

Ramesh Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-21-1994

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Judge : D.P. Hiremath and ;Kumar Rajarathnam, JJ.

Appeal No. : Crl. A. No. 426 and Crl. Ref. Case No. 1 of 1993 (Against judgment of Sessions J., Mandya in SC No.

Appellant : Ramesh

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadhav, HCGP

Advocate for Pet/Ap. : A.H. Bhagawan, Adv.

Judgement :

1. The facts of the case present a sordid story of the gory end of life of a young lady who had a promising career being an Assistant Editor with the accused and was trying to make some debut in film world, the first step having been taken with PW 17 - a film director who wanted to introduce the deceased Suma to the film world. She was a native and resident of Karada village in Kodagu District, and though her educational qualification did not come to the surface during the trial, she was employed by the accused as an Assistant Editor under him to edit his weekly 'Jammanangada' and he was also running a printing press of his own. This

occupation of the deceased was at Murnad village some distance away from her own native village and she used to commute by bus to attend to her job. Even before PW 28 Malini joined the establishment of the accused in April, 1990, the deceased Suma was already working with him. In course of time they fell in love with each other and also they intended to get married. The marriage betrothal was fixed on 18-10-1990. Though the accused also told the parents of the deceased that his parents were against this marriage, it cannot be made out whether they had changed their mind at all. However, the accused wanted to go ahead with this marriage after his young sister's marriage was performed. Anyhow it appears the parents of the deceased agreed to give Suma in marriage to the accused and the betrothal to be performed on 18-10-1990.

2. On 14-10-1990 which happened to be a Sunday, the accused had called the deceased and some of his other employees to his printing press for some work and accordingly the deceased had also gone to the printing press at Murnad. PW 28 Malini and PW 11 Ibrahim - the main printers were also present along with some of the other employees. The accused had a motorcycle on which it was also written in paint the name of his weekly. Its Registration No. was CNZ 1905.

3. As the prosecution story goes, the deceased and the accused left Murnad some time after 9-30 a.m. on the said motorcycle of the accused telling the others present in the press that they were going to Madikeri. When the stage carriage bus driven by PW 20 was going towards Virajpet from Madikeri, this motorcycle of the accused came opposite to him at about 10 a.m. and when Murnad was still some distance away, the accused stopped this bus signalling and Suma - the deceased who was on the pillion got down and gave a letter in his hand to be delivered to her parents in her house. Accordingly PW 20 who was acquainted with this family of the deceased delivered it in the hands of the mother of the deceased. It appears the deceased and the accused did not go to Madikeri. They went to Kamalapur in the afternoon, took their lunch there and thereafter the accused purchased a gunny bag and a thin rope from the shop of PW 3 and then they went to Krishnaraja Sagar dam. The accused purchased tickets for two which remained with him and according to the prosecution when they returned from K.R.S. and came near Bastipura, the accused committed her murder by hitting her head to a

stone. Thereafter sprinkled petrol on her and then set fire to her dead body. His motorcycle was also put on her body. This was seen by PW 5 Govindaraju of Hosahalli when he was going from his village to Ilwala and also PW 4 who however did not inform the police. The following morning when PW 6 Mandanna of Mysore who was a production Manager in Mandya National Paper Mills at Belagola received a phone call from one of his workmen that there was a murder of one girl and dead body was lying near about and that the girl had the appearance of a Coorgi woman. Out of curiosity, as this witness also happened to be from Coorg, went to the factory at 8 a.m. and then went to the spot near Basthipura village. He found beneath the culvert dead body of a girl and a half burnt motorcycle on the body. He found the accused sitting about 200 yards away from this spot under a tree and on a gunny bag. There was a rope by his side. Some 50 workmen and villagers had surrounded him making enquiries with him as to what all had happened. The accused told him that he came from Coorg to Mysore on his motorcycle, visited K.R.S. the same evening, went back to Mysore and on his way to Kodagu via Belagola that night, some people came in a car, stopped his motorcycle with an excuse to request for some petrol and soon after he started his motorcycle the inmates attacked the girl while he was tied to a tamarind tree. It was from the accused that this witness collected her family particulars and came to know that she was the daughter of one Bheemaiah of Patrapanda family. One of the relatives of the girl residing at Mysore was informed on phone and that relative in turn conveyed the message to the parents of the deceased, whereupon, the father of the deceased and here brother PW 18 rushed to the spot.

4. PW 9 - a Police Constable of K.R.S. police station was on search for the accused in another case registered in Crime No. 87 of 1990 and having visited other places came near the spot, saw large number of people assembled at the spot of the incident and also saw the dead body and the motorcycle and then went to the police station and gave his report Ex.P4 before PW 31 - the P.S.I. in charge of the police station. He only stated the bare fact of what all he had seen at the spot when it was about 10 a.m. when he saw the dead body. PW 31 on receipt of this report, registered a case in Crime No. 89 of 1990 under sections 302 and 201 of the Indian Penal Code, submitted FIR to the Jurisdictional Magistrate and his

superior, went to the spot at about 11.30 a.m., held inquest over the dead body and seized from the spot the motorcycle CNZ 1905, helmet, one pair of hawai chappals, two stones stained with blood weighing 5 k.g. each, a piece of rope, partly burnt gunny bag pieces and empty beer bottle having smell of petrol in it, and secured the services of a Medical Officer of the Primary Health unit at Belagola to conduct autopsy over the dead body at the spot. He was of the opinion that the deceased had died due to head injury. At the spot was lying a helmet used by the rider of the motor-cycle. PW 31 also received information that the accused was present somewhere around scene of offence and hence he deputed some of his staff people to search for the accused. Accordingly, PW 27 H.C. when he was searching for the accused saw a certain person coming near Basthipura gate, questioned him and on being assured that he was the accused required in this case, took him to custody and produced before PW 31 at about 3.30 p.m. On conducting personal search of the accused, among other things were found on his person a ticket bearing No. 4578 for entry in K.R.S. dam, some L.I.C. receipts, lady's H.M.T. wrist watch subsequently identified as that of the deceased and unused O.22 revolver bullets. The stone wash jeans pant which the accused was wearing was stained with blood at some places. He seized them and when he was questioning the accused, PW 32 the Circle Inspector of Police took over investigation and continued his interrogation. The accused gave information under section 27 of the Evidence Act, that he would show partly burnt rope, partly burnt letter etc., which was reduced to writing, panchas were called and the accused took the police and panchas to a spot some distance away from the place where the body of the deceased was lying and there some ash and burnt paper pieces and also a love letter lying nearby were seized. A partly burnt gunny bag and a rope were also seized. PW 32 thereafter during investigation examined witnesses to various circumstances including the movement of the accused the previous day regarding taking of L.I.C. policies and other relevant facts. Blood stained articles like two stones seized at the spot, the cuttings of pant on which stains of blood were noticed, were sent for chemical analysis. On completion of due investigation, charge sheet came to be filed against the accused for the aforesaid offences.

5. The trial Court considering the circumstances brought on record found that all the circumstances put together conclusively establish the guilt of the accused,

found him guilty under sections 302 and 201 IPC. For the said offences, it sentenced the accused to the extreme penalty of death and directed that the papers be submitted to this Court under section 366 of the Code of Criminal Procedure for confirmation.

6. While the accused in Criminal Appeal No. 426 of 1993 has challenged his conviction, Criminal Reference No. 1 of 1993 is the confirmation reference. We have heard the appeal of the accused in the first instance.

7. It was submitted on behalf of the accused-appellant that the trial Court was not justified in finding that the circumstances brought on record are conclusive and establish guilt of the accused beyond doubt. The accused no doubt has given a plea of total denial and even denied to have left Murnad along with the deceased on the morning of 14-10-1990. The evidence of PW 6 was referred to by the learned counsel for the appellant and he contended that this being the material brought on record by the prosecution as to the version that was given by the accused, if that probability could be considered, then it cannot be said that the prosecution has succeeded in proving the guilt of the accused. At any rate this is not a case wherein on any reasonable hypothesis the innocence of the accused cannot be excluded. We have re-appraised the evidence.

8. The facts upto the stage of the accused and the deceased visiting the K.R.S. dam on the evening of 14-10-1990 are either proved or not in serious controversy and the learned counsel for the appellant was fair enough to admit that there is sufficient material to show that on that morning both the accused and the deceased left Murnad on the motorcycle of the accused, passed through Kamalapura where they were seen by PWs. 1 to 3 and thereafter went to K.R.S. dam by taking a ticket produced at Ex.P29. For this reason we deem it necessary to make a passing reference to the evidence connecting these links in the chain of circumstances. It is not in dispute that both the accused and the deceased were in love with each other, had intended to marry and even the betrothal was fixed on 18-10-1990. The evidence of the driver PW 20 proves that the deceased did hand over a letter to him marked as Ex.P18 and to which reference has been made by her mother PW 22. She deposed that PW 20 went near their house at about 12.30

that afternoon parked his bus and gave a cover stating that Suma was going with the accused to Madikeri and had sent the letter to her. She identifies the signature of the deceased at Ex.P18(a) and this signature is proved even by her brother PW 18. There is also evidence that it was in the hand-writing of the deceased. We got the translation of this letter in Kannada from one of the Court officials. It is the true translation of the original Coorgi language in letter Ex.P18 The copies of the translation were furnished to the appellant's counsel as well as to the learned High Court Government Pleader. It is stated in this letter that no phone call was taken to the mother of the deceased as the telephone line was not available. At the instance of the elder sister of Ramesh she was going to Madikeri. As she had already informed to her mother, his sister's husband was not at home. He had gone to duty. Therefore, Ramesh's sister asked her to wait till he returned. For that reason she was not returning the same day, but would return the following day. She should not get perturbed. She also asked her mother to tell her father not to phone up to her office. Again she reiterated she should not get perturbed. It is stated in this letter that Ramesh having left her had gone to Madapura Bettahalli. She believed that one Rani might have gone there. It also states that this letter was handed over to the driver at Madikeri. It is apparent that some of the facts stated therein were not true. Firstly, the letter was not given at Madikeri. But there is clear evidence of the same having been handed over soon after they had left Murnad and perhaps they never touched Madikeri. Secondly, she never stayed in the house of sister of Ramesh who is none else than the accused and thirdly, Ramesh - the accused has never parted her company to go to Madapura-Bettahalli. Whether these recitals in the letter have anything to do with the ultimate ghastly incident - is the matter that received our attention. Suffice it to note at this stage that soon after leaving Murnad when the accused and the deceased were together travelling on the motorcycle of the accused, the accused got stopped the bus driven by PW 20 and then this letter was given to him. The evidence of PW 28 Malini and that of Ibrahim - PW 11 has clearly proved that both the accused and the deceased left the printing press of the accused some time after 9.30 a.m. On the way, they went to Military hotel on Mysore-Mercara road at about 2.30 p.m. and PW 1 - the proprietor of the hotel speaks about both of them getting from the motorcycle and taking their lunch in his hotel. Leaving the deceased there, the

accused had gone out which was also seen by PW 2 Ramegowda and having gone to the shop of PW 3 the accused purchased three 'maaru' of moogudara and a gunny bag, paid Rs. 15/- for that thin rope and Rs. 12/- for the gunny bag. Thus that both the deceased and the accused were in the hotel at Mamalapura at 2.30 p.m. and thereafter that they left the hotel is proved by the evidence of these witnesses. Seizure of Ex.P29 from the person of the accused has established that both of them on the very motor-cycle, the number of which finds place in Ex.P29 had gone to the K.R.S. dam and there is no clear evidence as to when they left the said dam.

9. The fact that the deceased did die homicidal death is proved by evidence of PW 21 who conducted autopsy over the dead body, and as already stated she died of head injury. It is also established that motorcycle that was lying over the dead body of the deceased and which was burnt to some extent was of the accused on which the accused and the deceased had left Murnad. The medical evidence also discloses that bleeding over right ear was present, left half of the face was completely burnt. Left upper limb was burnt, left half of the abdomen was completely burnt, left thigh was completely burnt, vagina and anus were completely burnt, right upper limb ventral aspect of the limb was burnt and right half of the abdomen was partially burnt. Right thigh was partially burnt. Internally on dissection of the body, fracture of right temporal bone was noticed and membranes had ruptured on the temporal region. Thorax walls and ribs cartilages-left half of the body were completely burnt except left leg. It is thus clear that after the deceased was done to death, body was set fire to and for the reasons best known to the person who did it, the motor-cycle was pushed over the dead body and was perhaps on fire. The photographs produced at Ex.P39 give a clear picture as to the condition of the spot, the dead body of the deceased and the motor-cycle over it. With these circumstances on record whether the prosecution has established the guilt of the accused beyond doubt - is the material point.

10. It was urged on behalf of the appellant that the mere fact that the deceased and the accused were last seen together is not sufficient to hold that it was the accused and the accused alone that committed her murder. The prosecution

however examined some witnesses to show that it was the accused who had caused the death of the deceased. PWs. 4 and 5 are the most material witnesses according to the prosecution. PW 5 who is a resident of Hosahalli testified that at about 9.30 p.m. he was going from his village to Ilwala on motorcycle on Belagola-Ilwala road to give information of the demise of his relative of Hosahalli to his another relative at Ilwala. When he went about half a kilometer from paper mill near the bridge, he saw a motor-cycle lying but he did not see any person. He proceeded further and as it was night time he had also taken PW 4 along with him from Hosahalli to Ilwala. After giving the information of death at Ilwala, they returned to Hosahalli. It was the following morning that he and one Mahadev went to the spot on hearing people in the village talking about the murder that had taken place near the bridge. He was cross-examined by the prosecution and to a question put by the Public Prosecutor, he had admitted to have stated before the police that at about 10.30 p.m. on that night when he was proceeding on his motor-cycle, he noticed motor-cycle bearing No. CNZ 1905 near the culvert and he stopped his vehicle and saw. He however denied to have stated that near the bridge he stood and peeped down the culvert and actually saw the accused sitting on the chest of the deceased and smashing her head against stone holding her head. He also denied to have stated that on seeing him the accused picked up a stone and threatened him. It is unnecessary to refer to the other denials elicited from his statement recorded under section 161 Cr.P.C. At least to the extent that he was passing by the side of the culvert and had seen the motorcycle lying on the road near the bridge and that motor-cycle was none other than CNZ 1905 is established from his evidence. There should be no impediment in relying on this part of his evidence though he did not support the prosecution in other respects.

11. PW 4 according to the prosecution is a key witness who has supported it in all respects. According to him, on the night of 14-10-1990 at about 10.30 p.m. he was returning to his village Pampina Hosahalli from K.R.S. on foot as he could not get any bus to his village. He was standing in front of the paper mill on Belagola-Ilwala road and from Ilwala side one scooter came. It was ridden by PW 5 - Govindaraju of his village and when PW 5 replied that he was going to Ilwala at the same time he told that beneath the culvert one unknown person was holding a girl by head and knocking her head against the culvert and on hearing the screaming of the

girl, he went and questioned the culprit who attempted to throw a stone at him and therefore he was frightened and came back. He then suggested to PW 5 that both of them should go and see as to who that person was. Accordingly he sat on his pillion, both of them went to the spot, but the motor-cycle that PW 5 had seen earlier lying on the road was not to be seen there. Both of them therefore saw beneath the culvert with the help of the head light of the lorry that was passing on the road at the same time and then they saw one person was going carrying gunny bag and the girl was lying and on her one motor-cycle was lying and it was burning. As there were some persons in the lorry, they thought those persons may implicate them for this ghastly incident and so they left the place. The following morning when they came near the spot, the police were present and there they came to know that certain girl was murdered. Even at that point of time, he did not tell anything to the police fearing them. However, some persons present told the police that a scooter had passed on the same road round about the same time and on hearing that, this witness narrated to the police what all he had seen. According to Sri Bhagawan - learned counsel for the appellant, this witness is wholly unreliable as the subsequent conduct of this witness clearly shows that till somebody told the police that the scooter had passed, he did not disclose it to anyone and much less to the police. Secondly there is marked contradiction between his evidence and that of PW 5 who according to the prosecution was an eye witness to the incident. His evidence smacks of artificiality and hence it would be rather risky to place reliance on him. We have gone through the answers elicited in the cross examination. According to him, it was from Belagola circle that he and Govindaraju went on his motorcycle. He had been to K.R.S. that day at about 8-30 p.m. and at 10.30 or 11 p.m. he came to the bus stop and since no bus was available, he started for his village on foot. It was about 11.15 p.m. when he came to the circle traversing the distance of about 6 kms. From Belagola circle his village is about 6 Kms. He accompanied PW 5 to Ilwala since PW 5 requested him to accompany him and both of them slept in the house of the relative of PW 5 at Ilwala itself. At Ilwala he came to know that his sister's daughter at Maidanahalli had passed away and therefore he decided to attend the funeral and then return to his village. The funeral was over by 1 p.m. and then he went to Ilwala and from there he went to the scene of incident. It could be seen from the mahazar that to

the bed of the culvert, the sloping from the road level was about 10 1/2 meters which may roughly come to about 40 feet. That being so, it is not possible to understand what PW 4 meant when he stated that the distance between the culvert bridge and the spot was 200 feet depth. It may be that it was his rough assessment of the distance from the road to the spot. He however did not identify the accused from the box. He only referred that some person was going from the spot holding a gunny bag. The point then is whether the prosecution has succeeded in satisfying the Court that PW 4 really did witness some person going from the spot holding a gunny bag apart from the identity of the accused. Where he was exactly picked up by PW 5 is not uniformly stated by both of them. A reading of evidence of PW 5 goes to show that both of them had left Hosahalli at 9-30 p.m. and the reason for PW 5 to take PW 4 on his motor-cycle is that he wanted someone to keep company with him when he was going to Ilawa that night. If that be so, practically there was no occasion for PW 4 to stand at Belagola cross waiting for a bus and casually coming across PW 5 to be picked up by him. As we have pointed out from his evidence he has made it amply clear that he reached the circle at about 11.15 p.m. and till then he had not even met PW 5. Thus the reason for PW 4 accompanying PW 5 is not uniformly and consistently stated by these two witnesses. One falsehood leads to the possibility of hundreds. It was urged on behalf of the appellant that he was under the protection of the police by virtue of an order passed by this Court in a certain litigation pending between him and some other person and it was KRS police who had been directed to give protection to him. That being so, according to Sri Bhagawan, this witness has every reason to oblige the police by projecting himself as a witness to have seen atleast some person going from the spot holding a gunny bag. The subsequent conduct of this witness also does not inspire confidence. He does not tell the police soon after going to the spot where large number of people had collected. It was only when certain people told the police that certain scooter passed on the road round about the same time that he came forward to give his statement. But the reason given by him for not disclosing earlier is that he had fear of the police and according to him, it vanished when some people told about a scooter passing round about the same time. He attended to his normal duties that morning, went to some other village to attend funeral and says went to the spot

thereafter. Till then it appears about this ghastly incident he never told to anyone. In our view it would be rather hazardous to keep reliance on the evidence of this witness to hold that he and PW 5 did see the accused or some other person at the spot. Here again it is pertinent to note that when PW 5 could see the actual smashing of the head of the deceased to a stone by the person who was perpetrating the crime, this witness does not speak about it. If the prosecution story that PWs. 5 and 4 were going together on the motor-cycle of PW 5, then practically there was no reason for this witness to give a different story than the one told by PW 5. What PW 5 is alleged to have been seen could also have been seen by this witness in the same measure. There could not have been two different stories from the mouth of these two witnesses who came together to the spot at the same time. In our view therefore the evidence of these two witnesses cannot be accepted as they having seen the accused actually perpetrating the crime.

12. If the evidence of these two witnesses is discarded, then the case rests purely and entirely on circumstantial evidence and it is here that the movements of the accused after the incident become most relevant and material.

13. There is evidence that he was taken into custody by PW 27 and produced before PW 31 round about 3 p.m. He was seen sitting under a tree some distance away from the spot of the incident by PW 6. There were other persons as well. It is here that the accused is said to have been given to PW 6 his own version of the incident. According to PW 6 the accused is said to have told him that after stopping the motor-cycle on which he and the deceased were going, the inmates of the car attacked the girl and took him to a tamarind tree and tied. The accused is said to have told him that the girl was murdered. Whether such a probability is atleast remotely possible so as to give credence to this version should engage our mind. The accused no doubt has not taken this defence, but has given a plea of total denial and even denial of he and the deceased going together that morning leaving Murnad and going to K.R.S. and then returning that night from K.R.S. to Madikeri. One of the arguments advanced by the learned counsel is that if at all the accused was guilty he could not have been present in the vicinity and could have taken to his heels. The fact that till some time at night both of them were

together is established conclusively and satisfactorily by the evidence discussed above. What exactly happened after they left K.R.S. is a matter which is exclusively within the knowledge of the accused. Though we do find some force in the argument of the appellant's counsel that the evidence of the accused and the deceased being last seen together alone cannot lead to an inference that the accused is responsible for this murder, we find something more in the instant case than they having been last seen together.

14. In the case of *Sakharam v. State of Madhya Pradesh* : 1992 CriLJ861 the deceased and the accused were living in one roomed family house. There was no evidence of attempted molesting. The deceased died of gun shot wound and the Supreme Court found that mere fact that the accused and the deceased were only occupants of the house at the time of occurrence is not sufficient to find the accused guilty of murdering the deceased by shooting at her. The possibility of an accidentally going off of the bullet from the gun was not ruled out. Apart from they having been seen together, it is urged on behalf of the appellant that there is practically no motive for the accused to commit the murder of the deceased. The finding of wrist watch of the deceased with the accused is of no consequence, in as much as, both of them were in love with each other and there may be some reason for the accused being in possession of her wrist watch. Other valuables like ear rings and a golden chain were still on the dead body when the inquest was held. Under any circumstance this could not be a murder for gain. If that be so, when both of them were in love with each other and when the important link in the chain of circumstances, viz., the motive is absent, it cannot be said that the links are complete in the chain of circumstances. Even in the case referred to above of *Sakharam v. State of Madhya Pradesh* (1992 Cri LJ 861) (SC), there was no motive.

15. In the case of *Eradu v. State of Hyderabad* : 1956 CriLJ559 , the Supreme Court pointed out that it is a fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. Where the accused enticed away the deceased on the evening of day of the murder and the

deceased was found hanging in the backyard of his house, these circumstances by themselves, were not enough, without anything more, to connect the accused with the crime.

Similarly in the case of *Inderjit Singh v. State of Punjab* : 1991 CriLJ2191 , the Supreme Court pointed out that the sole circumstance that the deceased was last seen in company of the accused was not sufficient to convict the accused.

16. We do find force in the argument of the appellant's counsel that this fact of the accused and the deceased being last seen together by itself cannot be sufficient to find the accused guilty and, therefore, we find it unnecessary to refer to other decisions cited by the learned counsel on this point.

17. If there is no motive whether that by itself is sufficient to say that an important link in the chain of circumstances is missing - came to be considered in the decision of the Supreme Court in the case of *Mulakh Raj Etc. v. Satish Kumar* : 1992 CriLJ1529 of the report, their Lordships of the Supreme Court referred to this point of absence of motive. It was urged there that the case was based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. While according to them undoubtedly in cases of circumstantial evidences motive bears important significance, they pointed out very clearly that motive always locks up in the mind of the accused and sometimes it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is now indispensable with conviction. When facts are clear it is immaterial that no motive has been proved. Therefore absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. Having so observed they proceeded to consider the facts of the case.

In our view though the prosecution has not by clear evidence shown that there was any motive for the accused to commit the murder of the deceased, we do find some material as to how things went on from the time the deceased and the accused left Murnad.

18. The evidence given by the parents of the deceased and PW 18 shows that the betrothal of the deceased was in fact fixed on 18-10-1990. It has however come in the evidence of the mother of the deceased that the parents of the accused were not willing for this marriage. We are not in a position to know whether they really changed their mind and whether the accused gave them indication about it at any point of time before they left Murnad. The letter Ex.P18 is significant in more than one way. As we have already pointed out, the letter did not state that they were going to K.R.S. but on the other hand it gave an indication that the accused and the deceased were not at all going together to K.R.S., but for the night the deceased was staying at Madikeri in the house of elder sister of the accused. If they wanted to be straight forward, then there should be no reason why some false facts came to be stated in this letter. It gives an impression as though the accused disassociated himself from the deceased and parted company even when both of them left Murnad. When her parents only knew that the deceased had gone to the printing press that morning as asked by the accused personally and perhaps when they were leaving together on the motor-cycle was not within the knowledge of the parents of the deceased and the deceased wanted to convey to her parents that she was not returning to the house that evening or soon after the work, there under normal circumstances, the true facts ought to have been stated in Ex.P18, as it appears, at no point of time the parents of the deceased had taken exception for the deceased moving with the accused. Therefore, the possibility of a ground having been prepared when they left Murnad to disassociate the accused from the company of the deceased that night looms large from the reading of Ex.P18. In short, Ex.P18 cannot be considered as having been written by the deceased on her own accord and the hand of the accused in writing falsehood cannot be ruled out.

19. Now the conduct of the accused after both of them left K.R.S. also assumes importance and whether the defence taken by him does add to the circumstantial evidence is the point.

20. In the case of Anant Chintaman Lagu v. State of Bombay : 1960 CriLJ682 it was pointed out that a criminal trial is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the

offence charged. In this connection, that piece of conduct can be held to be incriminatory which had no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material.

In the case of *Pershad v. State of Uttar Pradesh* : 1957 CriLJ328 , wherein a murder charge, the accused falsely denied several relevant facts which had been conclusively established, the Court would be justified in drawing an adverse inference from this against the accused. How far the false explanation given by the accused could be used in the case of circumstantial evidence came to be considered by the Supreme Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra* : 1984 CriLJ1738 . Their Lordships pointed out that it is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by the Court.

21. We have considered the defence taken by the accused as well as the circumstances proved against him. In this behalf we have also taken into consideration the evidence of PW 6 which according to the learned counsel may probabalise that someone else might have committed the murder. We have given our anxious thought to all these aspects. There is a clear answer as to why the accused did not flee from the spot from the unimpeachable circumstance that the motor-cycle of the accused was still lying and perhaps he was thinking of how best to salvage it. It is not shown that it was burnt to ashes. The pictures produced show that if at all anything was burnt it was not considerable. The accused was seen by a good number of people in the vicinity and even he was taken into custody at a place some distance away from the spot. In spite of these facts being proved, the accused came forward with the plea that he was not at all present at the spot and he never went with the deceased from Murnad. It is patently clear

that after both of them left K.R.S. and till the accused was seen alone near at some place away from the dead body, what had happened was exclusively within his knowledge. He does not state anywhere that the persons who came in a car even mishandled his motor-cycle or set it on fire. He does not say who untied him after he was tied by those unknown persons to a tree. Apart from that when all the valuables are left on the person of the deceased and nothing was robbed from his person, because cash of Rs. 47/- was found on his person when he was taken to custody and when there was no evidence to the deceased having been molested by some other person or persons and it is not even the case of the accused, we have no hesitation in finding that somehow the accused came forward with a false plea that some persons coming in a car, separated him and the deceased and then murdered the deceased. If all these had happened during night, practically nothing prevented him from rushing to the police station at K.R.S. which was quite near to the spot and giving his own complaint. Till 3 p.m. when he was produced before the P.S.L. - PW 31 it appears he had not taken any steps to unfold his own version of the incident. When so much evidence has been led about he and the deceased having been together till the last point of time when she must have been done to death and when how she died could have been within his exclusive knowledge and when the version given by him does not in any way even remotely fit into the circumstances appears to be incredible, then, these circumstances brought on record do lead to the conclusion and the only conclusion that it was the accused and the accused alone who committed the murder of the deceased and thereafter with an intention to screen himself from lawful punishment, did attempt to cause disappearance of evidence of murder by setting fire to the body and also to the motorcycle. In our view the trial court was quite justified in finding the accused guilty of both the offences. We dismiss the Criminal Appeal No. 426 of 1993, and confirm the trial Court's judgment of conviction for offences under sections 302 and 201 IPC. Having so found, we proceed to hear the Reference Case to consider whether this is a fit case in which extreme penalty of death is warranted.

22. Needless to state that presently imprisonment for life is the rule where the charge of murder is proved against an accused person and death sentence may be imposed in rarest of rare cases. Even in case of *Machhi Singh v. State of*

Punjab : 1983 CriLJ1457 , the Supreme Court pointed out that before opting for the death penalty, the circumstances of offender are also required to be taken into consideration along with the circumstances of the crime. Except in gravest cases of extreme culpability, the extreme penalty of death sentence should not be imposed.

In order to apply these guidelines interalia the questions that may be asked by the Court by itself would be :

Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence And are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender

23. In our view we do not find anything uncommon about the crime which renders sentence of imprisonment for life inadequate. For that reason, we reject the reference made by the trial Court under section 366 Cr.P.C. but commute the sentence to one of imprisonment for life for the offence under Section 302 IPC against the appellant-accused. We also sentence the accused to rigorous imprisonment for three years for the offence under section 201 IPC directing substantive sentences to run concurrently.

24. Acting under section 428 Cr.P.C. we give set off of the period of detention from the date of his arrest till the date of this judgment and direct him to suffer the remaining sentence.

25. Order accordingly.