IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 21ST DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1261/2022

BETWEEN:

SMT. PAVITHRA,
W/O SATHISH BABU,
AGED ABOUT 41 YEARS,
SAMANAHALLI VILLAGE,
SARJAPURA HOBLI, ANEKAL TALUK,
BENGALURU-562125.

PRESENT ADDRESS:
CTP NO.12327, DETAILED IN CENTRAL PRISON
BENGALURU HOSA ROAD, ELECTRONIC CITY
PARAPPANA AGRAHARA,
BENGALURU-560100. … APPELLANT

(BY SRI. MAHESH M.R., ADVOCATE)

AND:

STATE OF KARNATAKA,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560001. … RESPONDENT

(BY SMT. RASHMI PATEL, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 20.07.2021, PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT SIT AT ANEKAL, IN S.C.NO.5059/2014, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed against the judgment of conviction and sentence dated 20.07.2021 passed in S.C.No.5059/2014, on the file of the III Additional District and Sessions Judge, Bengaluru Rural District sitting at Anekal, for the offence punishable under Section 302 of IPC and to acquit the accused.

2. The factual matrix of the case of the prosecution is that accused No.1 is the wife of P.W.1 and accused No.2 is the mother-in-law of P.W.1. Accused No.1 was admitted to N.R.Hospital situated at Attibele for delivery and she gave birth

to a female child on 21.10.2013. P.W.1 had asked accused No.1 to come to the house after delivery and as accused No.1 did not come to the house of P.W.1, he had registered a case before the Sarjapura Police Station on 25.10.2013. The accused No.2 had appeared before Sarjapura Police Station and requested for two days time in order to settle the dispute. The accused No.2 was residing in a rented house. That on 26.10.2013 at about 10.00 a.m., accused No.1 had attempted to strangulate the 6 days old baby and as the child did not die, accused No.1 had smashed the baby to the floor and killed it. Inspite of having knowledge of the murder, accused No.2 did not disclose the said fact to anyone and attempted to screen accused No.1. Based on the complaint of P.W.1, case was registered and investigation was conducted and charge-sheet was filed against accused Nos.1 and 2. Having received the charge-sheet, cognizance was taken and charges were framed and the accused did not plead guilty and claimed trial. The prosecution in order to prove the case examined P.W.1 to P.W.16 and got marked the documents at Exs.P.1 to 11. The accused were subjected to 313 statement

and denied the incriminating evidence. The accused did not choose to lead any evidence.

3. The Trial Court having appreciated both oral and documentary evidence available on record comes to the conclusion that the child died due to homicide and convicted accused No.1 for the offence punishable under Section 302 of IPC and imposed life imprisonment and to pay fine of Rs.10,000/-. In default to pay fine, accused No.1 shall undergo further imprisonment for 6 months. The accused No.2 was convicted for the offence punishable under Section 202 of IPC and to undergo simple imprisonment for 40 days and to pay fine of Rs.5,000/-. In default to pay fine, accused No.2 shall undergo further simple imprisonment for 1 month. The accused Nos.1 and 2 were entitled for set off under Section 428 of Cr.P.C. The accused No.2 shall be set at liberty if she deposits the fine amount of Rs.5,000/-, since she was in judicial custody for 40 days as under trial prisoner.

4. Being aggrieved by the judgment of conviction and sentence, the present appeal is filed before this Court.

5. The learned counsel for the appellant/accused would vehemently contend that P.W.12 deposes before the Court that accused Nos.1 and 2 had approached P.W.12 on 26.10.2013 at around 11.45 p.m. with the child stating that the child has no movements for the past 20 minutes and is not drinking milk, and as there were no symptoms of life when he examined the baby, he informed that the child is no more. The learned counsel submits that P.W.12 who examined the child first has not noticed any injury on the dead body of the child and has submitted the report as per Ex.P.9. It is also contended that the inquest report Ex.P.4 recorded by the Investigating Officer dated 27.10.2013 also does not disclose any injury caused to the dead child. In the absence of any injury being found on the dead child by P.W.12 and also the investigation agency, it cannot be said that the appellant is responsible for the death of the child. The learned counsel would also submit that in the absence of any mention of head injuries in either the report Ex.P.9 of P.W.12 or the inquest report Ex.P.4, the appellant has thereby discharged her burden of proof under Section 106 as the only fact within her special knowledge was that the baby was unresponsive and not

drinking milk, which she brought to the notice of the doctor P.W.12 and she has no knowledge of any head injuries that have occurred to the baby as the baby was not in her custody.

6. It is contended that the post mortem report Ex.P.5 issued by P.W.13 does not disclose the age of the injuries and therefore, it cannot be relied upon to the extent that it is not certain whether the head injuries caused the death of the child or the child died due to any other reason, especially in the context of there being no mention of head injuries in either the report Ex.P.9 of P.W.12 or the inquest report Ex.P.4. The doctor who conducted the post mortem i.e., P.W.13 admits in his chief examination that he has not indicated as to when exactly the head injuries might have occurred and therefore, in the absence of that information, it cannot be stated with certainty that the baby died due to the head injuries or that it was homicidal death. P.W.13 also admits in his examination-in-chief that 0.5 cm. wound on the skull of the baby is visible to the naked eye and therefore, the Trial Court wrongly glossed over the absence of such injuries in the inquest report Ex.P.4. The prosecution has

not collected the bloodstained clothes and the same was not subjected to examination to rule out the cause of death. The learned counsel also vehemently contend that the Trial Court committed an error in relying upon the prosecution evidence, which is highly interested, contradictory, unreliable and artificial and the evidence of P.W.1 not inspires the confidence of the Court. The admission given by P.W.1 during the course of cross-examination revolves upon the conduct of P.W.1 that he played the role with the Investigating Officer in getting the report as against his wife and mother-in-law, since he was having the ill-will against both of them from the date of discharge of the child, as discharge was made against his wish. The Trial Court fails to take note of all these factors into consideration and committed an error in not appreciating the prosecution interested witness evidence and hence, prayed this Court to acquit the accused.

7. Per contra, the learned High Court Government Pleader appearing for the respondent/State would vehemently contend that it is not in dispute that the child was in the hospital for a period of 5 days and thereafter, the child was got

discharged from the hospital and on the very next day, the child died. The learned counsel would submit that there is no dispute that the child was in the custody of the mother. The material discloses that there are injuries on the child and no explanation was given by accused No.1 with regard to the incriminating evidence is concerned and hence, the Trial Court rightly taken note of both oral and documentary evidence and appreciated the medical evidence and the mother ought to have explained how the child had sustained the injuries on the head. In the absence of explanation, the Trial Court not committed any error.

8. Having heard the learned counsel for the appellant/accused and the learned High Court Government Pleader appearing for the respondent/State and on re-appreciation of evidence available before the Court, the points that would arise for the consideration of this Court are:

(i) Whether the Trial Court committed an error in convicting the accused based on the evidence of the prosecution witnesses and whether it requires interference of this Court?

(ii) What order?

Point No.(i):

9. We have perused both oral and documentary evidence available on record. The law was set in motion at the instance of P.W.1, who is the husband of accused No.1 and also the son-in-law of accused No.2. Having perused the material available on record, it is not in dispute that the child was aged about 6 days as on the date of death. It is also to be noted that delivery was taken place on 21.10.2013 in the hospital and the child was healthy and in the hospital for 5 days and discharged on 25.10.2013, but the child died on the next day. It has to be noted that the child was taken to Balaji Nursing Home on 26.10.2013 at 11.45 a.m. with the complaint that the child is not responsive from last 20 minutes and not making any reaction and requested to examine the child. The doctor examined the child and found that the child is not alive. Having received the information from the doctor, she went away. The doctor says that the lady who brought the child made the statement that she is residing in the street, which is located backside of Balaji Nursing Home. This is evident from the document Ex.P.9. When the child was taken to Balaji Nursing Home and examined

the child, the doctor not found any injuries on the child. The document of Ex.P.10 issued by N.R. Hospital is also clear that immediately that lady rushed to N.R.Hospital, where the delivery was made. On examination, the doctor says that the child was brought dead to the hospital at 1.30 p.m. on 26.10.2013 and document is also marked and this doctor also not noticed any injury on the child on examination. Hence, it is very clear that when the child was taken to both the hospitals i.e., Balaji Nursing Home and the N.R. Hospital, not noticed any injuries.

10. It is also important to note that due of unhappiness of P.W.1 when the child was got discharged and went to the house of accused No.2 on 25.10.2013, Ex.P.3 came into existence. No doubt, in Ex.P.3 it is mentioned that the said complaint was given on 25.10.2013 by P.W.1. But in an ingenious method not mentioned the timings at what time the complaint was given. In the complaint an allegation is made against the mother-in-law of P.W.1 that she got discharged the child and took the mother and child to her house. If really the said complaint was given on 25.10.2013 itself, the police officer

who received this complaint would have mentioned the date, but not mentioned the date. However, based on Ex.P.3, no steps were taken. But on the death of the child, a complaint was given in terms of Ex.P.2 and the same was given on 26.10.2013 at 19 hours and UDR No.28/2013 was registered under Section 174(c) of Cr.P.C. and also Ex.P.11 FIR came into existence. It is also important to note that subsequently on 31.10.2013, case was registered and Ex.P.1 spot mahazar was conducted and there was no sign of any incident in the house. It is the case of the prosecution that accused No.1 made an attempt to take away the life by strangulating the child. But when she could not succeed in the same, the head of the child was pushed on the wall and other circumstances is that she pushed the child on the floor. Having taken note of the inquest, no such injuries were noticed in Ex.P.4 as contended by the learned counsel appearing for the appellant and the same is marked through P.W.5. Only P.W.1 suspected the role of wife and mother-in-law.

11. It is also important to note that as per Ex.P.5 post mortem report, the opinion as to the cause of death is

mentioned as "the opinion as to the cause of death of a viable female neonate of gestational age above 7 months and below 9 months is due to head injury sustained". This Court has to take note of the evidence of the doctor, who conducted the post mortem i.e., P.W.13. P.W.13 mentions the nature of injuries and particularly, injury No.5 is mentioned as there was 0.5 cm. long crack on the head and blood clot was found in the brain i.e., sub dural and subarachnoid cavity. There was 30 ml. of milk in the stomach. No doubt, P.W.13 says that he mentioned the injuries in Ex.P.5. He says that when strangulated to commit the murder, injury Nos.1 to 3 could be caused and if the child is smashed on the ground, remaining injuries could be caused. In the cross-examination, he categorically admits that the injuries found are visible to bare eyes. But the doctors who examined the child at Balaji Nursing Home and N.R. Hospital not noticed those injuries. It has to be noted that the age of the injury is not mentioned and the same is admitted. Further admission was given by P.W.13 that when he went to conduct post mortem, not found any police officers in the mortuary and categorically admitted that the injury found on the head could be visible by

bare eyes. These answers elicited from the mouth of this witness also creates a doubt in the mind of the Court. It is also important to note that prior to death of the child, the child was fed milk and the same is mentioned in Ex.P.5. P.W.13 admits that before conducting the post mortem, he has not collected the death certificate. It is elicited that he has collected the documents regarding what time the child was brought to the hospital, at what time the body was kept in the cold storage and at what time the body was taken for post mortem. It is important to note that whether the injuries are ante-mortem or post-mortem, nothing is mentioned in the post mortem report as well as not spoken by the doctor P.W.13 and hence, whether it is a case of homicidal or natural death, no material is available on record. No doubt, there are injuries. But those injuries are not found when the Investigating Officer conducted the inquest as per Ex.P.4 and if he really had noticed those injuries, he would have mentioned the same in Ex.P.4. Hence, there is a force in the contention of the learned counsel for the appellant that death is not homicidal and when the child was not responsive, taken the child to Balaji Nursing Home as well as N.R. Hospital

and those two doctors, who have examined the child have not noticed any such injuries and hence, the case of the prosecution is doubtful with regard to the homicidal is concerned and the Trial Court fails to take note of the document of Exs.P.9 and 10, which were issued by the treated doctors. If such injuries were found and the same are visible as admitted by P.W.13, both the doctors would have noticed the same when the child was brought to the hospital with a complaint of no response from the child.

12. Now, this Court has to take note of the evidence of P.W.12, who is an important witness i.e., Balaji Nursing Home doctor, who first examined the child at 11.45 a.m. He says that on examination he found that the child was not alive. He says that both mother and grandmother brought the child to the hospital and they are the residents near the hospital and he gave the report in terms of Ex.P.9. His evidence supports the defence that there were no injuries when the child was brought to the hospital.

13. Now this Court has to examine the evidence of doctor P.W.14, N.R. Hospital, wherein the child was delivered and treated for 5 days and discharged. In the cross-examination, she admits that for having examined the child in the hospital, no documents are available. She categorically admits that there are no documents with regard to whether the child died on account of natural death or homicide. She admits that cannot say whether it is natural death or homicide. She categorically admits that if oxygen is not supplied, it will cause damage to the brain and other organs will fail. Nothing is elicited from the mouth of this witness also by the prosecution that when the child was brought to the hospital, whether she found the injuries and hence, Ex.P.10 also supports the case of the defence and not the prosecution, as no injuries were noticed. Hence, the very case of the prosecution that it is a homicidal cannot be accepted.

14. Now this Court has to examine the evidence of police witnesses before appreciating the evidence of P.W.1 i.e., P.W.15 PSI, who received the complaint by P.W.1 and registered UDR

No.28/2013 and he identified the signature in Ex.P.2. In the cross-examination of this witness, he admits that if he entrusts the work to other police, they must report with regard to their work. He says that P.C. Nagaraj went to N.R.Hospital on 26.10.2013, but he has not given any report. If any report is received regarding cognizable offence, it should be mentioned in telephone directory maintained in the station and if it is a cognizable offence, SHO has to register FIR. When a suggestion was made that on 26.10.2013, P.W.1 has given complaint of cognizable offence, he says that he is not aware of the same. But according to P.W.1, he gave the complaint on that day itself and relies upon the document and this Court has already pointed out that no timings is mentioned in respect of the complaint of discharge without his consent. For having given the child to the mortuary, no report was given. But he says on 27.10.2013, he went to hospital at 8.00 p.m. and he is not aware of what had happened before conducting of post mortem in Vaidehi Hospital. This cross-examination also supports the case of the defence that no injuries were found when the child was taken to the hospital. But there are subsequent injuries when the child was

taken to the hospital and this Court has to examine the evidence of P.W.1 to corroborate the case of the prosecution having considered the other evidence of police witnesses i.e., P.W.11 and P.W.16.

15. P.W.11 is another police witness. In his evidence, he says that he continued the investigation from 27.10.2023 onwards and secured panch witnesses to Vaidehi Hospital and conducted inquest as per Ex.P4 and so also on the same day, went to spot and secured panch witnesses and drawn panchanamma in terms of Ex.P1. He also obtained opinion from the Doctor of Balaji Nursing Home and collected PM report in terms of Ex.P5 and invoked Section 302 of IPC and registered FIR in terms of Ex.P6. It is also his evidence that accused was arrested and produced on 01.11.2013 and recorded voluntary statement and so also statement of accused No.1 was collected on 02.11.2013 and through Tahsildar conducted spot mahazar in terms of Ex.P7 and obtained the sketch in terms of Ex.P8. This witness was subjected to cross-examination. In the cross-examination, he admits that in Exs.P1 and P2 suspected the role

of the accused. He also admits that in Exs.P4 and P5 also mentioned suspecting the role of accused and at the time of drawing mahazar in terms of Ex.P1, both accused Nos.1 and 2 were there in the house. It is also elicited that he has not recorded the statement of C.W.17, but obtained the report on 27.10.2013 and he categorically admits that the said record is created on 26.10.2013. He also admits that he cannot state, who handed over the dead body of the child to the hospital and no document to that effect. But, two police staffs, P.W.1 and accused No.2 brought the child to the police station. Having considered his evidence, it is very clear that only there was suspicion about committing the murder and also admission was given that report dated 27.10.2013 appears to be created on 26.10.2013 and no document to the effect that dead body of the child was handed over to the hospital.

16. Now this Court has to consider the evidence of P.W.16, who is the Police Inspector. In his evidence, he says that he conducted further investigation from 03.11.2023 and sought opinion about the cause of death of the child and also got

prepared the sketch from the PWD Department. He also says that he recorded the statement of C.Ws.1, 3, 5, 21 and 23 and after completion of investigation, filed the charge sheet. In the cross-examination of this witness, it is suggested that nothing is mentioned in Ex.P4, except the black mark near the neck and no injuries were mentioned and same was denied. He categorically admits that he did not obtain the opinion whether the injuries are ante-mortem or post-mortem which are mentioned in Ex.P5. Further, he admits that there is no document evidencing the fact that from whom, when, where and at what time C.W.23 i.e., P.W.15 received the dead body. But, he says that he obtained the dead body from Attibele N.R. Hospital and admits that having taken the dead body, no mahazar was drawn and also did not record the statement of C.W.18, but says that he has obtained the report. He also categorically admits that in Ex.P10, P.W.14 has not stated that dead body was given to P.W.15 and also during his investigation, he did not find which officer has received the dead body and no document to that effect. P.W.15 also not furnished any details where the body was kept for PM and also no receipt is obtained for having handed over the dead

body and to that effect, a report should be given to the Investigating Officer. However, he categorically submits that after the inquest, body was kept in Vaidehi Hospital till PM was conducted. He also categorically admitted that when he found injuries on the child, he did not enquire the staff of the hospital. It is suggested that in between inquest and PM, the injuries were found on the child and the same was denied and further suggestion was made that he is giving evidence in order to save P.W.15 and the same was denied. He also admits that P.W.15 at the first instance registered the case as UDR based on the complaint of P.W.1.

17. Having considered the evidence of P.W.16, it is very clear that he did not obtain opinion from the Doctor whether the injuries are ante-mortem or post-mortem. Hence, it is clear that whether the injuries are ante-mortem or post-mortem, no evidence at all. Even with regard to handing over the body to the hospital, there is no material and no mahazar was drawn and no document for having handed over the body to the hospital. Even no document with regard to request made to the hospital to

keep the body in the hospital and also he did not record the statement of hospital staff regarding nature of injuries are concerned which he found. Hence, the evidence of prosecution to prove the case against the accused is a very weak piece of evidence available on record.

18. Having considered the evidence of police witnesses, this Court has to examine other than the evidence of P.W.1, if any evidence is available before the Court to point out the role of the accused. P.W.2 has turned hostile in respect of Ex.P1 and P.W.3 is the spot mahazar witness and he says that he had signed the mahazar when he was taken to draw the panchanama and his evidence is only with regard to spot panchanama. But, in the cross-examination, he says that he cannot state, who wrote the mahazar and also do not know the contents of the mahazar. The evidence of this witness is also not helpful to the case of the prosecution.

19. P.W.4 in his evidence says that mahazar was drawn on 27.10.2013 in terms of Ex.P1 and he identified his signature as Ex.P1(c). He also says that he did not know the contents of

the mahazar and police have also not given notice to him before calling him, but he says that he had signed the same in the police station and he is also having acquaintance with P.W.1, since he is the resident of same village i.e., P.W.1 and also Grama Panchayath member. The evidence of this witness also will not come to the aid of prosecution, since he had signed the same in the police station and it was known to P.W.1.

20. P.W.5, who is the inquest mahazar witness in his evidence says that there was black mark near the neck when the police conducted mahazar. In the cross-examination, answer is elicited that he was taken to Vaidehi Hospital in between 11.30 to 12.30 p.m. and police wrote Ex.P4. But, he do not know the contents of the mahazar and police wrote the same as the Doctor said and the police even not seized any cloth.

21. The main witness is P.W.6. According to the prosecution, this witness witnessed accused No.1 bringing the child to hospital along with a aged lady and accused No.2 requested the Doctor that child is in serious condition and after examination, the Doctor informed that child is no more.

Thereafter, accused No.2 left the hospital and he do not know to which place she went and thereafter, he met P.W.1 and he informed about the death of the child. This witness was subjected to cross-examination. In the cross-examination, he categorically admits that P.W.1 is his brother's son and he is residing separately and P.W.1 and his wife i.e., accused No.1 were residing together. But, he do not know how was the relationship between accused Nos.1 and 2 and P.W.1. He admits that earlier also, she gave birth to a child this child is second child and also admits that in usual course, the parents of the daughter would take care of the delivery expenses of the first child and in respect of second child is concerned, husband family to meet the expenses. It is suggested that accused No.2 only got admitted accused No.1 for delivery and witness denies the same. However, it is elicited that he went to hospital at 2.00 p.m., but Doctor came at around 2.45 p.m. and he was examined by the Doctor between 2.45 to 3.00 p.m. and Doctor has not given any OPD slip. He also categorically admits that for having visited the hospital, he is not having any slip.

22. Having taken note of evidence of P.W.6, it is very clear that this witness is a planted witness by the prosecution. But, he says that accused No.2 brought the child to the hospital and Doctor examined the child. But, not stated at what time he went to hospital in chief evidence. But, in the cross-examination, it is elicited that he went to hospital at 2.00 p.m. but, Doctor came at around 2.45 p.m. and he was examined at 3.00 p.m. but, no documentary evidence before the Court that he went and took treatment. But, his evidence is that Doctor came at 2.45 p.m. and he went to hospital at 2.00 p.m. However, the fact is that the child was taken to Balaji Nursing Home at 11.45 a.m. itself on 26.10.2013 in terms of Ex.P9-report given by the Doctor, who treated and examined the child. Hence, it is clear that this witness is a planted witness and according to him, he went to hospital at 2.00 p.m. and Doctor came at 2.45 p.m. But, in terms of the report at Ex.P9, Doctor at Balaji Nursing Home examined the child at 11.45 a.m. and there are material contradictions in his evidence and the same cannot be believed.

23. P.W.7 is an inquest witness and when the inquest was conducted, found injuries on the head and the same was grievous injury and he identified his signature in Ex.P4-inquest. This witness was subjected to cross-examination and in the cross-examination, he categorically admits that he is a friend of P.W.1 and P.W.1 came to Court and he came along with him. It is also his evidence that C.W.5 and P.W.1 only requested him to come and give evidence. Hence, it is clear that he is also an interested witness of P.W.1 and his evidence is very clear that when he saw the injury on the head of the child, no blood was found and he cannot state what the Doctor had mentioned in Ex.P4 and also do not know the contents of Ex.P1. Hence, the evidence of this witness also cannot be accepted, since he is an interested witness and close friend of P.W.1.

24. P.W.8 is the Secretary of Grama Panchayath, who has issued Tax Assessment Confirmation Letter of the house. He admits that there is no entry with regard to it relates to which village.

25. The other witnesses are P.W.9 and P.W.10 and both of them have turned hostile and not supported the case of the prosecution.

26. The star witness available before the Court is P.W.1, who is the husband of accused No.1 and son-in-law of accused No.2. This Court has to examine the evidence meticulously as the case is registered at the instance of P.W.1. No dispute having considered the evidence of this witness that accused No.1 and this witness married in the year 2009 and also no dispute that they were having a 4 year child in the said wedlock and this child is second child. It is also his evidence that accused No.2 was residing in a tenanted premises. But, his evidence is that he got admitted his wife to the hospital and on 5th day, without his consent, accused No.2 got discharged accused No.1 from the hospital and taken the child inspite of telling his wife that he would come and discharge and take her to his house. But, he says that bill was not cleared in the hospital and when he was going towards the house of accused No.2, at that time, accused No.2 was going to make the payment leaving accused No.1 in

the house in a car. Hence, he gave complaint to the police that his wife and child was got discharged without his consent and when the police called both accused Nos.1 and 2, they took two days' time. This witness in his further chief evidence says that he gave complaint in terms of Ex.P2 and police also came to N.R. Hospital and found injury on the neck of the child and also say that his uncle witnessed accused Nos.1 and 2 bringing the child to Balaji Nursing Home, wherein the Doctor declared that child is no more. But, he do not know the reason for death of the child. Hence, he gave the complaint suspecting the role of the accused. But, after conducting inquest, came to know that child has died on account of smashing head of the child on the wall and as a result, there was fracture on the head and child has died.

27. In the cross-examination of P.W.1, he admits that all of them are residing together and also categorically admits that till the birth of second child, they were very cordial. Hence, it is very clear that there was no dispute between the husband and wife till the delivery of second child and even accused No.2 was also visiting their house. He also admits that delivery expenses

of first child was met by accused No.2 only and there is a clear admission that he sent his wife-accused No.1 to the house of accused No.2 ten days prior to the delivery and both accused Nos.1 and 2 were residing at Dommasandra and distance between his house and the house of accused No.2 is 6 kms. and distance from N.R. Hospital to his house is 8 kms. and so also, distance from Attibele to the house of accused Nos.1 and 2 is 8 kms. He categorically admits that accused No.1 was admitted to hospital and it was a cesarean delivery and he gave consent for the same. He also says that expenses of delivery is Rs.65,000/-, but claims that he only gave the same and he has no receipt for having made the payment. When suggestion was made that accused No.2 only met the expenses and the same was denied. However, he admits that accused No.1 was having delivery pain and also pain in view of cesarean delivery. It is elicited that on 25.10.2013, accused No.2 took accused No.1 and child in Indica car and accused No.2 was coming in the very same car to pay the balance amount and this admission takes away the case of P.W.1 that he made the payment. He also categorically admits that accused No.2 was coming to pay the balance amount and

categorically says that he himself gave the complaint that child was taken without his consent and the same is admitted. But after discharge, he did not go to see the child and also did not enquire the health of his wife-accused No.1 and he was there in the house on 26th. He also says that he received a call from the hospital i.e., from Dr. Vijayamma, who informed that his child is no more and immediately, he went to the hospital between 11.30 to 12.00 p.m. But, the fact is that child was taken and examined at Balaji Nursing Home at 11.30 to 11.45 a.m. as per Ex.P10. But, he says that when he went to hospital, accused No.2 was there and doctor was also there, but though he requested the Doctor to examine the child to know the cause of death, but Doctor did not examine the child and also he categorically admits that there was no difficulty for him to take the child and get the opinion from other hospital. He also categorically says that accused Nos.1 and 2 were there in hospital itself. But, his evidence cannot be accepted for the reason that child was taken to N.R. Hospital as per Ex.P10 and Doctor at N.R. Hospital issued the letter Ex.P10 stating that child

was brought dead to hospital at 1.30 p.m. and answer given by P.W.1 also cannot be accepted to that effect.

28. It is important to note that P.W.1 categorically says that accused persons were there in hospital and police also came in a jeep and enquired and so also, enquired the Doctor and says that he himself and police were there for about half an hour. But, he categorically says that in his car, child was taken along with two police to Vaidehi Hospital and the accused persons went back to their house. In the meanwhile, while taking the child to hospital, they went to police station and it was between 3.00 to 4.00 p.m and he was in the car, but police went inside the station and at that time, child was in the car itself and thereafter, Sub-Inspector came near the car and saw the child and spoke to him and thereafter, continued along with police and took the child in his car itself to Vaidehi Hospital at around 6.00 p.m. and hospital people kept the dead body of the child in a box and hospital staff took the same and it was around 6.30 p.m. and they had issued the receipt. But, no such receipt is produced before the Court. He also says that again he came to hospital at

7.30 p.m. but the police, who came along with him left to the police station and thereafter, on the next day also, he went to police station and then went to hospital and the very same police accompanied him and he was there in the hospital till 2.30 p.m. Thereafter, he took the child to his house and police went to station and he cremated the child. He also categorically admits that he also visited police station on 27th and at that time, accused persons were there in the police station. He also says that he also visited on 28th and on that day also, accused persons were there in the police station, but police have not recorded the statement. He also admits that he continuously visited the police station for 15 days. But, he cannot tell whether the accused persons were there on 29th or not, but it is clear that accused Nos.1 and 2 were kept in the police station at the instance of P.W.1.

29. It is also important to note that till sending the accused persons to jail, he was regularly going to the police station and was also regularly speaking to Sub-Inspector. He also says that he cannot say on what date, the accused persons

were sent to jail. It is important to note that there is an admission on the part of P.W.1 that he was suspecting his wife character with one Ramesh, who was a neighbourer and he also quarreled with him, but he denies the said suggestion and says that he warned and the said warning was 10 days prior to sending accused No.1 to her house. He categorically admits that in Exs.P2 and P3, he has not stated that he only got admitted his wife to N.R. Hospital and the said suggestion was denied and also with regard to discharging accused No.1 and child without making the payment and the said suggestion was also denied. But, not found the said contents in Exs.P2 and P3-complaints which were given by him. He also categorically admits that he has stated the same before the Court and also says that he is not having any rivalry with his uncle P.W.6. and a suggestion was made that P.W.6 has not stated that he went to Hospital.

30. It is important to note that he had filed M.C.No.55/2014 and the same is subsequent to this incident and he had also obtained ex-parte divorce. He also admits that he had given the address of accused No.1 i.e., No.24, Bikkanahalli

Village, Sarjapura Hobli, Anekal Taluk and hence, Ex.D1 is confronted and he admitted the same. But, he claims that even to show that accused No.1 is residing in that address, he has given the identity card and admits that said ex-parte order was challenged and he has received notice and also categorically admits that he contracted second marriage and in the second marriage, he is was having 4 months old child. He admits that in the application, they have given the address of accused No.1. It is suggested that accused No.2 only made the payment in the hospital and the same was denied. It is the specific defence that with the help of police, he took the child and kept the child in the box in Vaidehi Hospital and the same is admitted. It is also the specific defence that he himself caused the injuries to the child and the same was denied.

31. Having considered the admission on the part of P.W.1, it is very clear that in his chief evidence, though he says that difference has arisen only subsequent to the death of second child, but his admission is very clear that he was very cordial till then. It is also very clear that Ex.P3-complaint was

given at the first instance for having got discharged the child and this Court has already noticed that no timing in Ex.P3 and Ex.P2 is subsequent to the death of the child. It has to be noted that in the evidence of Doctor, who conducted PM opined that cause of death of the child is due to smashing the child on the floor. But, in the evidence of P.W.1, he says that head of the child was smashed on the wall. Hence, it is clear that the very prosecution itself is not sure about how the injuries were sustained by the child and whether it is ante-mortem or post mortem and there is no evidence to that effect. Apart from that the admission of P.W.1 is very clear that he says that his uncle informed about the death of the child. But, this Court has pointed out that in terms of Ex.P10, child was taken to hospital at 11.45 a.m., but his uncle went to hospital at 2.00 p.m. and the evidence of P.W.1 in the further chief cannot be believed and only suspected the role of the accused. But, the answer elicited from the mouth of P.W.1 takes away the case of the prosecution.

32. Having considered the material available on record, there is no medical evidence to the effect that whether it is a

homicidal or natural death and none of the witnesses, who have examined the child stated that they found the injuries i.e., treated Doctor at Balaji Hospital as well as N.R. Hospital. It is also very clear that P.W.1 claims that he only got admitted accused No.1 to hospital and categorically admits that he only sent his wife-accused No.1 ten days prior to the admission to the hospital to the house of accused No.2 and also it is very clear that accused No.2 only went and admitted accused No.1 in the hospital and also his admission is very clear that accused No.2 was going to hospital in a car and in the very same car taken the accused No.1 and went to the house and thereafter to hospital to clear the balance amount. Hence, it is very clear that he made false claim that he only made the payment. Apart from that, it is very clear that he was having the child after death and in his car only taken the child and while going to Vaidehi Hospital, they visited the police station. But, the child was in his car, but police along with him went inside the police station. When such being the case, there are chances of causing injury on the child when the child was in his custody in the car. It has to be noted that he gave the child to Vaidehi Hospital along with police in between

6.00 to 6.30 p.m. But, again he says that he went to hospital at 7.30 p.m. and what made him to again go to hospital, there is no explanation. The Investigating Officer also categorically says that he did not enquire the hospital staff with regard to the injuries when he found the same. The Doctor also categorically admits that when he went to hospital, police was not there in the hospital and apart from that, his admission is very clear that from day one, he was visiting the police station till the accused persons were sent to the jail for more than 15 days and he was in touch with Sub-Inspector everyday. Hence, it is very clear that P.W.1 involved in registering the case against his wife and the Court has to take note of the conduct of P.W.1 as well as P.W.15-Police Inspector.

33. Having considered the admission on the part of P.W.1, it is very clear that P.W.1 had filed M.C.No.55/2014 and obtained ex-parte judgment of decree of divorce by showing different address and he also got married and having a child through second wife. Though, he claims that he spent money for admitting his wife i.e., accused No.1 to the hospital and on

overall perusal of evidence of P.W.1, it is very clear with regard to modus operandi of P.W.1 that taking advantage of the fact that child lost its life and making use of the said circumstance, circumvented accused No.1-wife must be in jail. The police, who have investigated the matter was hand-in-glove with P.W.1 and even Ex.P7-spot mahazar is very clear that not found any sign of either child was smashed to the floor as contended by the prosecution and so also no blood stains were found on the wall, since P.W.1 deposes that child's head was smashed by accused No.1, but the Trial Court failed to take note that 30 ml. of milk was found in the stomach of the child and it is clear that even accused No.1 has fed milk to the child. On overall perusal of evidence of P.W.1 and the cross examination elicited from the mouth of P.W.1, it is clear that Trial Court committed an error in appreciating the evidence and lost sight of the admissions and each admissions were not taken note by the Trial Court while coming to the conclusion that accused No.1 had committed the murder of her own child.

34. The judgment which has been relied upon by the Trial Court in the case of **BIPIN KUMAR MONDAL vs. STATE OF WEST BENGAL** reported in **(2010) 12 SCC 91** is not applicable to the facts of the case on hand in view of the admission on the part of P.W.1 with regard to motive is concerned in paragraph Nos.22 to 26 and actual motive of P.W.1 is to fix accused No.1, in order to separate his relationship with accused No.1. In this judgment also, it is held that accused can be convicted, if evidence is reliable and trustworthy and absence of motive is insignificant, that too in a case of direct evidence and circumstantial evidence and the admissions of P.W.1 takes away the case of the prosecution. There is no material to show that accused No.1 had committed the offence and the evidence of the police witnesses and P.W.1 is very clear that accused No.1 has been falsely implicated in the case and there is no sufficient material to believe the case of the prosecution.

35. The Trial Court also relied upon the judgment of the Apex Court in **PRITHIPAL SINGH AND OTHERS vs. STATE OF PUNJAB AND ANOTHER** reported in **(2012) 1 SCC 10** and the

Trial Court relied upon paragraph No.53 with regard to burden of proof under Section 106 and this judgment also will not come to the aid of the prosecution, since it is clear that child was within the possession of accused immediately after the child lost its life and there is no evidence of the Doctor that injuries are ante-mortem or post-mortem. When such being the case, question of invoking Section 106 to explain the same by the accused does not arise. Section 106 arises only if the prosecution makes out a case against the accused and then the Court can expect explanation under Section 106 as held by the Apex Court in the judgment relied upon by the Trial Court referred (supra).

36. The other judgment relied upon by the Trial Court is the judgment of the Apex Court in **RAJKUMAR vs. STATE OF MADHYA PRADESH** reported in **(2014) 5 SCC 353.** In this judgment also, the Apex Court discussed with regard to non-explanation in 313 statement by the accused. No doubt, the accused has a duty to furnish an explanation in a statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him and if the accused has been

given freedom to remain silent during investigation as well as before Court, then accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. But, having considered the admission on the part of P.W.1, this judgment also will not come to the aid of prosecution. The Trial Court committed an error in relying upon this judgment in coming to the conclusion that there was no explanation on the part of the accused and the said judgment it will come to the aid of the prosecution only when the incriminating evidence is found against the accused. This Court having considered the evidence of P.W.6 comes to the conclusion that he is a planted witness and so also evidence of P.W.7 and P.W.1 not inspires the confidence of the Court. When such being the case, question of explanation under Section 313 Cr.P.C. also does not arise.

37. No doubt, the Trial Court also relied upon the judgment of the Apex Court in **JAVED ABDUL RAJJAQ SHAIKH vs. STATE OF MAHARASHTRA** reported in **(2019) 10 SCC 778,** the Apex Court discussed with regard to circumstantial

evidence and medical evidence of homicide by throttling by appellant clearly ruling out suicide and comes to the conclusion that there is a medical evidence. In the case on hand, medical evidence is also not clear whether the death is ante-mortem or post mortem and there is no positive evidence before the Court whether it is homicidal or natural death. Hence, question of giving any explanation under Section 313 Cr.P.C. does not arise when the prosecution has not made out any case, particularly incriminating evidence against the accused and it is a clear case of circumventing accused Nos.1 and 2 to make them as accused and particularly, the document of Exs.P9 and P10 are very clear that child was taken to the hospital and both of them have not noticed the injuries and those witnesses have also been examined before the Court and none of these witnesses speak about the fact that they found the injuries. But, in the case on hand, it is very clear that injuries were caused subsequent to death of the child and no blood was found in the place of injury as deposed by P.W.7 and also when the Doctor deposes before the Court that there was a mark on the head, the same was visible by any person, however, it was not noticed by the

Doctors, who treated the child at N.R. Hospital as well as Balaji Nursing Home and the injuries are also found subsequent to conducting inquest and those injuries were not found in Ex.P4.

38. The Court has to take note of enmity between the complainant witnesses and the accused and Ex.P2 is the document of complaint given immediately after the wife and child was discharged. Hence, it is clear that they were having enmity. The Apex Court in the judgment reported in **DILAWAR SINGH vs. STATE OF HARYANA** reported in **(2015) 1 SCC 737** held that enmity of the witnesses with the accused is not a ground to reject their testimony and if on proper scrutiny, the testimony of such witnesses is found reliable, the accused can be convicted. However, the possibility of falsely involving some persons in the crime or exaggerating the role of some of the accused by such witnesses should be kept in mind and ascertained on the facts of each case. Having considered this principle and also the evidence elicited from the mouth of P.W.1, it is very clear that the accused has been implicated at the instance of P.W.1, who was having enmity against his wife and

mother-in-law, who have been arraigned as accused and he persuaded the police in registering the case and made them to arrest both of them.

39. This Court also would like to rely upon the judgment of the Apex Court in **SHEILA SEBASTIAN vs. R. JAWAHAR RAJ** reported in **2018 (7) SCC 581** regarding benefit of doubt and meaning of reasonable doubt and to constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. The Apex Court also further held that while the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice. Exaggeration of the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. But having reassessed

the evidence of P.W.1, the Trial Court lost sight of the criminal jurisprudence while appreciating the evidence.

40. This Court also would like to rely upon the judgment of the Apex Court in **BRAHMA SWAROOP vs. STATE OF U.P.** reported in **AIR 2011 SC 280** with regard to inquest report under Section 174 of Cr.P.C. is not a substantive evidence. In the case on hand, the prosecution also relies upon inquest report. But, on perusal of the inquest report, no such injuries were found on the child when the inquest was conducted and basic purpose of conducting inquest is to ascertain regarding apparent cause of death whether accidental, suicidal or homicidal or by some machinery etc. It is therefore not necessary to enter all the details of the overt acts in the inquest report. In the case on hand, no injuries were found when the inquest was conducted.

41. The Court also has to take note while appreciating circumstantial evidence whether circumstances point out the role of the accused in committing the offence which is discussed in **VIDHYALAKSHMI vs. STATE OF KERALA** reported in **AIR**

2019 SC 1397 and also in **SHARAD BRIDHICHAND SARDA vs. STATE OF MAHARASHTRA** reported in **(1984) 4 SCC 116**, wherein it is categorically held with regard to five steps i.e., pancha sheela to be satisfied in a case of circumstantial evidence that each chain link must be established and if it is not found, the same cannot be relied upon and the present case is also based on the circumstantial evidence.

42. The other observation made by the Trial Court is with regard to circumstantial evidence, particularly Section 106 of the Evidence Act and the burden would be comparative of a lighter character and there would be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. But, this Court has already taken note of the fact that child was in exclusive custody of P.W.1 after the death and carried the dead body of the child in his car along with police. But, when the police went to the police station, the child was in his custody in his car itself. This Court in detail discussed that when the child is in custody of P.W.1 and it is not in the exclusive possession of accused No.1 and also when there is no

material with regard to nature of injuries are ante-mortem or post-mortem, the Trial Court erroneously invoked Section 106 of the Evidence Act that there was no explanation on the part of the accused and question of explanation invoking Section 106 of the Evidence Act does not arise in the case on hand.

43. The Apex Court also in a three-Judges Bench judgment in **RAJESH PRASAD vs. STATE OF BIHAR AND ANOTHER** reported in **(2022) 3 SCC 471** in paragraph No.30 has considered various earlier judgments on the scope of interference in a case of acquittal, wherein it is held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Court.

44. This Court also would like to rely upon the judgment of the Apex Court in **KANNAIYA vs. STATE OF MADHYA**

PRADESH reported in **2025 SCC ONLINE SC 2270,** wherein the Apex Court in paragraph No.58 referred the decision in **PANKAJ vs. STATE OF RAJASTHAN** reported in **(2016) 16 SCC 192,** wherein it was emphasized that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Apex Court also held that it is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. When the evidence produced has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. Similarly, in **BHAGWAN SAHAI vs. STATE OF RAJASTHAN,** the Apex Court reiterated that once the prosecution is found to have suppressed the original and genesis of the occurrence, the only proper course is to grant the accused the benefit of doubt.

45. This Court also would like to rely upon the judgment of the Apex Court in **SHAIL KUMARI vs. STATE OF CHHATTISGARH** reported in **2025 SCC ONLINE SC 1640,** wherein the Apex Court in paragraph No.6 referring the judgment in **SHARAD BIRDHICHAND SARDA vs. STATE OF**

MAHARASHTRA reported in **(1984) 4 SCC 116** in paragraph No.151 observed 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. 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 a Court. The Apex Court also in paragraph No.152 referring number of citations of the Apex Court observed that there must be a chain of evidence so far complete as not to lease any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

46. This Court also would like to rely upon the judgment of the Apex Court in **BABU SAHEBAGOUDA RUDRAGOUDAR AND OTHERS vs. STATE OF KARNATAKA** reported in **(2024) 8 SCC 149,** wherein the Apex Court has held that legally, reversal of acquittal, is permissible only when the impugned acquittal suffers from patent perversity and based on a

misreading/omission to consider material available on record, reversal of acquittal, held, also permissible when no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

47. When such being the case, the Trial Court ought to have considered both oral and documentary evidence available before the Court meticulously and the very admission given by P.W.1 takes away the case of prosecution that he had indulged in bringing home the guilt of the accused, even though they have not committed any offence and clear admission was given that till the accused were arrested, he was in constant touch with Police Sub-Inspector for more than 15 days and in connivance with the police, falsely implicated the accused Nos.1 and 2. In the case on hand, every day he was visiting the police station i.e., from the date of death of the child and the said admission takes away the case of the prosecution and all these materials were not considered by the Trial Court in a proper perspective. Hence, the Trial Court committed an error in

appreciating both oral and documentary evidence and not made out the case against the accused Nos.1 and 2. Hence, we answer point No.(i) accordingly.

Point No.(ii)

48. In view of the discussion made above, we pass the following:

ORDER

(i) The criminal appeal is *allowed*.

(ii) The impugned judgment of conviction and sentence passed against the accused in S.C.No.5059/2014 dated 20.07.2021, on the file of the III Additional District and Sessions Judge, Bengaluru Rural District sitting at Anekal, for the offence punishable under Section 302 of IPC is hereby set aside.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MD/ST