



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.444 OF 2017 (A)

BETWEEN:

STATE OF KARNATAKA
BY UPPARPET POLICE STATION
BENGALURU
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDITIONAL S.P.P.)

AND:

MADAN MOHAN RAJ @ MADAN RAJ
@ MADAN @ DANIEL D'SOUZA @ RAJENDER
S/O. M. JAYARAJ
AGED ABOUT 41 YEARS
RESIDING AT FLAT NO.501
J.P. APARTMENT, CHEETAH REDDY COLONY
NEW BOVINAPALLI, SECUNDERABAD
HYDERABAD
ANDHRA PRADESH-500 001.

...RESPONDENT

(BY SRI CHANDRAPPA K.N., ADVOCATE)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) & (3) OF THE CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 22-3-2016 PASSED BY THE LX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH-61) IN SESSIONS CASE NO.462 OF 2005, ACQUITTING THE





RESPONDENT/ACCUSED NO.2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 201 READ WITH SECTION 34 OF IPC.

THIS CRIMINAL APPEAL IS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

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

Heard Smt. Rashmi Jadhav, learned Additional State Public Prosecutor for the appellant-State and Sri Chandrappa K.N., learned counsel for the respondent-accused No.2.

2. The State has preferred this appeal challenging the acquittal of accused No.2 for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

3. The factual matrix of the case of the prosecution are that on 10.01.2005 at about 4:00 p.m., accused Nos.1 and 2 booked Room No.204 of Mahalakshmi Deluxe Lodge, Balepete Main Road, Bengaluru, within the jurisdiction of Upparpet Police Station, Bengaluru, by giving a false name and address and



took their friend, Sri Rajesh Arthum (hereinafter referred to as 'deceased'), to the said room with an intention to commit his murder and they committed his murder by separating his head and thumb between 10:00 p.m. and 11:00 p.m. and snatched his ICICI, Visa Card and Master Cards and took his head and two thumbs in black air bag and travelled in Bajaj Pulsar bike, bearing Registration No.AP-10 AD-9815, and threw the bag containing head and two thumbs near the gate of Edga Maidana of Mominpura, Mysuru Road, and poured petrol on the bag and lit fire of them with an intention to destroy the evidence.

4. On the basis of the first information given by CW1-T. Venkatachalaiah, Supervisor of Mahalakshmi Deluxe Lodge, Balepete Main Road, Bengaluru, on 13.1.2005, the Police registered a case in Crime No.50 of 2005 and went to Mahalakshmi Deluxe Lodge, Room No.204 and on receiving foul smell emanating from the room, they broke open the door, which was locked, and in the presence of mahazar witnesses, drew mahazar in the room and seized plastic jug, bloodstained shirt, bloodstained white bedspread, hair found on the pillow, hair found on the chair, dust from the bed, hair found on the



T.V., pillows, woollen blanket, cushion of the bed, blood from the floor, one towel from the toilet, particles of vomit, one pillow from the toilet, another blanket and bloodstained towel, glass, arrival register and receipt book of the Lodge, and then took photographs of the dead body of the deceased and prepared the sketch of the place of occurrence and then shifted the dead body to the Victoria Hospital for inquest and conducted inquest mahazar on the dead body. The Police recorded the statements of the witnesses, who were present at the time of inquest, recorded the statements of the friends of the deceased, who gave missing complaint in Crime No.8 of 2005, and recorded the statements of the father and the brother of the deceased and other witnesses. They also gave requisition to the Magistrate to draw blood sample of the father and the brother of the deceased and went to the Court along with the Technician and obtained blood sample for DNA test of the father and the brother of the deceased and thereafter, conducted Post-Mortem on the dead body of the deceased and collected femur bone, clavicle bone, sternum, skin and hair of the deceased and sent to the Director, CDFD, Nacharam, Hyderabad. Thereafter on 17.01.2005, they went to the room



of the deceased and seized a shirt of the deceased by drawing mahazar and gave requisition to the Bank Manager of ICICI to give information regarding the bank account of the deceased. On 22.01.2005, the Police arrested accused No.1, recorded his voluntary statement and seized one Sony Ericsson mobile, one Samsung mobile and one HSBC Bank Card from him by drawing mahazar. On the basis of voluntary statement, the Police proceeded towards the place where the accused thrown the burnt air bag containing head and thumb of the deceased. On 23.01.2025, the Police went to Edga Maidan, Mominpura, Mysuru Road and verified the place where the accused burnt the air bag by pouring petrol. But, they did not find the air bag in the place and then they found burnt skull near the dust bin and they seized the skull by drawing mahazar and then recorded statement of witnesses. Then, they went to Valki Deluxe Lodge, near Ananda Rao Cricle, Bangalore and seized the arrival register, wherein the accused booked Room No.201 on 09.01.2005 and also seized the advance receipt book by drawing mahazar and recorded statement of witnesses.



5. On 23.01.2005, they went near Gali Anjaneya Swami Temple, Mysuru Road and searched for the knives used for the commission of offence and the thumbs. But, they could not trace out the knives and thumbs of the deceased. Hence, they drew mahazar in the presence of mahazar witnesses. On 24.01.2005, the accused No.1 took the Police to Malavalli Main Road, Kadalapura Grama, Tea Hotel of Rafi and recorded statement of Madhu and also they visited near Teresian College Compound, Mysuru Road and searched for the shirt thrown by accused No.1. But, they did not trace out the shirt and drew mahzar in the place. On 31.01.2005, PSI Joseph and his staff arrested accused No.2 in Secunderabad and recorded his voluntary statement and they seized one Samsung mobile from accused No.2 by drawing mahzar. On 31.01.2005, PSI Krishna Kumar came along with accused No.1 from Delhi and submitted report along with mahazar and seized registers. On 31.01.2005, accused No.2 was produced before the Court and obtained Police custody of accused No.2 and on 01.02.2005, they taken accused to Mysuru and recorded statement of Kumari Ranjitha and also seized Bajaj Pulsar bike bearing No.AP-10-AD-9815 which was parked in front of Mysuru



Railway Station. On 03.02.2005, they have obtained report from Victoria Hospital along with sample hairs of accused Nos.1 and 2 and on 04.02.2005, they secured the skull of Rajesh Arthum and sent to CDFD, Hyderabad, Andhra Pradesh for DNA test. Then, they went to Vijayawada, Andhra Pradesh for search of the clothes of accused Nos.1 and 2. But, they did not trace out the shirts and they drew mahazar. Then they went to Chandana Brothers Jewellers, Vijayawada and seized one bill book, bank charge slip from A. V. Reddy by drawing mahazar.

6. On 04.02.2005, they went to Nagarjuna Lodge, Vijayawada and seized the arrival register by drawing mahazar. On 05.02.2005, they drew mahazar in Gulzar shop, Hyderabad and seized one Kamala design gold chain and one mango design gold chain by drawing mahazar. On 05.02.2005, the accused took to Dharma Jewellers, Pannam Complex, Secunderabad and seized one gold chain and one gold ring from the owner of the shop Shailesh by drawing mahazar and then they went to room of accused No.2 at Gandhinagara, New Bakaram, House of Ramana Mohan and seized HSBC, HDFC, Nata Westvesco cards and Highway Low Limits card and GVC



Fashions Pvt. Limited card by drawing mahazar. On 07.02.2005, they went to Poona and seized arrival register in Ghanashyam Lodge by drawing mahazar. On 10.02.2005, they went to Food World Super Market Ltd., Basaveshwara Nagara, Bengaluru and seized two sample knives by drawing mahazar and then they went to Edga Maidan, Mominpura, J.P.Nagara and drew mahazar in the place where the accused burnt the air bag containing the skull and thumb. On 11.02.2005, they produced accused before the Court and on 14.02.2005, they drew sketch of the spot with the help of PWD Executive Engineer. On 22.02.2005, they sent knives to FSL, Victoria Hospital for their opinion and on 15.03.2005, they sent arrival register and specimen hand writings to FSL for examination and after completion of investigation, the Police filed charge sheet against the accused.

7. The Police investigated the matter and filed the charge sheet and after filing of the charge sheet, cognizance of the offence was taken by the learned Magistrate and the learned Magistrate committed the case to Principal City Civil and Sessions Judge, Bengaluru for trial. On receipt of entire



committal record, the Court secured the presence of the accused by issuing intimation to the jail authorities. The matter was heard, charges were framed and accused did not plead guilty and claimed for trial.

8. During the course of trial, accused No.1 absconded from Belgaum Jail and therefore, this Court registered separate spit up case against accused No.1 in S.C.No.264/2010. In the meanwhile, accused No.1 died, hence, case against him is abated and only accused No.2 i.e., the appellant was subjected to trial.

9. The prosecution examined 39 witnesses as P.Ws.1 to 39 and got marked the documents as Exs.P1 to P53 and M.Os.1 to 32. The accused No.2 i.e., the appellant herein was subjected to 313 statement and he denied all the incriminating circumstances and not led any defence evidence.

10. The Trial Court having considered both oral and documentary evidence placed on record comes to the conclusion that prosecution has proved that deceased Rajesh Arthum has met with homicidal death and answered point



Nos.2 to 7 as 'negative' that there is no chain link, in order to prove the guilt of the accused, since the case rests upon circumstantial evidence and acquitted the accused for the above offences. Being aggrieved by the judgment of acquittal, the present appeal is filed by the State before this Court.

11. The main contention of Smt. Rashmi Jadhav, learned Additional SPP appearing for the appellant-State is that the Trial Court failed to consider both oral and documentary evidence available on record. She would specifically contend that the Trial Court wrongly appreciated the evidence that last seen theory is not established by the prosecution. She also brought to notice of this Court that evidence of P.W.2, who is an employee of the Lodge is very clear and he has categorically deposed that this accused came at around 6.30 p.m. and went to the room and while going to room, he had taken a black colour bag and around 8.30 p.m., both accused Nos.1 and 2 came out and informed him that deceased is in the room and one of them is going to drop one of the accused and will come back. But, he did not come back and they found stinking smell from the said room on 13.01.2005 and hence, informed the



same to the concerned jurisdictional Police and Police came and opened the locked room and found the dead body which was lying on the bed and drawn the mahazar and seized relevant articles. She would submit that P.W.2, categorically identified accused No.2 that he came and went to the particular room.

12. Learned Additional SPP also brought to notice of this Court evidence of P.W.33, P.W.34 as well as P.W.31. She would vehemently contend that P.W.31 deposed before the Court with regard to purchase of gold chain and ring by using the card and mahazar was drawn in terms of Ex.P29 and bill book is marked as Ex.P30 which was purchased on 12.01.2005 within two days of committing the murder. She also brought to notice of this Court that evidence of P.W.34 is very clear that accused No.2 was brought by the Police and he identified accused No.2 and he had handed over the chain and ring and mahazar was drawn in terms of Ex.P33. She also vehemently contend that in the house of accused No.2, found the credit card of the deceased and mahazar was drawn in terms of Ex.P47. Further, she also contend that prior to committing the murder, they also booked room on 09.01.2005 in the name of



Rajendra and entry was made by accused No.2 himself and documents Exs.P12 to P15 are also marked. She would further contend that Ex.P39 mahazar and Ex.P38 voluntary statement of accused No.2 is also recorded and marked and even though there was no recovery at the instance of this accused, Police have seized the motorcycle which belongs to the brother of this accused by drawing mahazar in terms of Ex.P29. The evidence of P.W.20 is very clear with regard to seizure of motorcycle and also examined the witness P.W.19. She would vehemently contend that even though all these materials were available on record, the Trial Court has not properly appreciated the evidence available on record. Hence, matter requires reconsideration by setting aside the judgment of acquittal, particularly accused No.2, who had played key role in committing the murder and thereafter, used the very card belonging to the deceased for purchase of gold ornaments which were sold later on.

13. Per contra, Sri Chandrappa K.N., learned counsel appearing for the respondent-accused would vehemently contend that case rests upon circumstantial evidence and there



is no direct evidence. The counsel would contend that even though witnesses P.Ws.1 to 39 have been examined, their evidence is not helpful to the prosecution. Though P.W.2 has deposed before the Court that he identified the accused, but in order to prove the case against the accused, nothing is placed on record. The counsel would submit that P.Ws.3 to 5 are inquest witnesses and the evidence of those witnesses are not material. P.W.6 is the Supervisor, who had informed the incident to P.W.1 Receptionist and P.W.7 gave intimation to the Police. P.W.8 is the friend of the deceased and he lodged the missing complaint on 12.01.2005 itself. The counsel would vehemently contend that Post-Mortem was conducted on 15.01.2005. But, according to the prosecution, murder was committed on 10.01.2005 itself. However, the Doctor, who has been examined before the Court as P.W.24 says that murder was committed between 36.00 to 48.00 hours and the said timing also not matches. Learned counsel would submit that though Ex.P30 is marked, the same stands in the name of deceased and the name of this accused is not found in the bill. Apart from that, P.W.31 has not identified the accused for having purchased the gold chain and ring from him. He would



further submit that though P.W.34 deposed before the Court that accused No.2 himself came and sold the gold chain and ring, but to prove the fact that the same is purchased using the card which belongs to the deceased, nothing is placed on record. The counsel also vehemently contend that when there was no chain link and circumstantial evidence, the Trial Court rightly exercised the discretion in favour of the accused, since benefit of doubt goes in favour of the accused and not committed any error.

14. Having heard learned Additional SPP appearing for the appellant-State and learned counsel appearing for the respondent-accused, the points that would arise for consideration of this Court are:

- (1) Whether the Trial Court committed an error in acquitting accused No.2 in coming to the conclusion that prosecution has not proved the case beyond reasonable doubt and whether it requires interference?
- (2) What order?

Point No.(1):



15. Having heard learned Additional SPP appearing for the appellant-State and learned counsel appearing for the respondent-accused, we have perused the evidence available on record. The learned Additional SPP appearing for the appellant-State mainly relies upon evidence of P.W.2. No doubt, P.W.2 deposes before the Court that accused No.2 came to Lodge at around 6.30 p.m. and went back at around 8.30 p.m., but the case of the prosecution is that murder has taken place in between 10.00 p.m. to 11.00 p.m. and having committed the murder by cutting and separating his head and thumb between the said time, snatched ICICI Visa card and Master card of the deceased and took his head and two thumbs in a black air bag and traveled in Bajaj Pulsar bike bearing No.AP-10-AD-9815.

16. It has to be noted that there is discrepancy with regard to mentioning of timing and P.W.2 says that accused Nos.1 and 2 left the Lodge at around 8.00 p.m. to 8.30 p.m. But, according to the prosecution, they took the head and two thumbs in a black colour air bag and burnt the same using petrol. However, the skull was found and mahazar was drawn is



not in dispute. It is also not in dispute that blood was drawn from one of the family member of deceased and DNA test was also conducted and DNA test report is in favour of the prosecution that the skull which was seized is that of the deceased. But, while considering the material on record, that too, in a case of circumstantial evidence, the prosecution must establish chain link between each of the incident. No doubt, the prosecution relies upon the evidence of P.W.31, who is the owner of the jewellery shop, who sold the gold chain and ring having accepted the card of the deceased, but he did not identify the accused when the accused was produced before the Court and he turned hostile. When the learned Public Prosecutor cross-examined this witness, got elicited the answer with regard to drawing of mahazar in terms of Ex.P29. Ex.P30 is the bill book and Ex.30(a) is the receipt under which the chain was sold. But, the evidence of P.W.31 is not helpful to the prosecution, since P.W.31 has not identified accused No.2 and purchase is also made in the name of the deceased.

17. It is also important to note that accused No.1 is no more and all the recovery is made at the instance of accused



No.1 and he passed away immediately after framing of charge. Hence, split up case is registered against him when he escaped and in the meanwhile, he passed away. But, there is no immediate recovery at the instance of accused No.2 i.e., this appellant. No doubt, the prosecution mainly relies upon the evidence of P.W.34, he identifies that accused No.2 came and sold the chain and mahazar was drawn in terms of Ex.P33. It has to be noted that the evidence of P.W.31 not supports the case of prosecution and there is no corroborative piece of evidence that chain which was purchased from the shop of P.W.31 was sold only in the shop of P.W.34. It is also important to note that even the card belonging to the deceased was not seized and the same is also not marked. Though it is stated that card was found in the house of accused No.2, there is no material with regard to seizure of the same from the house of accused No.2.

18. No doubt, learned Additional SPP appearing for the appellant-State brought to notice of this Court that on 09.01.2005, accused Nos.1 and 2 took the room in the name of Rajendra, but in order to prove that these accused persons only



took the room, nothing is placed on record though contention was taken that there has been entry made by accused No.2 himself and there is no material before the Court that said hand writing belongs to accused No.2 himself. No doubt, Ex.P15 is marked, in order to prove the same that accused No.2 himself booked the room, no material is placed on record and though voluntary statement of present accused is recorded in terms of Ex.P38 and the same can be considered only if there is recovery at the instance of accused and mere recording of voluntary statement will not support the case of the prosecution and the same also cannot be relied upon and only if there is recovery based on voluntary statement, then Court can look into the voluntary statement and the same is also not proved and mahazar was drawn in terms of Ex.P39.

19. Learned Additional SPP for the appellant-State also brought to notice of this Court that motorcycle in which they carried the head and two thumbs, in order to screen the evidence belongs to brother of the accused No.2, the same was seized and mahazar was drawn in terms of Ex.P20. It is also important to note that motorcycle was seized by collecting the



key from one Ranjitha and she has not been examined before the Trial Court and in order to prove the fact that the said motorcycle belongs to brother of the accused also, nothing is placed on record and Ex.P20 is also not proved. Though P.W.19 deposes with regard to non-examination of said Ranjitha, who handed over the key of the motorcycle, the same is also not proved by the prosecution. When the Investigating Officer found that motorcycle belongs to brother of accused No.2, ought to have seized the vehicle to show that the same stands in the name of brother of accused No.2 and no such effort has been made and 'B' Register Extract is also collected and produced to show that motor cycle belongs to brother of this appellant.

20. Having considered the material available on record, both oral and documentary evidence placed on record with regard to last seen theory is concerned, no doubt, the Trial Court committed an error in appreciating the evidence that P.W.2 has not identified the accused, but he has identified the accused. But, only last seen theory itself cannot be a ground to convict an accused when chain link is not established by the



prosecution. In a case of circumstantial evidence, there must be linking evidence to establish each of the circumstances and the same is not placed on record. Hence, the Trial Court extended the benefit of doubt in favour of the accused and rightly acquitted the accused and when there is no linking evidence, in order to establish the chain of circumstances, we do not find any error on the part of Trial Court in coming to such a conclusion. The evidence of P.W.2 and P.W.34 is not sufficient to come to a conclusion that the prosecution has proved the case against the accused beyond reasonable doubt.

21. We have already pointed out that evidence of P.W.31 is not helpful, since he has not identified the accused and mere evidence and identification of accused by P.W.2 and P.W.34 cannot be a ground to convict the accused. Hence, benefit of doubt goes in favour of the accused and we do not find any error on the part of the Trial Court and we do not find any legal evidence to reverse the judgment of the Trial Court and there is no material to set aside the judgment of acquittal and convict the accused. Accordingly, I answer point No.(1) as 'negative'.



Point No.(2):

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

ORDER

- (i) The criminal appeal is dismissed.
- (ii) The bail bond, if any executed by the respondent-accused stands cancelled.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE