neck to the ceiling beam would have been less, but it is long. It means that after killing the deceased, the accused pulled her to the wall and tied one hand of the rope round the neck and tied the other end to the ceiling beam. This was the observation made by the trial Court for arrival of the conclusion that the accused alone had committed the murder of the deceased Girijamma on the premise of suspecting her fidelity even after lapse of 45 years of running of the family affairs with them. But if the deceased who stood on the chair and alleged to hung herself, the length of the rope between her neck and also the ceiling would have been short. But it is not the case of the prosecution. Moreover, the accused tried to bring her down.-. 25 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Then he must have untied the knot at the ceiling. But the undisputed photos at Ex.P5 show that there are atleast two knots at the ceiling and they are not undone. This negates the claim of the accused person contending that he was present in the field by letting the water. However, the prosecution had facilitated the worthwhile evidence by subjecting PW.1- Gangamma, who is none other the daughter of the accused and the deceased-Girijamma for examination. But PW.13- Doddathayamma, PW.14- Jayamma and PW.15-Yashodamma are the sisters of the deceased-Girijamma and they have stated in their evidence that there was some altercation took in between the deceased and the accused frequently, but even on the fateful day also, this accused was present in the scene of crime and done to the death of Girijamma by strangulating her with means of Mo.1-rope and Mo.2-Sari, which was used by the accused and also the contents in the complaint at Ex.P1 and the contents in the mahazar at Ex.P2 inclusive of Ex.P4-inquest held over the dead body. The post-mortem report at Ex.P14 indicates the ligature mark around her neck. There are all the evidence which finds placed on the record and forthcoming on the parts of the prosecution and therefore, the prosecution - 26 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 proved the guilt against the accused with beyond all reason doubt. Consequently, the conviction judgment rendered by the trial Court does not call for any interference as there is no perversity, infirmities which could be viewed from any angle. However, learned SPP-II emphatically and stoutly submits to dismiss the appeal being devoid of merit by confirming the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.5042/2014.

30. But in this matter, it requires re-appreciation of the evidence and equally revisiting the impugned judgment of conviction and order of sentence. But there is no dispute about the homicidal death of the deceased Girijamma. The doctor, who conducted the autopsy over the dead body of the deceased, noticed the ligature mark around the neck and also cause for the death. Ex.P5 is the photos of the deceased- Girijamma, which indicates that the accused made her to sat on the chair to create a pretext that herself committed suicide by hanging. However, this accused is none other than the husband of deceased Girijamma and subsequent

to their marriage, she was blessed with the daughters and the son. But PW.5-Girisha, who is none other than the son of the accused fell in love with - 27 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 PW.6-Ranjitha. PW.5 and PW.6 have been subjected to examination on the parts of the prosecution, but nothing worthwhile has been elicited to believe the theory of the prosecution to rendering the conviction judgment. But their evidence is contrary to the evidence of PW.1-Gangamma, who is none other the daughter of the accused and the deceased-Girijamma, PW.13-Doddathayamma, PW.14-Jayamma and PW.15-Yashodamma, who are the sister of the deceased- Girijamma. PW.5 to PW.17 have been subjected to examination on the parts of the prosecution. They have been given in go by to the versions of their statements at Exs.P6 to 12 and even PW.24 has also been subjected to examination and he has also given in go by to the version of his statement at Ex.P17.

31. But the prudent man can even look into the evidence and also in respect of the proving facts for arrival of a proper conclusion. However, their evidence runs contrary to the contents of Ex.P1 made by the complainant and further contradictory evidence of PW.1-Gangamma, PW.2- Ramachandrappa and PW.3-Mahalingappa.-. 28 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 32. But the accused had suspected her fidelity that she had some affairs with some other person and for that reason only, there was some altercation took place in between the accused and the deceased frequently because of that, PW.2 and PW.3, who are the elderly persons, held a panchayath in Hobanahalli in C.N.Durga Hobli, Koratagere Taluk in Tumkur District and advised them not to continue the same. But they did not set right the same. However, on the fateful day, the accused committed the murder of his wife on 15.06.2014 and 16.06.2014 around 8.00 p.m. to 6.00 a.m. by strangulating her with means of MO.2-rope and concealing the commission of the offence that he tied her neck with means of Mo.2-rope and made her to sit on the chair with a pretext that she hung herself from the ceiling with means of Mo.2-rope and committed suicide. The entire theory which is at a cursory glance on the parts of the prosecution indicates that this accused committed the murder of his wife.

However, the burden of proof it is always on the prosecution. The prosecution shall let in the evidence with beyond all reasonable doubt relating to the ingredients of Section 302 of IPC. Mere because this accused was not in good terms with the deceased- - 29 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Girijamma and frequently, there was some altercation took place in between the accused and the deceased, it cannot be the elements as well as the grounds to convict this accused. The conviction can be based on testimony of a single witness. The evidence of the witnesses should inspire confidence and also reliable. If any doubt creates in the mind of the Court relating to the testimony, even though it has let in by the prosecution, then it cannot arise for rendering the conviction judgment mere because the accused is facing of a trial under Sections 302 of IPC and even under Section 201 of IPC relating to the disappearance of the evidence to screening form the legal punishment. But it is a duty cast upon to the prosecution to prove the guilt of the accused with beyond all reasonable doubt.

33. But in the instant case, several witnesses have been subjected to examination to securing the conviction. The conviction rendered by the trial Court against the accused is only based upon the sufficient evidence. The evidence facilitated by the prosecution should be beyond reasonable doubt and acceptability in all corners without giving any clouds of doubt. Whatever the evidence let in by the prosecution, that - 30 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 evidence should not create any doubt in the mind of the Court. In the instant case, the theory has been put forth by the prosecution that the accused firstly committed the murder of the deceased- Girijamma and thereafter, made her to sat on the chair and created the scene that herself committed the suicide by strangulating by means of Mo.2-rope.

34. Keeping in view the contentions made by the learned counsel for the appellant in the instant case are concerned, it is relevant to refer the suicide - meaning thereof - "Sui" means "self" and "cide" means "killing", thus, implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespectively of the means employed by him in achieving his object of killing

himself. This issue has been extensively addressed by the Hon'ble Supreme Court of India in the case of M.Mohan v. State reported in (2011) 3 SCC626 35. But in the instant case, the accused had committed the murder of his wife-Girijamma on the suspicion about her character and also fidelity. But Section 306 is concerned, learned counsel taken a contention that herself committee - 31 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 suicide but basic distinction, two offences under section 302 and section 306 are of distinct and different categories. This issue has been addressed by the the Hon'ble Supreme Court of India in the case of Sangaraboina Sreenu v. State of Andra Pradesh reported in (1997) 4 Supreme 214. But even conviction can be based on the testimony of the single witness even when the prosecution was able to prove the guilt against the accused by facilitating the worthwhile evidence it is in terms cogent, corroborative and consistent evidence that the accused committed the murder of the deceased. Unless there shall be some inspire in the confidence of the Court and also found reliability of the testimony as rendered by the prosecution, it cannot be arise for rendering a conviction judgment as sought for. It is only based upon the evidence.

36. Even in the instant case, the entire case depending on the circumstantial evidence. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the Court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to - 32 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 follow a particular path. But in the circumstantial evidence, the important points are these it is well settled that if the evidence of the witnesses which is rendered by the prosecution even or held to be reliable and also inspire confidence then the accused cannot be convicted even solely on the ground that some superficial injuries found on the person of the accused concerned. But in the instant case, there shall be some ligature marks around the neck of the deceased with means of Mo.2- rope and also one end to the another end tied with means of Mo.1-Sari. But the circumstantial evidence, it is always relating to the circumstances from which the conclusion of guilt is to be

drawn should be fully established and should also be consistent with only one hypothesis i.e., the guilt of the accused. The circumstances should be conclusively proved by the prosecution. This issue has been extensively addressed by the Hon'ble Supreme of India in the case of *Brajendrasingh vs. State of Madhya Pradesh* reported in AIR 2012 SC1552 37. In the instant case, the motive factor relating to the accused alleged to committed the murder of his wife and also done to her death by strangulating her neck with means of Mo.2-ropes are concerned, the intention to cause the death is - 33 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 an important factory on the criminal justice delivery system. But that evidence should be fortified with the medical evidence, whereby conducted autopsy over the dead body. But in the instant case, even at a cursory glance of the entire material, it cannot be said that the evidence in toto adduced by the prosecution must be acceptable to render conviction judgment by the trial Court.

38. Section 299 of the IPC i.e., culpable homicide. The culpable homicide and the murder these things has been distinguished. "Culpable homicide" is the genus and "murder" is its species and all "murders" are "culpable homicide", but all "culpable homicides" are not "murders". This issue was also extensively addressed by the Hon'ble Supreme of India in the case of *Rampal Singh v. State of Uttar Pradesh* reported in (2012) 8 SCC289 39. In so far as presumption regarding intention: The intention in the present case to committing the murder of his wife-Girijamma as on the fateful day even on strangulating her neck with means of Mo.2-rope and equally the knowledge is also important factor. The accused has committed the murder - 34 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 of his wife by strangulating her neck with means of Mo.2. Mere because there was some allegation made against the accused, unless there shall be some sufficient evidence and so also equally strong evidence on the parts of the prosecution, it cannot be arise for rendering a conviction judgment against the accused. In the light of the evidence which is stated supra, it is requires intervention of the impugned judgment of conviction and order of sentence for the offences under Sections 302 and 201 of IPC.

40. However, the ingredients of Section 302 of IPC relating to mens rea and actus reus and equally Section 201 of IPC relating disappearance of the evidence in order to screening from the legal punishment. But in the instant case, the murder was taken place in the scene of crime i.e., the house of the accused and the deceased. But both the deceased and accused were running family affairs for more than 45 years. The accused was aged about 65 years when he was put on trial for the heinous offence of committing the murder of his wife-Girijamma. The deceased-Girijamma was blessed with the son and the daughters. The said son was fallen in love with PW.6-Ranjitha and subsequent to her marriage with him, they - 35 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 were residing in the same village where his parents were also residing. But there was no dispute in between the family members of the accused and the deceased relating PW.6- Ranjitha. But these are all the things that finds place in the record and also finds place in the evidence of PW.1-Gangamma, PW.13-Doddathayamma, PW.14-Jayamma and PW.15- Yashodamma. However, PW.5 to PW.17 have been subjected to examination and they did not supported the case of the prosecution to any extent and they have been given in go by to the versions of their statements at Exs.P6 to P12, but their evidence runs contrary to the evidence of PW.1-Gangamma and equally to the evidence of PW.13 to PW.15, who are the sisters of deceased-Girijamma. Of course, they have been deposed in their evidence relating to the family affairs and also there was some quarrel developed by their brother-in-law/accused. Mere because the sisters-in-law of the accused-Thimmaiah have been given the evidence, unless there is some strong evidence to consider from all corners, it cannot be arise for rendering a conviction judgment only on the ground that the accused is the husband of the deceased and the scene of crime occurred in the house of the accused and the deceased.-. 36 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 41. But in the instant case, considering the entire circumstances of the case, role of the accused as well as the appreciation made by the trial Judge relating to the aforesaid evidence which have been facilitated by the prosecution inclusive of elicitation of certain portion in the cross- examination, it is the domain vested with the trial Court to appreciate

the evidence in a proper perspective manner, if not, certainly in the appeal, it requires intervention. If not intervened, the accused being the gravaman of the accusation would be the sufferer and also miscarriage of justice would occur.

42. Even at a cursory glance of the entire evidence and equally re-visiting the impugned judgment of conviction and order of sentence rendered by the trial Court in S.C.No.5042/2014, it is found that there are some infirmities and discrepancies inclusive of inconsistencies and the same could be seen as a prudent man. Therefore, in this appeal, it requires intervention for the aforesaid reasons and findings. Consequently, we are of the opinion that this appeal deserves to be allowed even on all the aforesaid counts of the reasons stated therein.-. 37 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 43. Accordingly, we proceed to pass the following:

ORDER

i. The appeal preferred by the appellant/accused under Section 374(2) of Cr.P.C. is hereby allowed. ii. Consequent upon allowing the appeal, the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.5042/2014 dated 09.09.2016 is hereby set aside. iii. Consequent upon setting aside the judgment of conviction stated supra, the appellant/accused i.e., Thimmaiah S/o. Late Kumbaiah aged about 65 years (when he was put on trail in the aforesaid case), who is in fag end of his life, is hereby acquitted for the offences punishable under Sections 302 and 201 of IPC, 1860. iv. The appellant/accused is in incarceration. Therefore, the Jail Authorities of Central Prison, - 38 - NC:

2023. KHC:25013-DB CRL.A No.500 of 2018 Bangalore are directed to set him at liberty, if he is not required in any other case. v. Registry is directed to forward the operative portion of this order to the Jail Authorities of Central Prison, Bangalore to set him at liberty forthwith. Accordingly ordered. Sd/- JUDGE Sd/- JUDGE HKV, VM List No.:

1. SI No.: 3