

**(2016) 01 KAR CK 0284**

**KARNATAKA HIGH COURT**

**Case No:** Criminal Appeal No. 196 of 2013 (C)

Samya Naika

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision:** Jan. 21, 2016

**Citation:** (2016) 166 AIC 474 : (2016) 4 CriCC 452 : (2016) 3 Crimes 580 : (2016) 4 KantLJ 490

**Hon'ble Judges:** Mohan M. Shantanagoudar and K.N. Phaneendra, JJ.

**Bench:** Division Bench

**Advocate:** Sri K. Varaprasad, Advocate, for the Appellant; Sri P.M. Nawaz, State Public Prosecutor-I, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

**Mohan M. Shantanagoudar, J.**—The judgment of conviction and order of sentence dated 29-12-2012 passed by the Fast Track Court-V, Madhugiri, in S.C. No. 64 of 2011, is called in question in this appeal by the convicted accused.

By the impugned judgment, the Trial Court has convicted the accused for the offences punishable under Sections 302 and 201 of Indian Penal Code, 1860.

2. The case of the prosecution in brief is that, the deceased Rameebai, is the wife of the accused; on 21-9-2010, P.W. 1-Kumara Naika, after seeing the pieces of the dead body near the bushes at Dadagondanahalli, lodged a complaint as per Ex. P. 1, which came to be registered in Crime No. 129 of 2010. During the course of investigation, the pieces were found to be the pieces of the dead body of Rameebai; the accused was arrested after one and half months from said date; he was arrested on 2-11-2010 and was produced before the Trial Court on 3-11-2010. The police after investigation laid the charge-sheet against the accused.

The motive alleged by the prosecution is that the accused was suspecting the fidelity of his wife and on the night of 20-9-2010, he had quarreled with his wife and committed her

murder in the house by chopping her head and limbs; thereafter, the accused converted the dead body into pieces and thrown the pieces of the dead body into the bushes.

3. In order to prove its case, the prosecution examined in all 8 witnesses and got marked 40 exhibits and 19 material objects. On behalf of the defence, no witness is examined. As aforementioned, the Trial Court on evaluation of the material on record, convicted the accused.

4. Heard Sri K. Varaprasad, learned Advocate appearing on behalf of the appellant and Sri Nawaz, learned State Public Prosecutor appearing for the respondent-State.

5. At the outset we would mention here itself that, the order of the Trial Court is not a speaking one as it has not assigned the valid reasons for coming to the conclusion. Paragraphs 1 to 5 are confined to preliminary points such as facts etc. In Paragraphs 6, 7 and 8 of the judgment, the Trial Court has narrated the evidence on record. In Paragraph 9, the Trial Court has come to the conclusion abruptly, in Paragraphs 10, 11, 12, 13, 14, the Trial Court has discussed the judgments cited at the Bar and in Paragraph 15, the Trial Court has reached to the conclusion.

6. We have carefully gone through the material on record and evaluated the evidence. P.W. 1, who is the complainant, has turned hostile to the case of the prosecution. P.Ws. 2,3,4 and 5, who are all near relatives of the deceased and the accused, have also turned hostile to the case of the prosecution. They were supposed to depose about the motive for commission of the crime as well as about the investigation done by the police, drawing-up of the panchanama of scene of offence, inquest panchanama seizure of pieces of dead body, etc., but, none of these witnesses have supported the case of the prosecution. Even on cross-examination of these witnesses by the Public Prosecutor, no useful purpose is served. Thus the Trial Court, in our considered opinion, has rightly not relied upon the evidence of P.Ws. 1 to 5. Even on reconsidering the materials on record, we do not find any ground to rely upon the evidence of these witnesses.

P.W. 6 is the Doctor, who conducted autopsy, P.W. 7 is the witness, who has signed the Mahazar-Ex. P. 26, under which photograph of the deceased was seized, has also turned hostile to the prosecution case. P.W. 8 is the Inspector of Police, who conducted investigation. Except P.Ws. 6 and 8-official witness, all other witnesses including the close relatives of the deceased have turned hostile to the case of the prosecution.

7. There are no eye-witnesses to the incident in question. According to the prosecution, the incident has taken place within the house, wherein the accused and the deceased had lived. The children of the couple were living in Bombay. Even according to the accused, he was also living in Bombay. However, he used to come to the village to see his wife about once in two months. He used to pay money to his wife whenever he came to the village. As mentioned supra, the accused was allegedly present on date of the incident and he committed the offence in the house. The prosecution further relies upon

the circumstances such as abscondence of the accused, recovery of skull at the instance of the accused and the FSI. Report, which goes against the accused.

As mentioned supra, the defence of the accused is that he was always residing in Bombay and he was working then\* and he used to come to the village once in two months.

8. During the investigation, the skull was seized by the police along with the mandible containing 14 teeth. As per the" evidence on record, the deceased was aged about 45 years and it is not the age to lose as many as 16 to 18 teeth.

Be that as I may. The skull with mandible alleged to have been seized was sent to the experts to conduct Super Imposition Test. But, on verification the skull with the mandible sent to them, the experts have opined that it is not possible to conduct Super Imposition Test. However, the DNA test conducted by FSL to verify whether the dead body was belonging to the deceased or not, was found to be successful. E.x. P. 40 is the DNA Test Report. The said report reveals that the deceased Rameebai, Sri Lakshma Naik (brother) and Smt. Gangibai (sister) are the offspring of the same biological parents. By means DNA Test, the Investigating Authority is successful to identify the dead body as that of the deceased Rameebai. However, we find that there is no material to connect the accused with the said crime.

9. The recovery panchas have turned hostile to the case of the prosecution. The Super Imposition Test has failed. Therefore, it cannot definitely be said that the skull with mandible seized by the police during the course of investigation were belonging to the deceased Rameebai. However, as mentioned supra, the DNA Test confirms that deceased and her sister are from the same biological parents.

10. It is no doubt true that the FSL Report-Ex. P. 24 supports the case of the prosecution. All the articles sent to FSL including the chopper, clothes of the deceased, bed-sheets, etc. found in the house, were all containing "B" blood group. Thus is it clear that the incident has taken place in the matrimonial home of the deceased. But, in the absence of any material to show that the accused had come from the Bombay during relevant point of time, it would be very hard to believe the case of the prosecution that the accused has committed the murder.

11. The material on record, more particularly, the evidence of P.Ws. 1 to 5, explains the circumstances of abscondence of the accused. As mentioned supra, the accused normally resides at Bombay. There is nothing on record to show that, in spite of the accused coming to know about the murder of his wife, he remained absconding and he did not come back to the village. No material is produced by the Investigating Officer to show that they made search of the accused in various places including Bombay.

12. In the light of such shaky material on record, in our considered opinion, the benefit of doubt should go in favour of the accused. The circumstances relied upon by the

prosecution are not proved by the prosecution satisfactorily and beyond reasonable doubt. In view of the same, the appeal is entitled to be allowed.

13. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence dated 29-12-2012 passed by the FTC-V, Madhugiri, in S.C. No. 64 of 2011 is set aside. The accused is acquitted of the charges levelled against him. He shall be released forthwith, if he is not required in any other case.