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**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

Dated this the 1st Day of April 2013

Present

THE HON'BLE MR.JUSTICE B.V.PINTO

And

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

Criminal Appeal No.2752/2011
& Criminal Appeal No.2753/2011

In CrI. A.No.2752/2011

Between:

Basavaraj Yallappa Saidannavar,
Aged about 30 years,
R/o Herur, Tq: Hangal,
Dist: Haveri.

...Appellant

(By Shri. I.P.Moses, Advocate)

A n d :

The State of Karnataka,
By Haliyal (U.K.) Police Station,
Karwar District, represented by
State Public Prosecutor,
High Court Circuit Bench Building,
Dharwad.

...Respondent

(By Shri. Y.V.Raviraj, Addl. Govt. Advocate)

This criminal appeal is filed under Section 374 of Cr.P.C. seeking to set aside the judgment and order of conviction and sentence recorded by the principal District & Sessions Judge, Karwar, in S.C. No.6/2007 dated 20.04.2010, thereby convicting the appellant for the offences punishable under Sections 32 of IPC and sentencing him to undergo life imprisonment and imposed a fine of Rs.1,000/- in default to undergo S.I. for 6 months and further sentenced the accused for the offences punishable under Section 201 read with Section 34 of IPC S.I. for 2 years and pay fine of Rs.1,000/- in default S.I. for three months.

In CrI. A.No.2753/2011

Between:

Smt. Renuka @ Sundranma Kom.
Chandrappa Kammar,
Age 26 years, Occ: Household work,
R/o Devi Hosur, Tq: Haveri,
Now at Shivapur, Haliyal.

...Appellant

(By Shri. Santosh D.Naragund, Advocate)

A n d :

The State of Karnataka,
By Haliyal (U.K.) Police Station,
Karwar District, represented by
State Public Prosecutor,
High Court Circuit Bench Building,
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These criminal appeals coming on for Hearing this day, **H.S.Kempanna, J.**, delivered the following:

JUDGMENT

These two appeals preferred by the appellants/accused are directed against the judgment and order dated 20.04.2010 passed in S.C.No.6/2007 by Sessions Judge, Uttara Kannada, Karwar, convicting them for the offences punishable under Sections 302, 201 read with 34 of Indian Penal Code and sentencing them to undergo imprisonment for life and to pay fine of Rs.2,000/- each, in default, to undergo simple

imprisonment for six months for the offence under Section 302 read with 34 of Indian Penal Code and to undergo simple imprisonment for two years and to pay fine of Rs.1,000/- each, in default, to undergo simple imprisonment for three months for the offence under Section 201 read with 34 of Indian Penal Code.

2. Criminal Appeal No.2752/2011 is preferred by accused No.2. Criminal Appeal No.2753/2011 has been preferred by accused No.1. Since these two appeals are directed against the same judgment and order, they are heard together and are disposed of by this common judgment.

3. The brief facts of the case are:-

The appellants/accused were tried on the charges for the offences punishable under Section 302 read with 34 IPC and 201 read with 34 of IPC. It is alleged that on 11.10.2006 in the wee hours at 4.00 a.m. in the house

bearing No.205 situated at Shivapura village, the accused, in furtherance of their common intention, did commit the murder of Chandrappa Kammar by assaulting him with a wooden club and also by smothering him, and after committing the murder, in order to cause disappearance of the evidence of the said murder to screen themselves from legal punishment, removed the body from inside the house and kept it on the pial of the house to make it appear that the murder has been committed by someone else and thereby have committed aforementioned offence.

4. It is the case of the prosecution, the deceased Chandrappa Kammar is the husband of accused No.1-Renuka. He was working as a teacher in a Government Higher Primary School at Shivapura. He was living with accused No.1 and three children including P.W.2, in his house situated at some distance from the school where he was working at Shivapura.

Accused No.2 is also a school teacher working at Hangal. He was regularly visiting the house of the deceased and accused No.1. Accused No.1 had developed illicit intimacy with accused No.2. It is the prosecution case that accused No.2, whenever he was visiting the house of the deceased and accused No.1, was sometimes staying overnight also. Such being the case, it is the case of the prosecution, the accused in furtherance of their common intention, in order to get rid of the deceased, on 11.10.2006 in the wee hours at about 4.00 a.m., when the deceased was sleeping in the front room of his house did commit his murder by assaulting him with M.O.2 – the wooden club and by smothering him with the T-shirt-M.O.1. After committing his murder, in order to cause disappearance of the evidence of murder to screen themselves from legal punishment, they removed the body from inside the room and placed it on the pial of the house. This

occurrence, according to the prosecution was seen by P.W.2-the daughter of the deceased and accused No.1.

5. It is further the case of the prosecution that at about 8.00 a.m. on 11.10.2006, P.W.13-PSI of Halyal Town Police Station received an anonymous telephone call about the death of the deceased. Immediately, he proceeded to the house of the deceased at Shivapura along with his staff, after informing the same to his immediate superior P.W.15- the CPI. There he saw the body of the deceased lying in front of the house and accused No.1 and her three daughters standing near the house. Thereafter, P.W.13, on enquiry with accused No.1, recorded her first information as per Ex.P.14, returned to the Police Station and on the basis of Ex.P.14 registered a case in Crime No.114/2006 for the offences under Sections 302, 201 read with 34 of Indian Penal Code against unknown person, initially, and issued FIR to the jurisdictional Magistrate as per

Ex.P.15. Thereafter, he handed over further investigation of the case to P.W.15-C.P.I. P.W.15, on taking over the investigation, held inquest over the body of the deceased and drew up inquest panchanama as per Ex.P.4 in the presence of panch-P.W.5 and another. At the time of Ex.P.4, he recorded the statements of blood relatives of the deceased. After completing Ex.P.4, he sent the body for subjecting it to post-mortem examination along with a requisition to the Government Hospital at Halyal. In pursuance of the same, P.W.8 – the Medical Officer conducted autopsy over the body of the deceased and issued Post-mortem Report as per Ex.P.7. In the meantime, P.W.15 drew up scene of offence panchanama as per Ex.P.5, as pointed out by accused No.1, in the presence of panch-P.W.6. Thereafter, he seized clothes and articles – M.Os.6 to 11, which were on the body of the deceased, under Ex.P.6 in the presence of panch-P.W.7. P.W.15 continuing the investigation on 12.10.2006, suspecting

the hand of accused No.1, interrogated her and recorded her voluntary statement as per Ex.P.17. Thereafter, he arrested accused No.1. After arresting accused No.1, in pursuance of her statement as per Ex.P.17, he seized M.Os.1 and 3 under panchanama Ex.P.2 in the presence of panchas-P.W.3 and P.W.6. Thereafter, on completion of arrest formalities got her remanded to judicial custody. He also gave a report to the jurisdictional Magistrate as per Ex.P.18 to involve both the accused in the case. On 13.10.2006, he arrested accused No.2 at Herur village in Hangal Taluk. On his interrogation, he recorded his voluntary statement as per Ex.P.19 and in pursuance of the same, he seized M.O.2 under Ex.P.3 in the presence of panchas-P.W.3 and P.W.6. Apart from the same, he also seized M.Os.4 and 5 under Ex.P.3. Thereafter, on completion of the arrest formalities of accused No.2, he got him remanded to the judicial custody. On the same day, he recorded statement of P.W.2, 4 and other

witnesses in the case. He also gave a requisition to PWD authorities to prepare the sketch of scene of occurrence in the case and also to the Gram Panchayat Secretary to issue the residential certificate in respect of the residence of the deceased and accused No.1 at Shivapura village. In response to the said requisitions, P.W.9-Gram Panchayat Secretary issued residential certificate as per Ex.P.10 and P.W.14 prepared the sketch as per Ex.P.16 and forwarded the same through proper channel to P.W.15. P.W.15, continuing the investigation forwarded all the seized articles for subjecting them to chemical examination to the Forensic Science Laboratory Office, Mangalore. Thereafter, P.W.15, on obtaining the relevant documents and the opinion from the medical Officer regarding M.O.2, on completion of the investigation, submitted a final report against the accused before the jurisdictional Magistrate who, in turn, committed the case of the accused to the Court of Sessions, which on

receipt of the records secured the presence of the accused, framed charges against them to which they pleaded not guilty but claimed to be tried.

6. The prosecution in support of its case, in all, examined P.Ws.1 to 15 and got marked Exs.P.1 to P.23 and M.Os.1 to 11. The accused have not got marked any defence exhibits.

7. After the closure of the prosecution evidence, accused denied all the incriminating circumstances in their examination under 313 Cr.P.C. They also submitted that they have no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

8. The learned Trial Judge, on consideration of the oral and documentary evidence placed on record, came to the conclusion that the prosecution has established the charges levelled against the accused and

accordingly by the impugned judgment and order convicted and sentenced the appellants/accused as aforesaid.

9. The appellants/accused being aggrieved by the judgment and order of conviction and sentence are in appeal before this Court.

10. Learned counsel appearing for the appellants/accused contended the evidence of the sole eye witness – P.W.2, who is none other than the daughter of deceased and accused No.1, is untrustworthy having regard to her conduct in not coming out of she having witnessed the occurrence to the police on the morning of 11.10.2006 itself. They further contended she being a child witness has been tutored and therefore her evidence does not inspire confidence to place any reliance on her testimony. They further contended, the prosecution, apart from the direct testimony of P.W.2, have also relied on the

testimony of P.W.4 whose testimony also cannot be believed in the circumstances of the case, as he has also not come out of he having seen accused No.2 going towards the house of the deceased and accused No.1 on the evening of 10.11.2006 and going away from their house in the morning of 11.10.2006. They further contended, the next strong circumstance of recovery of M.Os.1 to 3, at the instance of the accused under Exs.P.2 and P.3, cannot also be believed in view of the sole testimony of the direct witness being untrustworthy and as it is also not corroborated from panch witnesses P.W.3 and 6. The learned trial Judge, without appreciating the entire evidence on record in its right perspective, has committed an error in holding that prosecution as proved its case beyond reasonable doubt against the accused which finding being contrary to the evidence on record and perverse cannot be sustained, hence the same be set aside and the accused be acquitted of the charges levelled against them.

11. Per contra, Shri Y.V.Raviraj, learned Addl. Government Advocate appearing for the respondent/State supporting the impugned judgment and order contended, there is no reason whatsoever to discard the testimony of PW.2 the sole eye witness to the occurrence who is none other than the daughter of the deceased and accused No.1. Her evidence is further corroborated from the evidence of PW.4 coupled with the recovery made at the instance of both the accused. Apart from the same, the testimony of PW.2 is also fortified from the evidence of PW.8, the Medical Officer in respect of the injuries, which is spoken to by her, as noticed at the time of autopsy. The learned trial Judge on taking the entire evidence into consideration has come to the right conclusion in holding that the accused are guilty of the offences with which they are charged. The said finding being based on facts and

evidence does not suffer from any infirmity calling for interference in this appeal, hence it be dismissed.

12. Having regard to the aforementioned facts, the rival contentions, the evidence and the documents on record, the points that arise for our consideration are as under:

- i) Whether the prosecution has established that the deceased Chandrappa Kammar has died an homicidal death?
- ii) If so, whether the prosecution has established that the accused are responsible for the homicidal death of the deceased and have also caused disappearance of the evidence of the said murder to

screen themselves from legal punishment?

- iii) Whether the impugned judgment and order of the trial Judge calls for any interference?

13. Point No.1: PW.8 is the Medical Officer who has conducted autopsy over the body of the deceased. PW.8 in his evidence has stated that on 11.10.2006 he conducted autopsy over the body of the deceased at Haliyal Hospital and at the time of autopsy he noticed the following external injuries.

Cut lacerated wound of 2 ½” with surrounding ½” of skin abraded, present over left frontal eminence about 1 ½” above left eye brow and 4” above left external auditory canal. Subcutaneous muscle crushed.

On dissection of body he noticed the following:-

Head:

Fracture of temporal bone on left side seen 2.2" in length extending vertically above left external auditory canal, situated 2 ½" behind left supra orbital margin, ½ cm above external auditory canal.

There was extravasation of blood of 50 ml over right temporal region. Meninges was normal. Subdural hematoma of 100 ml on sub temporal lobe of brain with rupture of cortex of brain over 2 x 2 inch.

14. He has further stated, the injury on the head was antemortum in nature. The death might have occurred about 24-30 hours prior to the postmortem examination. He is of the opinion that the death is due to head injury and he has issued the postmortem report as per Ex.P.7. This evidence of PW.8 is corroborated from the evidence of PW.15, the CPI/the Investigating

Officer who has conducted inquest over the body of the deceased and has noticed the injuries on the body of the deceased as reflected in the postmortem report Ex.P.7. The evidence of PW.2 also goes to show that she has noticed the injuries on the body of the deceased. In the cross-examination of these witnesses nothing has been brought out on record to discredit their testimony as regards to the deceased having sustained the injuries on his head to which he has succumbed, as per the opinion of the Medical Officer PW.8. On the other hand, homicidal death of the deceased is also not disputed before us. Therefore having regard to the aforementioned evidence we are of the clear view that the deceased has died on account of the injuries sustained to his head and the prosecution has established that the deceased has died an homicidal death.

15. Point Nos.2 and 3: The prosecution in order to connect the accused with the homicidal death of the deceased Chandrappa Kammar have relied upon the direct testimony of PW.2 who is none other than the daughter of the deceased and accused No.1. Apart from the same, they have relied upon the evidence of PW.4 who has seen accused No.2 going towards the house of deceased and accused No.1 on the evening of 10.10.2006 and leaving the house on the morning of 11.10.2006. Further they have also relied upon recovery of MOs.1 to 3 under Ex.P.2 and P.3 at the instance of accused No.1 and 2. In this connection they have relied upon the evidence of PWs.3, 6 and 15, the Investigating Officer. PW.2 is the daughter of accused No.1. A perusal of her evidence reveals that accused No.2 was visiting their house frequently. At times accused No.2 was also staying over night in their house. On 10.10.2006 she along with her father, the

deceased had gone to the school. Her father had come to the house in the midst of school working hours to take water. After taking water he returned back to the school. Thereafter he sent her to find out whether any one has come to his house. Accordingly she came and saw accused No.2 in the house. At that time her mother accused No.1 asked her whether her father has sent her. In response to the same PW.2 told accused No.1 that her father sent her to find out whether anybody has come to the house. In response to the same accused No.1 told her not to reveal the presence of accused No.2 in the house. Thereafter she went back to the school.

16. Her evidence further reveals, on that day her father went to Haliyal on his motorcycle. She returned in the evening to the house after the school hours. Her evidence reveals, accused No.2 was in the house on that day. On that night she

along with her sisters and her mother accused No.1 slept on the cot. Accused No.2 slept beneath the cot in the 2nd room of their house. Thereafter in the early hours of 11.10.2006 she woke up on hearing the screams. At that time she came to the front room where she saw her deceased father having sustained a bleeding head injury and her mother smothering her father along with accused No.2 with the help of the T-shirt MO.1. Her evidence also reveals, MO.2 was lying at the said place. Further her evidence reveals, her mother threatened her with dire consequences not to reveal the same to any one. In the cross-examination of this witness except eliciting that she has been tutored to say so against accused No.1 and 2 and suggesting that she has not seen the occurrence, in our view, nothing serious has been elicited to discredit her testimony. It was vehemently contended before us by the counsel for the accused that her testimony

cannot be believed, because, firstly she is a child witness and she has not come out with the version of having seen the occurrence on the morning of 11.10.2006 when the police were present near the house. We do not find any merit in the said contention for the reason that she has stated in her examination-in-chief since her mother had threatened her with dire consequences saying if she were to reveal the occurrence to anybody, she will be killed by pushing into a well. Therefore having regard to this evidence on record she being a natural witness whose presence in the house cannot be doubted, we do not find any reason to discard her testimony.

17. Apart from this direct evidence the prosecution has relied upon the evidence of PW.4. PW.4 has claimed in his evidence that he is running a pan shop near the house of the deceased and accused No.1. He deals in selling of

articles including beedi. On 10.10.2006 in the evening accused No.2 had come to his shop and had bought betel nut and betel leaves and proceeded towards the house of the deceased and accused No.1. He has further stated, on the morning of 11.10.2006 he saw accused No.2 going away from the house of deceased and accused No.1. In the cross-examination of this PW.4 also nothing has been elicited to discredit his testimony of he having seen accused No.2 coming to the house of deceased and accused No.1 on the evening of 10.10.2006 and going away from their house on the morning of 11.10.2006.

18. It is the case of the accused that the deceased was in illicit connection with CW.12 Surekha who was a cook engaged for preparing food in the school. The deceased used to be in the company of the said CW.12. On the night of 10.10.2006 the said CW.12 along with her

husband must have committed the murder and brought the body and kept on the pial of the house of deceased and accused No.1. Alternatively they also submitted that the deceased must have been done to death by somebody, somewhere else and body must have been brought and kept on the pial of the house of the deceased and accused No.1. We do not find any merit in the said two contentions of the counsel for the accused for the simple reason, no culprit who commits the murder would venture to keep the body on the pial of the house of deceased and accused No.1 along with the motorcycle. Further the evidence of PW.2 clinchingly goes to show that blood had also fallen inside the room where her deceased father was sleeping. It is further fortified from the fact of blood stains having been found on the mat MO.3 which is seized in the case found in the first room where the deceased was sleeping, according to the prosecution. Therefore the theory of the counsel

for the accused that the deceased has been done to death elsewhere and his body has been kept on the pial of his house has no merit.

19. Apart from this PWs.3 and 6 are the panchas for Ex.P.2 and P.3 of which Ex.P.2 is the mahazar drawn up by PW.15 under which he has seized MOs.1 and 3 at the instance of accused No.1, pursuant to her statement Ex.P.17. PWs.3 and 6 are the panchas. They have supported that part of the seizure made by PW.15. Ex.P.3 is the mahazar under which MO.2 the club has been seized at the instance of accused No.2 from his house. This seizure has also been supported by both the panchas PWs.3 and 6. Apart from the same, on perusal of Ex.P.20 the serology report reveals that this club MO.2 contains B group blood, which is the blood group found on the clothes of the deceased seized in the case. This would direct towards the involvement of the

accused in the case. On a careful consideration of the entire evidence on record we are of the view that the accused are guilty of having committed murder of the deceased. The evidence on record reveals that the body of the deceased has been shifted from the room to the pial of the house. That in our view also goes to show that murder must have committed by them in the room situated inside the house. The learned trial Judge on consideration of the entire evidence and the material on record, in our view, has come to the correct finding in holding that the accused are guilty of committing murder of the deceased and have also caused disappearance of the evidence of murder to screen themselves from legal punishment. The said finding, in our view, having been based on facts and evidence does not suffer from any infirmity calling for any interference in this appeal.

20. Accordingly, we do not find any merit in both these appeals and hence they are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KMS/MRK/-