

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2023

PRESENT

THE HON' BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL No.1610/2017

BETWEEN:

...APPELLANT

(BY SRI HANUMANTHARAYA C. H. ADVOCATE, ALONG WITH
Ms. ABHINAYA K, SRI K.V.MANOJ, AND
SRI NITHIN RAMESH, AMICUS CURIAE)

AND

STATE OF KARNATAKA,
BY SIRA POLICE STATION,
SIRA TALUK, TUMKUR DISTRICT,
BY S.P.P., HIGH COURT BUILDING,
BANGALORE-560 001.

...RESPONDENT

(BY SRI KIRAN S JAVALI, STATE PUBLIC PROSECUTOR-I A/W
SRI VIJAYKUMAR MAJAGE, ADDITIONAL STATE PUBLIC
PROSECUTOR)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE BY THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 09.08.2017 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TUMAKURU, IN S.C.No.82/2015- CONVICING THE APPELLANT/ ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376 AND 302 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **B.VEEERAPPA J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The appellant/accused filed the present Criminal Appeal against the judgment of conviction dated 09.08.2017 and order of sentence dated 14.08.2017 passed in S.C.No.82/2015 on the file of the Principal District and Sessions Judge, Tumakuru, convicting the him for the offence punishable under Section 302 of the Indian Penal Code and sentencing to undergo rigorous imprisonment for life with fine of Rs.50,000/- in default, to undergo simple imprisonment for a period of two years, and convicting for the offence punishable under Section 376 of Indian Penal Code and sentencing to undergo rigorous

imprisonment for a period of ten years with fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year.

I. FACTS OF THE CASE:

2. It is the case of prosecution that, P.W.1-Nagesh, brother of victim-deceased Rathnamma, filed complaint-Ex.P.1 dated 25.06.2015, stating that, he is permanent resident of Javanahalli, Kasaba Hobli, Sira Taluk, Tumakuru District. Rangappa and Rangamma are his parents. He is the elder son in the family. His elder sister-Lalitha is married. His younger sister-Rathnamma/victim, aged 21 years, completed her Bachelor Degree in Arts from Badavanahalli Government College. She had joined computer classes in Badavanahalli. She used to return home from computer class at 3.30 pm. As usual, on 25.06.2015, Rathnamma went to computer class at 10.30 am. Till evening she did not return home. He was under the impression that she might have gone to her friends

house. When he was working in the village Dairy, around 6.15 pm, people who came to Dairy were talking among themselves that some one has murdered a girl by slitting her neck in Doddahalla situated by the side of road running from Gulagenahalli to Javanahalli. He along with his uncle's son-Prasanna Kumar went to spot and saw that the girl who was murdered was none other than his sister and noticed that some miscreants had thrown the chutidar pant, underwear and veil worn by his sister-Rathnamma on the bush and had raped her. Under the fear that she may reveal the incident, they have murdered her by poking her neck with some weapon, and had thrown the school bag nearby, which she used to carry every day. The incident might have happened between 3.00 pm to 5.00 pm. Therefore, prayed to apprehend the accused and punish in accordance with law.

3. The jurisdictional police registered a case in Crime No. 149/2015, drawn the mahazar as per Ex.P.2 and seized

M.Os.1 to 9, investigated the matter and apprehended the accused. Later, recorded the voluntary statement of the accused as per Ex.P.21, and recovered M.Os.10 to 14. Thereafter, Investigating Officer filed the Charge Sheet.

4. After taking cognizance of the offence, learned Magistrate committed the matter to the learned Sessions Judge, who, after hearing learned Public Prosecutor and the learned defence counsel, framed Charge against accused for the offences punishable under Sections 302 and 376 of Indian Penal Code, read over the same to accused in the language known to him who pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution, in all, examined 15 witnesses as P.Ws.1 to 15 and produced material documents Exs.P.1 to P.27 and material objects, M.Os.1 to 14. After completion of evidence of prosecution witnesses, statement of accused as contemplated under the provisions of Section 313 Code of Criminal Procedure was recorded.

Accused denied all incriminating circumstances adduced against him by prosecution witnesses, however, did not chose to adduce any defence evidence.

6. Based on the aforesaid pleadings, the learned Sessions Judge framed the following points for consideration.

1. "Whether the prosecution proves beyond all reasonable doubt that, on 25.06.2015 at 3.00 pm, when the sister of the complainant was returning home after attending the computer class on the road known as 'dodda halla' leading from Borasandra to Magodi, the accused held her, closed her mouth and by dragging her to a nearby bush of jali plant, cut her neck and committed her murder and thereby committed an offence punishable under Section 302 of Indian Penal Code?
2. Whether the prosecution proves beyond all reasonable doubt that, on the above said date, time and place the accused after

having committed the murder of the sister of the complainant, committed rape on her and thereby committed an offence punishable under Section 376 of Indian Penal Code?"

7. The learned Sessions Judge, considering both oral and documentary evidence on record, recorded a finding that the prosecution proved beyond reasonable doubt that on 25.06.2015, at 3.00 pm, when the complainant's sister was returning home after attending computer class on the road leading from Borasandra to Mogadi, near Doddahalla, accused held her, closed her mouth and dragged her to a near by bush of Jali plants, cut her neck and murdered her and thereby committed an offence punishable under Section 302 of Indian Penal Code, and further that, after committing murder, accused committed rape on her and thereby committed an offence punishable under Section 376 of Indian Penal Code. Accordingly, learned Sessions Judge, by the impugned judgment of conviction and order of sentence, convicted the

accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.50,000/- in default, to undergo simple imprisonment for a period of two years, and convicted him for the offence punishable under Section 376 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.25,000/-, in default, to undergo simple imprisonment for a period of one year. Hence, present appeal is filed by the appellant/accused.

8. We have heard learned counsel for parties.

**II. ARGUMENTS ADVANCED BY LEARNED COUNSEL
FOR APPELLANT**

9. Sri C.H.Hanumantharaya, learned counsel along with Ms Abhinaya K and Sri K.V.Manoj, learned counsel for appellant/accused contended with vehemence that impugned judgment of conviction and order of sentence convicting the accused for the offences punishable under Sections 302 and 376 of Indian

Penal Code is erroneous and contrary to material on record, and therefore, the same cannot be sustained and liable to be set-aside. He further contended that though Ex.P.1 - complaint was lodged on the date of incident i.e., on 25.06.2015 against unknown persons, accused was arrested on 02.07.2015 after lapse of 07 days. There is delay in arresting the accused. Thereby, the involvement of accused in homicidal death of deceased is doubtful.

10. Learned counsel further contended that, entire case of prosecution is based on the circumstantial evidence and there are no eye witnesses to the incident. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and those circumstances should be of definite tendency unerringly pointing towards guilt of accused. The circumstances, taken cumulatively, should form a chain, so as to complete that there is no escape from conclusion that with all human probability the crime was

committed by accused and none else. The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of accused and such evidence should not only be consistent with the guilt of accused but should be inconsistent with his innocence. Learned counsel contended that, in the present case, no such circumstances are proved against accused by prosecution beyond reasonable doubt and therefore, sought to set-aside the impugned judgment of conviction and order of sentence passed by the learned Sessions Judge.

11. Learned counsel further contended that the Charge framed is that the accused first committed the murder of the deceased by cutting her throat so as to attract the provisions of offence punishable under Section 302 of Indian Penal Code and thereafter, committed rape on the dead body, so as to attract the offence punishable under the provisions of Section

376 Indian Penal Code. There are no eye witnesses to the incident, there is no last seen theory and there is no motive for murder of deceased by accused and rape on the dead body. Therefore, that does not amount to an offence, in view of provisions of Section 377 of the Indian Penal Code. Thereby, the provisions of Section 376 would not attract. Therefore, learned Sessions Judge is not justified in convicting accused for the offences made out in the Charge.

12. Learned counsel further contended that, P.W.1 who is the brother of deceased Rathnamma deposed about lodging of complaint as per Ex.P.1. He does not implicate any person including accused. The complaint is against an unknown person. P.Ws.2 to 5, said to be the persons who have last seen the accused have turned hostile to the case of prosecution. P.W.6-Honnappa, speaks about spot mahazar-Ex.P.2, but the same does not implicate any one. He further contended that, P.W.7-Manjunatha, Revenue Inspector speaks

about spot mahazar-Ex.P.9, recovery of M.Os.10 to 13 i.e., underwear, half sleeve shirt, a towel and a knife, from the house of accused. The said recovery has not been duly proved and have been totally disproved in the cross-examination. Only on the basis of voluntary statement of the accused, in the absence of any other evidence, the learned Sessions Judge ought not to have convicted the accused for the offence punishable under Sections 302 and 376 of the Indian Penal Code. Learned counsel for appellant further contended that evidence of Dr.Ranganatha-P.W.8, who examined the accused and issued Ex.P.11-wound certificate alone cannot be held to have any impact on the case of prosecution. P.W.9-Dr.Anil Kumar, psychiatrist who examined the mental status of accused issued the report as per Ex.P.12. The said evidence clearly depicts that intelligence of accused is below normal and other aspect of opinion regarding anti social disorder is based on input given to the doctor by the police and not his own opinion. He further contended that, P.W.10-

Dr.S.Rudramurthy, deposed regarding post mortem examination conducted on the body of deceased and issued Ex.P.8-post mortem report opining that cause of death was due to asphyxia as a result of compression of neck. It is further stated that signs of recent sexual intercourse is present, however, pending chemical analysis report. P.W.11-C.Kotresh, Police Inspector who received the complaint-Ex.P.1, registered FIR-Ex.P.20. P.W.12-Chidananda, Village Accountant is witness to Ex.P.9-spot mahazar, which is not duly proved. His evidence is not trustworthy. Their evidence does not help the prosecution to prove the involvement of accused in the offence. Learned counsel further contended that defective investigation conducted by Investigation Officers goes to the root of the matter and shakes the substratum of the case of prosecution. The conclusion arrived at by learned Sessions Judge that blood stains found on the towel of the accused matches with the blood group of deceased, is not based on any cogent evidence. Therefore,

false implication of accused in the offence cannot be sustained.

13. Learned counsel further contended that, conviction based on the recovery made at the instance of accused and relying on his voluntary statement, is impermissible, in view of Section 27 of the Indian Evidence Act. He also referred to Section 57(13) of the Indian Evidence Act. Referring to Section 46 of the Indian Penal Code, learned counsel contended that the word "death" denotes the death of a human being unless the contrary appears from the context. He also referred to Section 499 Indian Penal Code with regard to 'defamation'. He further contended that the act of the accused is nothing but 'necrophilia' and there is no specific provision in the Indian Penal Code to convict the accused for the said act and thereby, he sought to allow the appeal.

14. In support of his contentions, learned counsel relied upon the following judgments:

- (i) ***Kozhipalliyalil Muhammad vs. State*** reported in ***1974 Cri.LJ 204***, paragraph-6,
- (ii) ***Navtej Singh Johar vs. Union of India***, reported in ***(2018) 10 SCC 1***, paragraphs 267, 465, 645.3,
- (iii) ***Subhash Chand vs. State of Rajasthan*** reported in ***(2002) 1 SCC 702***, paragraph 19,
- (iv) ***State vs. Mahender Singh Dahiya***, reported in ***(2011) 3 SCC 109*** paragraph 72,
- (v) ***Jaikam Khan vs. State of Uttar Pradesh*** reported in ***2021 SCC online 1256*** paragraph 58,
- (vi) ***Kumar vs. State*** reported in ***(2018)7 SCC 536*** paragraph 26,
- (vii) ***T.P. Senkumar vs. Union of India***, reported in ***(2017) 6 SCC 801*** paragraph 72,
- (viii) ***Prakash Singh vs. Union of India*** reported in ***(2006) 8 SCC 1***.
- (ix) Medical jurisprudence and toxicology by Dr.Modi about legal status of dead.

(x) Research material.

III. ARGUMENTS ADVANCED BY LEARNED SPP

15. Per Contra, Sri Kiran S.Javali, learned State Public Prosecutor-I along with Sri Vijayakumar Majage, learned Additional State Public Prosecutor while justifying the impugned judgment of conviction and order of sentence, contended that though some of the witnesses turned hostile, learned Sessions Judge convicted accused based on circumstantial evidence, last seen theory and recovery of material objects from the possession of accused. He further contended that official witnesses and independent witnesses have clearly deposed about the incident and on the basis of voluntary statement of accused, Investigation Officer has recovered material objects. He further contended that Ex.P.17-FSL report depicts that item no.4 blood stained soil, item no.6 one chudidar top of deceased and item no.7 one chudidar petticoat of deceased were stained with B group

human blood. Ex.P.19-another FSL report depicts that, item No.3 one towel belonging to accused was stained with human blood B group, blood stains were detected on item No.4-hacksaw blade. He further contended that Ex.P.25-DNA report depicts that 12 items were sent for examination viz., item No.1-one chudidhar leggings, item No.2-one underwear, item No.3-one chudidhar veil, item No.4-blood stained soil, item No.5-one chudidhar top, item No.6-one petticoat (slip), item No.7-pubic hair, item No.8-vaginal smear, item No.9-swab around left breast, item No.10-vaginal swab, item No.11-blood sample of accused-Rangaraju and item No.12-blood sample of victim-deceased Rathnamma. After subjecting the aforesaid samples for DNA profile examination in the DNA centre, Dr.Chandrashekhara, Scientific Officer, Biology Section, Forensic Science Laboratory, Bengaluru, arrived at the conclusion that, blood stains and epithelial cells were detected in item Nos.2,5,6,8 and 10, and they were of human origin and female sex; DNA profile of item Nos.2,5,6,8 and 10 was

matching with the DNA profile of blood sample sent in item No.12 and not matching with DNA profile of sample blood sent in item No.11.

16. Learned State Public Prosecutor-II further contended that M.Os.10 to 14 i.e., underwear, shirt, towel, knife and hacksaw blade were recovered under Ex.P.10 at the instance of accused. The same is supported by the evidence of P.Ws.7 and 12- mahazar witnesses. P.W.8-Dr.Ranganath M.V., in his evidence, specifically deposed that accused was examined comprehensively on 03.07.2015 and his cardiac and respiratory status were normal. He was healthy and general condition of health was good. On local examination, P.W.8 issued the report stating that following injuries were found on the body of the accused:

1. *Contusion measuring 2 x 1 cm. over right supra scapular region blackish to greenish in colour.*

2. *Contusion measuring 2 x 1 cm. over left supra scapular region greenish in colour.*
3. *Abrasion measuring ½ x ½ cm. over middle of thoracic spine region covered with blackish scab.*
4. *Abrasion measuring 0.5 x 0.5 cm. present 1 cm. above right anterior superior iliac spine covered with blackish scab.*
5. *Abrasion measuring 1 x 2 cm. over left anterior superior iliac spine covered with blackish scab.*
6. *Abrasion measuring 0.5 cm x 0.5 cms. 2 inches below left nipple covered with blackish scab.*

No blood stains or clots were found over the body or over digital spaces or over digits.

P.W.8 further deposed that the aforesaid injuries are simple in nature and are 6 to 8 days old. Accordingly, issued wound certificate-Ex.P.11.

17. Learned SPP-I further contended that accused has not explained as to how he sustained the aforesaid injuries and has not cross-examined P.W.8-doctor. The post-mortem report -Ex.P.8 clearly depicts that there were 14 external injuries on the dead body of victim-Rathamma. Thereby, prosecution has proved beyond reasonable doubt that accused is not only involved in the homicidal death of Rathamma, but also raped on the dead body of Rathamma. Learned SPP-I further contended that, provisions of Section 375(a) and (c), of the Indian Penal Code, i.e., "sexual offences" was amended by Act 43 of 1983 with effect from 25.12.1983. Thereby, the rape on dead body attracts sexual offences and is punishable under the provisions of Section 376 of Indian Penal Code and thus, learned Sessions Judge is justified in convicting the accused for the offences punishable under Sections 302 and 376 of the Indian Penal Code.

18. Learned SPP-I further contended that prior to amendment of the Indian Penal Code in the year 1983, it was mentioned as "of rape". Now, by Act 43 of 1983 w.e.f. 25.12.1983 it is amended as "Sexual Offences". Thereby, the conviction of accused is just and proper and this Court cannot interfere with the impugned judgment of conviction.

19. In support of his contentions, learned State Public Prosecutor-I relied upon the following judgments.

- (i) ***M.K. Ranganathan vs. Govt. of Madras***, reported in ***AIR 1955 SC 604***, Paragraphs 22 and 23,
- (ii) ***RBI vs. Peerless General Finance & Investment Co. Ltd.***, reported in ***(1987) 1 SCC 424***, paragraphs 32 and 33.
- (iii) ***Surendra Koli vs. State of Uttar Pradesh and others***, reported in ***(2011) 4 SCC 80***, paragraph 14,

IV. ARGUMENTS ADVANCED BY LEARNED AMICUS CURIAE

20. This Court, by the Order dated 24.03.2023 appointed Sri Nithin Ramesh as *amicus curiae* to assist the court, who filed notes on 'necrophilia' and would submit that, definition of 'person' as provided under Section 3(42) of the General Clauses Act, includes a body of individuals, a company or a group of individuals whether it is incorporated or not. The definition of 'person' as contained in Section 11 of Indian Penal Code includes any company or Association or body of persons, whether incorporated or not. Further, under Section 10 of the Indian Penal Code, the word 'man' denotes a male human being of any age, and 'woman', denotes a female human being of any age.

21. Learned *amicus curiae* further contended that, although Indian Criminal Laws do not recognize 'necrophilia' as a crime in itself, the human rights after death of a person has gained recognition. Article 21 of the Constitution of India, not only

recognizes a right to life with dignity and respect, but also include the right to die in a dignified manner and certain rights of treatment after death, burial etc., as held by the Hon'ble Supreme Court in the case of ***Parmanand Kataria vs. Union of India*** reported in **(1989)4 SCC 286** wherein, it is recognized that Article 21 provides the right to life, fair treatment and dignity, and these rights extend not only to the person alive, but also to their dead bodies.

22. He further contended that, Section 297 of the Indian Penal Code remotely covers the act of 'necrophilia' by stating that any person who, "commits any trespass in any place of worship or on any place of sculpture, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies". This cannot, in itself simply be understood as directly addressing or penalizing

'necrophilia'. Yet, this is the closest penalty that obtains in Indian Criminal Law. The chapter titles in Indian Penal Code cannot restrict the meaning of the wordings of the specific penal provisions covered thereunder. In other words, it may be argued that as long as the *indignity to human corpse* is proved, the offence is constituted.

23. Learned *amicus curiae* further contended that, to a limited extent, Section 499, Explanation I of Indian Penal Code, provides that defamation of a deceased person can be an offence, but on closure scrutiny it becomes clear that infact it is the hurting of feelings of deceased's family. That is the focus of the penal provision and not the indignity to the dead body or person as such. Further, the provisions of Section 377 of the Indian Penal Code begins with the expression "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal..." Thereby, the question remains whether 'man' and 'woman' can include

'dead'. No doubt, the words 'man' and 'woman' defined under Section 10 of the Indian Penal Code, refers to an individual of the male or female gender irrespective of age. But as plainly understood 'age' herein refers to the age concerning the living person and not of the dead.

24. Learned *amicus curiae* further contended that, in United Kingdom, Section 70 of the Sexual Offences Act, 2003, makes it an offence for a person who intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of a dead person, and the person guilty of an offence, on conviction on indictment is liable to be sentenced to imprisonment for a term not exceeding two years. Section 182 of Criminal Code of Canada, 1985 makes 'necrophilia' punishable with imprisonment for a term of not more than five years. Section 150 of Crimes Act, 1961, of New Zealand prescribes punishment for two years to any person doing any act on the corpse, whether buried or unburied, to harm its

dignity. Lastly, he contended that Section 14 of the Criminal Law (sexual offences and related matters) amendment Act, 2007, of South Africa, prohibits 'necrophilia'.

V. POINTS FOR CONSIDERATION

25. In view of the aforesaid rival contentions urged by learned counsel for the parties, the points that would arise for our consideration in the present Criminal Appeal are:

- (i) Whether appellant/accused has made out a case to interfere with impugned judgment of conviction convicting him for the offence punishable under Section 302 of Indian Penal Code and sentencing him to undergo rigorous imprisonment for life with fine of Rs.50,000/-, in default to undergo simple imprisonment for two years.
- (ii) Whether rape on dead body of a woman attracts an offence punishable under the provisions of Section 376 of the Indian Penal Code, in the peculiar facts and circumstances of the present case?

VI. CONSIDERATION

26. We have given our thoughtful consideration to the arguments advanced by learned counsel for parties and perused the entire material on record, including original records, carefully.

27. This Court being appellate Court, in order to reappraise the oral and documentary evidence on record, it is relevant to consider the evidence of prosecution witnesses and documents relied upon.

(i) P.W.1- Nagesh is the complainant and brother of deceased Rathnamma, he has stated that, after receipt of the incident, he visited the spot, identified the dead body of his sister Rathnamma and lodged complaint as per Ex.P.1 and the seizure of MO.1 to MO.9. Admittedly, PW.1 is not an eye witness to the incident, but, he has set the law into motion, in his evidence he has not stated about the involvement of the accused.

(ii) P.W.2-Manjunatha who is stated to be the circumstantial witness, who had stated to be seen

accused prior to the commission of offence at the spot i.e., near the land of one Sarojamma-Doddahalla on the relevant date, but, he has turned hostile to the case of prosecution.

(iii) P.W.3-Ranganatha who is stated to be the circumstantial witness, who had stated to be seen accused prior to the commission of offence at the spot i.e., near Bridge/Doddahalla on the relevant date, but, he has turned hostile to the case of prosecution.

(iv) P.W.4-Sannakamanna who is borewell agent and who is stated to be the circumstantial witness, who had stated to be seen accused prior to the commission of offence at the spot on the alleged date of incident, in his evidence, he deposed that, he had been to the land of one Basavaraju of Devanahalli Village for dig borewell at 12.30 noon and returned, but, he has not stated anything about the accused to be seen accused prior to the commission of offence at the spot i.e., near Bridge/Doddahalla. Hence, he has turned hostile to the case of prosecution.

(v) P.W.5-Sharavana Kumara, Borewell Company Manager who is stated to be seen accused prior to the commission of offence at the spot i.e., near

Bridge/Doddahalla, but, he has turned hostile to the case of prosecution.

(vi) P.W.6-Honnappa witness to spot mahazar Ex.P.2, in his evidence has stated that, police have conducted spot mahazar at the scene of offence and seized the material objects from the spot.

(vii) P.W.7-Manjunath and P.W.12-Chidananda are Revenue Inspector and Village Accountant of Kasaba Hobli, Sira, in their evidence, they have stated that, on 03.07.2015, on the request of Sira police, Tahsildar Sira deputed him to accompany police as witness to mahazar, hence, they went to Sira police, at that time accused Rangaraju was in the custody of police, he informed the polices that, he would show the spot. Accordingly, accused lead the police and other witness to the place called Doddahalla of Javanahalli Village, where, he shown the spot stating that, he committed rape on Rathamma and later, murdered her, hence, police conducted Panchanama as per Ex.P.9. They further deposed that, accused lead the police and other witness to his house where accused furnished one underwear, one half shirt, one towel and one knife, which were kept in bathroom of his house, hence, police seized said articles under Ex.P.10 seizure mahazar.

(viii) P.W.8-Dr.Ranganath, the Medical Officer of Government Hospital, Sira, who treated accused and issued Medical certificate as per Ex.P.11.

(ix) P.W.9-Dr.Anil Kumar, Psychiatrist working in District Hospital who examined accused regarding his mental status and after examination he issued certificate as per Ex.P.12.

(x) P.W.10-Dr.S.Rudramurthy, RMO and Senior Specialist, Department of Forensics Medicine and Toxicology, District Hospital, Tumkuru, in his evidence he has stated that, he conducted PM examination on the dead body of Rathnamma, in the mortuary of District Hospital, Tumkuru and issued PM report (Ex.P.8).

(xi) P.W.11-C.Kotresh, then PSI of Sira Police Station, who received complaint from PW.1 as per Ex.P.1 and registered the case in Crime No.149/2015 on 25.06.2015 at 7.30 p.m. and dispatched FIR as per Ex.P.20.

(xii) P.W.13-K.G.Ramakrishna, Police Inspector, in his evidence he deposed that, on the receipt of information of the crime, he instructed PW11 to register the case and later, he secured dog squad and fingerprint expert,

visited the spot, on the same night he drew spot Panchanama as per Ex.P.2, seized MO.1 to MO.9, shifted dead body to District Hospital, Tumkuru and on the same night he conducted inquest Panchanama as per Ex.P.7, handed over the body to Doctor for PM Examination, deputed his staff to trace the accused, received PM report as per Ex.P.8, sent MO's to FSL Bengaluru for chemical examination, requested PWD authorities to prepare sketch of scene of offence, requested the Tahsildar to issue the documents in respect of the spot, recorded the statement of the witnesses, on 02.07.2015 at 9.00 p.m. arrested accused, enquired him and recorded his statement as per Ex.P.21 and on the basis of voluntary statement of the accused, he secured PW.7 and PW.12, visited the spot and conducted Panchanama as per Ex.P.9 and on the basis of the statement of the accused, accused shown MO.10 to 12 and 14 from his house, hence, conducted seizure Panchanama as per Ex.P.10, produced accused before Medical Officer for Medical Examination of accused and after securing all documents he handed over further investigation to PW.14 Gopala Krishna.

(xiii) P.W.14-B.N.Gopala Krishna, Police Inspector, who received FSL report as per Ex.P.17 and report from Sri

Dharmastala Manjunatheshwara, Dental University, Dharwad and handed over further investigation to PW.13.

(xiv) P.W.15-Lakshmaiah, Police Inspector, in his evidence he has stated that, he received reports from FSL, Bangalore as per Ex.P.17 to P.19, received final opinion from Medical Officer as per Ex.P.13, P.14 and P.16 and filed charge sheet against accused.

Based on the aforesaid oral and documentary evidence on record, learned Sessions Judge proceeded to convict the accused for the offences punishable under Sections 302 and 376 of the Indian Penal Code.

28. The gist of the case of prosecution is that, P.W.1-Nagesh, brother of victim-deceased Rathamma, filed complaint-Ex.P.1 dated 25.06.2015, stating that, he is permanent resident of Javanahalli, Kasaba Hobli, Sira Taluk, Tumakuru District. Rangappa and Rangamma are his parents. He is the elder son in the family. His elder sister-Lalitha is married. His younger sister-Rathamma, aged 21 years,

completed her Bachelor Degree in Arts from Badavanahalli Government College. She had joined computer classes in Badavanahalli. She used to return home from computer class at 3.30 pm. As usual, on 25.06.2015, Rathnamma went to computer class at 10.30 am. Till evening she did not return home. He was under the impression that she might have gone to her friends house. When he was working in the Dairy in the village, around 6.15 pm, people who came to Dairy were talking among themselves that some one has murdered a girl by slitting her neck in Doddahalla situated by the side of road running from Gulagenahalli to Javanahalli. He along with his uncle's son-Prasanna Kumar went to spot and saw that the girl who was murdered was none other than his sister and noticed that some miscreants had thrown the chutidar pant, underwear and veil worn by Rathnamma on the bushes and had raped her. Under the fear that she may reveal the identity of miscreants, they have murdered her by poking her neck with some weapon, and had thrown the school bag which

she used to carry every day, nearby. The incident might have happened between 3.00 pm to 5.00 pm. On the basis of the said complaint the jurisdictional police registered a case in Crime No.149/2015 for the offences punishable under the provisions of Sections 376, 302 and 201 of the Indian Penal Code. After investigation, the police filed Charge Sheet against accused for the offences punishable under Sections 302 and 376 of the Indian Penal Code.

29. The entire case of the prosecution is based on circumstantial evidence. In view of the dictum of Hon'ble Supreme Court in the case of **Sharad Birdichand Sarda vs. State of Maharashtra**, reported in **(1984)4 SCC 116**, to prove its case based on circumstantial evidence, the prosecution has to show that the five golden principles constituting panchsheel of the proof of a case are fulfilled. Paragraphs 153 and 154 of the said judgment reads as under:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and

'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

30. In the present case, Ex.P.1-complaint was lodged by P.W.1-brother of the victim against unknown miscreants and there are no eye witnesses to the unfortunate incident that occurred on 25.06.2015. Accused was arrested on 02.07.2015 i.e., after seven days of the incident. The prosecution examined P.Ws.2, 3, 4 and 5, as last seen witnesses. The said witnesses have stated that they have seen accused prior to the commission of offence at the spot i.e., near the land of one Sarojamma near Doddahalla. But they turned hostile to the case of prosecution. Thereby, last seen theory set up by prosecution is not proved. PW.6-Honnappa, witness to spot mahazar-Ex.P.2 turned hostile to the case of prosecution. P.W.7-Manjunatha, Revenue Inspector, and P.W.12-Chidananda, Village Accountant, witnesses to seizure mahazar Ex.P-10 under which M.Os.1 to

14 were recovered, have supported the case of prosecution. P.W.13-K.G.Ramakrishna, Police Inspector, recovered the material objects, at the instance of accused. The evidence of P.Ws.7 and 12 who are official witnesses supports the case of prosecution. Accused cannot be convicted based on the recovery made at his instance and based on his voluntary statement, in view of Section 27 of the Indian Evidence Act, as panch witnesses failed to support case of prosecution and no independent witnesses have supported case of prosecution.

31. It is well settled that Court need not seek corroboration of evidence of a police officer who conducted search. Evidence of police officer cannot be discarded merely because he is a police officer, in the absence of hostility to the accused.

32. Dr.S.Rudramurthy examined as P.W.10 has deposed that he conducted post mortem on the dead body of Rathamma and issued the report as per Ex.P.8, which depicts that 16

external injuries were found on the dead body of the victim, as under:

External Injuries:

- 1) *Abrasion present over right cheek measuring 2 cm x 0.2 cm.*
- 2) *Contusion measuring 2 cm x 2 cm and 3 cm x 2 cm present over right side of neck.*
- 3) *Contusion measuring 4 cm x 2.5 cm present over left side of neck.*
- 4) *Contused abrasions present over neck over frontal aspect 9 cm below chin measuring 6 cm x 0.5 cm, 11.5 x 1 cm immediately below previous one, 4 cm x 0.5 cm, 1 cm below previous and 9 cm x 0.3 cm - 1 cm below previous one.*
- 5) *Incised wound measuring 4.5 cm x 0.3 x skin deep with tailing outwards present over left side of neck, below the level of thyroid cartilage.*

- 6) *Incised wounds measuring 1.5 cm x 0.1 cm x skin deep with tailing outwards present over right side of neck at previous level, another measuring 3 cm x 0.2 cm x skin deep with tailing outwards present over middle of neck at the same level and another incised wound measuring 1.5 cm x 0.1 cm x trachea deep present just below previous injury with tailing outwards to (not clear) right.*
- 7) *Contused abrasion measuring 5 cm x 0.5, 8 cm x 1.25 cm, 8 cm x 1.5 cm, 9 cm x 0.5 cm and 8 cm x 0.4 cm present one below the other, spaced 01, 02 cm, 02 cm and 1.25 cm respectively over right shoulder region.*
- 8) *Contused abrasion measuring 4 cm x 0.5 cm present over left shoulder.*
- 9) *Multiple punctate abrasions present over an area of 8 cm x 4 cm over left arm.*
- 10) *Grazed abrasion present over left elbow measuring 5 x 3 cm.*

- 11) *Multiple punctate abrasions present over back of left arm over an area of 4 x 2 cm.*
- 12) *Grazed abrasion present over back of right forearm measuring 13 x 6 cm.*
- 13) *Abrasion measuring 6 cm x 3 cm present over back of left shoulder.*
- 14) *Contused abrasion measuring 1 cm x 0.1 cm, 0.4 x 0.4 cm, 0.7 cm x 0.5 cm, 1 cm x 0.5 cm and 1.5 x 1.5 cm present over left outer (not clear) of left breast.*
- 15) *Contused abrasion measuring 5.5 cm x 0.5 cm with (not clear) downwards present over left breast below (not clear) bite mark.*
- 16) *Contused abrasion measuring 5 cm x 0.5 cm with (not clear) upwards present (not clear), of left breast-bite mark*

33. P.W.10 has further deposed that all the above injuries are fresh, ante mortem in nature. He opined that time since death is twelve to twenty four hours prior to autopsy. He also

opined that on reflection of neck, extensive blood extravasation was seen extending from chin to upper portion of chest and cause of death was due to asphyxia as a result of compression of neck and signs of recent sexual intercourse were present. P.W.10-doctor further deposed that, he received a requisition along with sealed packet from Police Inspector of Sira Police Station for examination of weapon and to furnish his opinion. The sealed packet contained one metallic knife like weapon made of hacksaw blade piece measuring 11 cm in length and 1 cm in width with one end semi circular in shape and blunt with rough one. One edge of the weapon was in zig zag pattern and rough and the other edge was sharp at one half and blunt on other half. Surface of the weapon showed reddish brown stains at places. He opined that injuries 5 and 6 referred to in Ex.P.8 and injury to trachea are possible by the type of weapon examined and death due to this injury, in this case, is not possible. The evidence of

doctor and Ex.P.8-post mortem report clearly depicts the homicidal death of deceased.

34. Since there are no eye witnesses to the incident, and homicidal death is proved, it is for the prosecution to prove that accused is involved in homicidal death of deceased. It is relevant to state at this stage that the accused was arrested on 02.07.2015. He was produced before P.W.8-Doctor for medical examination on 3.7.2015 at 2.45 pm. The doctor issued wound certificate as per Ex.P-11 and same was recorded in MLC register of the hospital. In the cross-examination, P.W.8 deposed that accused may not be well built, but he is moderately built. He denied the suggestion that accused is not even moderately built. He deposed that a person aged about 20 years having height of 153 cms and 40 kgs cannot be termed as moderately built, under medical science. He further deposed that in the casualty ward of the hospital, one nurse and an attendant are working as

supportive staff and denied the suggestion that if a patient is brought to the hospital, normally the supportive staff in the form of nurse will examine the patient and record the findings and the medical officer mechanically signs the same. He further denied the suggestion that when accused was examined, MLC was not at all recorded and only while coming to court for giving evidence, it was created. He further denied the suggestion that, in active connivance and collusion with the Investigating Officer, he issued false medical certificate as per Ex.P.11. He also denied the suggestion that he has not at all examined the accused person.

35. P.W.9-Dr.Anil Kumar, deposed that on 06.07.2015 he received requisition from police to examine the mental status of accused-Rangaraju. When he examined, accused was not answering most of his questions. Therefore, he collected collateral information from parents and relatives. He also collected some information from police who accompanied the

accused. As per the information provided by the father of accused, accused's development achievement was not in accordance with age, it was delayed. His social skill was also not in accordance with the age group of 20 years. Academically also, accused was not good as per the information provided, and he had studied upto 8th standard. Considering the said aspects, he opined that his intelligence is border line. It is further deposed that, as per the information received, accused was not involved in any anti social activities such as stealing, lying etc., But, police gave a different version stating that accused was earlier suspected of molestation and attempt to rape. Only on the basis of information given by police, he diagnosed that accused has got anti social personality disorder. A person having less IQ level does not respond to the situations. He further deposed that after examining the accused, he issued a certificate as per Ex.P.12 stating that accused is suffering from border line

intelligence and antisocial personality disorder. Admittedly, P.W.9 has not been cross-examined by the defense.

36. In the cross examination of any of the prosecution witnesses, it has not been elicited that accused is of unsound mind or was incapable of knowing the nature of the act that he is doing, what is right or what is wrong. Even in the statement recorded under Section 313 of the Code of Criminal Procedure, accused has not offered any such explanation. Also he has not stated as to how he sustained injuries. Thereby, an adverse inference has to be drawn against accused. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Prahlad vs. State of Rajasthan** reported in **(2019)14 SCC 438**, wherein, at paragraph 11, it is held as under:

11. No explanation is forthcoming from the statement of the accused under Section 313 CrPC as to when he parted the company of the victim. Also, no explanation is there as to what happened after

getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse against the accused.

37. In the cross-examination of P.W.8-Dr.Ranganatha, there is no whisper or suggestion as to how accused sustained six external injuries on his body. P.W.13-Ramakrsihna, Police Inspector, in his evidence deposed that on the information received about the offence, he instructed P.W.11 to register case and secure dog squad and finger print experts, and visited the spot on the same day, drawn panchanama as per Ex.P.2, seized M.Os.1 to 9, shifted the body to District Hospital and conducted inquest mahazar as per Ex.P.7, handed over the body to the doctor for examination and deputed staff to apprehend the accused. On 02.07.2015, at about 9.00 pm accused was arrested, enquiry was made and his voluntary statement was recorded. Later, he secured P.Ws.7 and 12, visited the spot, and conducted spot mahazar. At the instance

of accused, M.O-10, underwear, M.O.11-shirt, M.O.12-towel, M.O.13 and 14 hacksaw blade were recovered from the house of accused. As per Ex.P.10 mahazar was drawn, conducted seizure panchanama and produced the same before medical officer for examination. Further investigation was handed over to Sri Gopalakrishna-P.W.14 who received the FSL report as per Ex.P.17 and handed over to P.W.13-Ramakrishna, Police Inspector. After investigation, P.W.15-Lakshmaiah filed charge sheet. Evidence of P.W.14 and P.W.15- Investigation Officers is not seriously challenged. The blood sample of accused was taken for DNA profiling. Ex.P.17 is the FSL report which depicts that blood stains were detected on item No.4- blood stain soil, item No.6 chudidhar top and item No.7- chudidhar petticoat. They are marked as M.Os-5, 6 and 8. Blood group is recorded as human blood B group in the report- Ex.P.17. Ex.P.19 is another FSL report obtained in respect of the items recovered at the instance of accused. Item No.1 is one short, item No.2 is one shirt, item No.3 is one towel, item

No.4 is one hacksaw blade, item No.5 is swab from right and left foot, item No.6 is nails from right and left great toe, item No.7 is pubic hairs and item No.8 is penile swab. In Ex.P.19, the Scientific Office has opined that presence of blood stain was detected in item Nos.1, 2, 3, 4, 5 and 6; presence of epithelial cells was not detected in item Nos.7 and 8; blood stain in item No.3 was of human origin and 'B' group; and blood stains in item Nos.1,2,4,5 and 6 were disintegrated. The evidence on record clearly depicts that item No.3-towel of the accused was stained with human blood B group. This corresponds with blood stains found on item Nos.4,6 and 7 i.e., blood stained soil, chudidar top and chudidar petticoat belonging to the victim, as is evident from Ex.P.17. The towel of the accused is marked as M.O.12 and was recovered at the instance of accused, in the presence of P.Ws.7, 12 and 13 who supported case of prosecution and thereby, recovery of towel is established. Thereby it is for the accused to explain as to how his towel recovered from his residence was stained with

'B' group human blood. But accused has not offered any explanation either in the statement recorded under Section 313 of Code of Criminal Procedure or has not elicited any information from the cross-examination of prosecution witnesses. This is the strongest circumstance appearing against accused.

38. Ex.P.25-DNA profiling report of deceased and accused depicts that blood stains found on underwear, chudidar, petticoat, and pubic hair of deceased pertain to human origin and female sex and is B group blood. Thereby this clearly establishes that clothes of deceased were stained with her own blood and it was B group. The same blood group was found on towel belonging to accused which was recovered at the instance of accused himself. The accused has not offered any explanation as to how the blood of deceased was found on M.O.12-towel recovered from his house at his instance. It is also not in dispute that M.O.12 was recovered by P.W.13 at

the instance of accused in the presence of P.WS.7 and 12 who fully supported case of prosecution. The DNA profile does not establish blood group of accused and it is entirely different. And therefore, it is for the accused to explain as to under what circumstances his towel was stained with human blood 'B' group and as to how he sustained injuries on his body. But, the entire case of accused is total denial. No doubt, under Ex.P.27, the Certified Forensic Odontologist has opined that, any conclusion on the degree of certainty of the link between the bite mark and the accused person's teeth cannot be made due to insufficient quality of the bite mark photograph in terms of lack of scale in the photograph, thereby preventing a 1:1 comparison, or 'life size' comparison. Hence, there is insufficient quality of evidence to make any statement of relationship of the bite mark to the suspected biter's teeth. Therefore, it is inconclusive whether the teeth belonging to the accused person named Rangaraju has caused the bite mark on the deceased female subject Ratnamma. Thereby, due to

insufficient quality of evidence, the Odontologist is unable to arrive at a conclusion. However, same can be ignored since other circumstances i.e., DNA profiling coupled with FSL report clearly establish that on the towel belonging to accused, blood stains of deceased were traced. The injuries found on body of accused are corresponding to date of offence and the accused has not given explanation regarding injuries found on his body. This is also another strong circumstance against accused.

39. This Court is aware that it is for the prosecution to prove its case beyond reasonable doubt and establish that accused is involved in the homicidal death of deceased, when there are no eye witnesses and entire case is based on circumstantial evidence. it cannot be thrown out and conviction under circumstantial evidence is permissible.

40. In the present case, though P.Ws.2,3,4 and 5 last seen theory witnesses have stated that prior to the unfortunate

incident, accused was at the spot, they have turned hostile. But P.W.7 and P.W.11 have clearly deposed about spot panchanama Ex.P.9 and recovery of M.Os 1 to 14 at the instance of accused. The recovery of the belongings of accused is established and blood stains were found on towel of accused and accused also sustained injuries during the incident which is also the evidence of P.W.8 and material document wound certificate- Ex.P.11.

41. Thereby, circumstances stated supra i.e., recovery of blood stained weapon and clothes from the house of accused and non explanation of incriminating circumstances by the accused points towards the accused. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Ganga Bai vs. State of Rajasthan** reported in **(2016)15 SCC 645**, wherein, at paragraph 11, 12, 13 and 14 it is held as under:

"11. Having gone through the records, we find it difficult to be persuaded to take a different view on

the evidence against the appellant which according to both the trial court and the High Court formed an unbroken chain which led only to one hypothesis viz. the involvement of the appellant in the offences under Section 302 and Section 201 IPC. It has to be specially noted that even under Section 313 IPC statement, the appellant did not have any explanation on the presence of human bloodstains on her clothes which were duly recovered on her disclosure.

12. In Nana Keshav Lagad v. State of Maharashtra [Nana Keshav Lagad v. State of Maharashtra, (2013) 12 SCC 721 : (2014) 4 SCC (Cri) 510] , this Court had an occasion to consider a similar situation. Since the factual background, as such, is also explained therein, we shall extract the relevant paragraph as such: (SCC pp. 730-31, para 27)

"27. The other submission made on behalf of the appellants was with reference to the human blood found on the clothes worn by A-1 and A-4. It was contended that the prosecution failed to satisfactorily establish

through any independent evidence about the bloodstains found on the clothes of A-1, as well as the appellant in Crl. A. No. 1010 of 2008. In that respect instead of reiterating the details, it will be sufficient to refer to the conclusion reached by the trial court, while dealing with the said contention, which is found in para 63. The relevant part of it reads as under:

'63. In the present case, the evidence of API Padwal in this respect is not seriously challenged or shattered. After all the accused were arrested under panchnama and at the time of arrest, panchnama of accused Nana bloodstained clothes were seized. It is not in any way contended or for that matter even whispered that IO API Padwal was having any rancour against the accused or he was motivated or interested in one-sided investigation with the sole object of implicating

the accused. As a matter of fact, the investigation in this case appears to be totally impartial. When it transpired that two accused by name Sandeep and Ganesh, the juvenile delinquent have not taken part in the assault, their names were deleted from the prosecution case by filing report under Section 169 CrPC. Therefore, here the investigation has proceeded impartially and it is also not even for the sake of it, is suggested to API Padwai that, no such bloodstained clothes were recovered from the accused Nana, moreover, as per the settled position of law, there is no presumption in law that a police officer acts dishonestly and his evidence cannot be acted upon. Therefore, here the evidence of API Padwal is sufficient to prove the recovery of the bloodstained clothes of the accused. His evidence also

goes to prove that all these articles, bloodstained clothes, etc. were sent to CA and as per the CA report, Ext. 61, the blood was detected on the clothes of the accused and the deceased and this blood was human blood... In the present case, though the CA report, Ext. 61 shows that the said human blood was of Group B, CA report, Ext. 62 about the blood sample of the accused states that the blood group could not be ascertained as the results were inconclusive, moreover, there is no CA of the blood sample of the deceased to prove that he was having Blood Group B. However, the fact remains that the stains of human blood were found on the clothes of accused Nana and he has not explained how these bloodstains were on his clothes and therefore, as observed in this authority, it becomes one more highly

incriminating circumstance against the accused.'

In fact, as rightly noted by the trial court, it was for the appellants to have explained as to how the clothes worn by them contained human blood. In Section 313 questioning, no explanation was forthcoming from the appellants. In these circumstances, the said contention also does not merit any consideration."

13. The last contention is on parity. It is submitted that Udai Lal, whose clothes were duly recovered, also contained stains of human blood, for which also, there was no explanation and he had also given disclosure on the recovery of weapon of offence. Though we find that the acquittal made by the High Court could require a revisit, in view of the fact that there is no appeal by the State against the acquittal of Udai Lal and that the incident is of the year 1999, we do not propose to pursue the matter as against Udai Lal. However, we may state that only because Udai Lal was acquitted, in view of the clinching evidence on the involvement of the

appellant in the offences of murder and destruction of evidence charged against her, she is not entitled for a similar treatment as that of Udai Lal. Merely because one or more of those charged with the substantial offences and also charged under Section 34 IPC have been acquitted, the one in the group who shared the common intention, in whose case there is conclusive evidence of direct involvement, cannot claim parity.

14. Thus, we respectfully agree with the concurrent findings on the conviction and sentence of the appellant. We find no merit in the appeal and the same is accordingly dismissed."

42. The material on record clearly establish that, based on aforesaid circumstances the prosecution has proved beyond reasonable doubt that accused is guilt of homicidal death of deceased and the evidence on record is consistent only with the hypothesis of the guilt of accused, that it is to say, the facts established are not explainable on any other hypothesis

except that the accused is guilty. The circumstances are conclusive nature and they exclude every possible hypothesis except the involvement of accused in the homicidal death of deceased. Further, the chain of evidence is so complete not leaving any reasonable ground for the conclusion consistent with the innocence of the accused and it is shown that in all human probability, the act is done by the accused.

43. It is also well settled that based on his voluntary statement, accused cannot be convicted in view of Section 27 of Indian Evidence Act. But the circumstances stated supra clearly corroborates with the voluntary statement of accused. It cannot be lost sight that, earlier on three occasions, accused has involved in molestation and attempt to rape and this is the fourth incident.

44. The very Charge framed against accused by learned Sessions Judge on 27.10.2016 is as under:

"That, you the above named accused on 25-06-2015 at about 3.00 pm., when the daughter of the complainant was returning home after attending a computer class, on the road which is also known as 'dodda halla', leading from Borasandra to Magodi, held her, closed her mouth and by dragging her to a nearby bush of jail plant, cut her neck and committed her murder and thereby committed an offence punishable under section 302 of Indian Penal Code and within my cognizance,

That, on the above said date, time and place you the accused after committing the murder of daughter of the complainant committed rape on her and thereby committed an offence punishable under section 376 of Indian Penal Code and within the cognizance of this Court."

45. A careful reading of the Charge clearly depicts that accused firstly murdered Rathamma by slitting her neck with M.C.14-blade, and thereafter, committed rape on her and thus

committed offences punishable under Sections 302 and 376 of the Indian Penal Code.

46. Learned SPP-I contended that Section 375-Rape was substituted by Act 13 of 2013 with effect from 03.02.2021 and contended that, a man is said to commit "rape" if he: (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b)xxxx (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person, under the circumstances falling under seven descriptions, of which, seventh is, 'when she is unable to communicate consent'. Thereby, the offence clearly attracts "rape" by the accused on the deceased after committing murder. He further contended that, in view of the provisions of Section 377 of the Indian Penal Code-Unnatural Offences, the learned Sessions Judge is

justified in convicting the accused under the provisions of Section 376 of the Indian Penal Code.

47. By careful perusal of material on record, it clearly depicts that accused is involved in the homicidal death of deceased. However, the Charge is that the accused firstly committed the murdered and thereafter committed rape on dead body. Therefore, the only legal question that arises for our consideration is-

"Whether sexual intercourse on the dead body of a woman amounts to rape, in view of provisions of Section 376 of the Indian Penal Code?"

48. A careful reading of the provisions of Section 375 of the Indian Penal Code clearly depicts that, a man is said to commit the rape if he penetrates his penis, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or manipulates any part of the body of a woman so as to cause penetration into the vagina,

urethra, anus or any part of body of such woman or makes her to do so with him or any other person. Admittedly, the accused had sexual intercourse on the dead body. Whether it amounts to an offence under Section 375 or Section 377 of the Indian Penal Code? A careful reading of Section 377 of the Indian Penal Code-Unnatural offences defines that, Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. A careful reading of the provisions of Sections 375 and 377 of the Indian Penal Code make it clear that, the dead body cannot be called as human or person. Thereby, the provisions of sections 375 or 377 of the Indian Penal Code would not attract. Therefore, there is no offence committed punishable under Section 376 of the Indian Penal Code. The said aspect has not been considered by the learned single Judge.

49. Dr.Modi, in his book "The Medical Jurisprudence and Toxicology" has defined Legal Status of Dead as under:

"The personality of a human being may be said to commence existence on birth and cease to exist at death. The dead are no longer persons in the eyes of law. Their legal personality comes to an end at their death and they are destitute of rights and liabilities. They have no rights because they have no interests. Yet, although all the rights of a human being perish with him, the law, without conferring rights upon the dead, does in some degree recognise and takes into account his desires and interests. There are three things in respect of which the anxieties of living men extend beyond the period of their deaths and which law takes notice of.

Firstly, with respect to a person's body: Law deems that a living man is interested in the treatment to be awarded to his own dead body. Law secures his desire through criminal law which makes it an offence to violate the grave." Every dead body has a right to decent burial. Secondly, the reputation of the dead receives some degree of protection from criminal law in that it would be defamation to

impute anything to a dead person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. A libel upon a dead man will be punished by law. Thirdly, the most important matter in which the desires of dead man are allowed by law to regulate the actions of the living is that of testamentary succession. Many years after his death his wishes continue to regulate and determine the disposition and enjoyment of the property, which he owned while living.

50. The Division Bench of Kerala High Court in the case of ***Kozhipalliyalil Muhammad vs. State*** reported in **1974 Crl.LJ 204**, at para 6 held as under:

"6. The reasons which weighed with the learned Sessions Judge to acquit the appellant of the offence of murder under Section 302, I. P. C. hold good in acquitting the appellant for the offence of robbery under Section 394, I. P. C. also. The ingredients of the offence of theft shall be present in the offence of robbery. Before theft can amount to robbery the offender must have voluntarily caused or attempted to

cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. The second ingredient necessary to constitute robbery is that his act must be in order to the committing of the theft or in committing theft in carrying away or attempting to carry away the property obtained by theft. The third ingredient is that the offender must voluntarily attempt to cause to any person hurt for that end in view. Nothing of that has been proved in this case. The evidence of P. W. 16, Assistant Surgeon, was that the chopping off of the ear of the victim might be before or after death. The definite case of the prosecution was, so far as it was revealed from the charge as well as from the evidence, that the ears of the victim were chopped off in order to commit theft. In the nature of the evidence adduced on behalf of the prosecution, especially that of P. W. 16, it could not be said that the ears of the victim had been chopped off before her death. In that case no conviction can be held under Section 394 of the I. P. C. because removal of ornaments from the body of the victim after causing her death cannot amount to robbery because robbery is theft by force and theft is taking away of movables out of the possession of a person. But removing ornaments from a dead body is not taking property

out of the possession of a person. A dead body is not a person. So the prosecution case that the appellant removed the jewels from the body of the deceased before she was murdered could not be accepted and hence an offence under Section 394, I. P. C. could not be sustained."

51. The provisions of Section 46 of the Indian Penal Code defines death. The word "death" denotes the death of a human being unless the contrary appears from the context. Rape must be accomplished with a person, not a dead body. It must be accomplished against a person's will. A dead body cannot consent to or protest a rape, nor can it be in fear of immediate and unlawful bodily injury. The essential of guilt of rape consists in the outrage to the person and feelings of victim of the rape. A dead body has no feelings of outrage. The sexual intercourse on dead body is nothing but necrophilia.

52. "Necrophilia- It is a morbid fascination with death and the dead and more particularly, an erotic attraction to corpses. It is a psychosexual disorder and DSM-IV classifies it among a group of disorders called 'paraphilias' including pedophilia, exhibitionism and sexual masochism and names necrophilia as 'not otherwise specified'. The Manual cautions that paraphilias should be distinguished from the non-pathological use of sexual fantasies, behaviour, or objects as stimuli for sexual excitement in individuals with paraphilia. It may not necessarily be repetitive, but could be the result of rage, experimentation or lust rather than sexual necessity or habit, to Although necrophilia is primarily engaged in by males, occasionally there have been reported instances of female necrophilia. This is not a specific IPC offence categorised under sexual offences mentioned under the Code, but could be brought under Section 297 as causing "indignity to any human corpse" by trespass into a place set apart for performance of funeral rites or as a depository for the remains of the dead

Specific IPC offence with Intention of wounding feelings of any person or of insulting any religion, if all the legal ingredients of intention are satisfied.

53. In the present case, it is not the case of prosecution that the accused trespassed to a place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offered any indignity to any human corpse, or caused disturbance to any person assembled for the performance of funeral ceremonies, with an intention to wound feelings of any person, or of insulting any religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby. But it is the specific case of prosecution that, accused, first murdered the victim and then had sexual intercourse with dead body. Thereby, it cannot be held as sexual offences or unnatural offence as defined under Sections 375 and 377 of the Indian Penal Code.

Thereby, it cannot be termed as rape punishable under Section 376 of the Indian Penal Code. Utmost it can be considered as sadism, necrophilia and there is no offence made out to punish under Section 376 of the Indian Penal Code.

54. In United Kingdom, Section 70 of the Sexual Offences Act, 2003 of the UK makes it an offence for a person who intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of a dead person. It reads as follows:

Sec. 70 Sexual penetration of a corpse (1) A person commits an offence if-(a) he intentionally performs an act of penetration with a part of his body or anything else, (b) what is penetrated is a part of the body of a dead person, (c) he knows that, or is reckless as to whether, that is what is penetrated, and (d) the penetration is sexual. (2) A person guilty of an offence under this section is liable (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the

statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years

55. In Canada, Section 182 of the Criminal Code of Canada, 1985 makes Necrophilia punishable. It reads as follows:

Dead body

182. Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who

(a) neglects, without lawful excuse, to perform any duty that is imposed on him by law or that he undertakes with reference to the burial of a dead human body or human remains, or

(b) improperly or indecently interferes with or offers any indignity to a dead human body or human remains,

The above provision appears to be similar though not identical to Sec. 297, IPC.

56. In New Zealand, Section 150 of the Crimes Act, 1961, serves imprisonment for two years to any person doing any act on the corpse, whether buried or unburied, to harm its dignity.

57. In South Africa, Section 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 prohibits Necrophilia.

58. The Hon'ble Supreme Court while considering the provisions of Article 21 of constitution of Indian, in the case of ***Pt. Parmanand Katara, Advocate vs. Union of India and another*** reported in ***(1995)3 SCC 248*** at para-3 held as under:

"3. The second contention of the petitioner is based on para 873 of the Manual which is as under:

"873. Body to remain suspended half an hour. Return of warrant.— (1) The body shall remain suspended for half an hour and shall not be taken down till the medical officer declares life extinct.

(2) The Superintendent shall return the warrant of execution with an endorsement to the effect that the sentence has been carried out."

We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death. According to us, the only requirement of the above-quoted para of the Manual is that the body of the condemned prisoner shall only remain suspended till the time the medical officer, present on the spot, declares him dead. We make it clear and hold that the jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead. The limitation of half an hour mentioned in para 873 is directory and is only a guideline. The only mandatory part of the above-quoted para is that the condemned person has to be declared dead by the medical officer and as soon as it is done the body has to be released from the rope. The petition is disposed of in the above terms. No costs."

59. The dignity of dead body of a human being must be maintained and respected. Moreover, it extended the right to the homeless deceased person to have a decent cremation, according to the religious customs to which one belongs to. It is also established a corresponding duty on the State to ensure decent cremation is served to the person. Article 21 of the Constitution of India emphasized the Right of Life means a meaningful life and not merely animal existence. Right to dignity is also expanded to a dead person. The provisions of Indian Penal Code contemplates rights of a deceased person including right against the trespass of burial sites or places of funeral rights under Section 297 of IPC. Right against dishonest misappropriation and conversion of property as contemplated under Section 404 of IPC. Right against the defamation as contemplated under Section 499 of IPC and Right against criminal intimidation as contemplated under Section 503 of IPC.

60. It is relevant to state at this stage the provisions of Transplantation Of Human Organs And Tissues Act ('THOTA' for short) regulates the removal, storage, transplantation of human organs and tissues for therapeutic purpose for preventing commercial dealings in human organs and tissues. THOTA guarantees a deceased person a right to protect and preserve human organs or tissue or both of the dead body being harvested without his/her consent or the consent of near relatives.

61. The National Human Rights Commission issued advisory dated 14.05.2021 for Upholding the Dignity and Protecting the Rights of the Dead as under:

Basic Principles for Upholding the Dignity and Protecting the Rights of the Dead

- 1. No discrimination in treatment of the body in any form-** To ensure that the dead body is

properly preserved and handled irrespective of religion, region, caste, gender, etc.

- 2. No physical exploitation-** Any form of physical exploitation of the body of the dead violates the basic right of the deceased person.
- 3. Decent and timely burial/cremation-** The deceased person has the right to a decent and timely burial/ cremation.
- 4. To receive justice, in case of death due to crime-** The dead have the right to receive justice in cases where death occurs due to crime.
- 5. To carry out a legal will-** The will, if any, left by the dead must be respected and honoured.
- 6. No defamation after death-**The deceased person should not be defamed by any kind of statement or visible representation, made or published intending to harm his/her reputation.

7. No breach of privacy- *The deceased person has the right to privacy, i.e., the right to control the dissemination of information about one's privacy.*

62. The law has not so far defined a person will include a dead person. It, however, has some rights which cannot be detached from it, even if the body is deluded of the life, is together forms a human being. The provisions of the Indian Succession Act, 1923, provides for execution of the Will of a person, after he has died. A person is also has a right to protect his dead body, to be mutilated, wasted or its organs to be taken out, except by the consent of the person, when he was alive or on the consent of his kith and kin or the State, if the body is unclaimed. The word 'person' may not be construed narrowly serves to exclude dignity of dead body of the human being, who was the person, when alive, which is not claimed and which is required to be cremated or buried

with the dignity in accordance with the religious beliefs of the person, if such beliefs can be found by establishing his identity. State is obliged in law to maintain sanitation to remove the body, which becomes dangerous, for the safety of other living beings for its adequate disposal. Unclaimed dead body has to be claimed by the State both for the purpose of investigation of the crime if it was committed on the human being who did not naturally died for scientific investigation or for research of medical education. The State is obliged in law both under its powers as welfare State, and to protect the rights of such person in its extended meaning under Article 21 of the Constitution of India for disposal of dead body for a decent and dignified cremation/burial in accordance with the religious beliefs that man kept or possessed.

63. It is our experience that everyday newspapers are covered with the reports of group of persons illegally confining the dead bodies on the road, or in front of the police stations

holding up traffic for hours making demand of compensation or for better road safety. The society should not permit such disgrace to the dead body. The State through its agencies must take immediate possession of such dead bodies used for illegal means, for its decent and dignified cremation.

64. It is brought to our notice that most of the government and private hospitals where the dead bodies, especially young woman kept in mortuary the attendant who appointed to guard, have sexual intercourse on the dead body. Thereby it is high time for the State Government to ensure such crime should not happen, thereby maintaining dignity of the dead body of the woman. Unfortunately in India no specific legislation enacted including under the provisions of Indian Penal Code for the purpose of upholding dignity and protecting rights and crime against the dead body of the woman. In the present case, as already stated supra, the charge is the accused first murdered the victim and had sexual intercourse

with the dead body. Though it is anunnatural offence, as defined under Section 377 of IPC, which defined *whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with impris-onment of either description for a term which may extend to ten years, and shall also be liable to fine.*

65. Unfortunately the said provision does not include the term 'dead body'. Thereby most of the crimes against woman on the dead body including hospital mortuaries happening and it can be considered as sadism or necrophilia and there is no offence in the IPC made out to punish such persons who committed sexual intercourse on the dead body of the woman. Therefore the provisions of Section 376 of IPC would not attract. The said material aspect has not been considered by the learned Sessions Judge, thereby erroneously convicted the accused under the provisions of Section 376 of IPC in the

absence of any provision attracting the offence under the provisions of Indian Penal Code.

66. It is the high time for the Central Government in order to maintain right to dignity of the dead person/woman to amend the provisions of Section 377 of IPC should include dead body of any men, woman or animal or to introduce a separate provision as offence against dead woman as necrophilia or sadism as has been done in United Kingdom, Canada, New Zealand and South Africa, to ensure dignity of the dead person including woman.

67. For the reasons stated above, the first point raised in the present criminal appeal is answered in **negative** holding that the accused has not made out any case to interfere with the impugned judgment of conviction, convicting the accused for imprisonment for life for the offence punishable under Section 302 of IPC with fine of Rs.50,000/- with default clause. Accordingly the second point is answered in **negative** holding

that the rape on the dead body of woman will not attract the offence punishable under the provisions of Section 376 of IPC.

VII. RECOMMENDATIONS

- i) *It is high time for the Central Government to amend the provisions of Section 377 of IPC and should include dead body of men, woman or animal as contemplated under the said provision;*

Or

The Central Government shall amend the new provision in the IPC with regard to sadism or necrophilia against the person whoever voluntarily has carnal intercourse against the natural including the dead body of the woman, punishable with imprisonment of life or with imprisonment of either description for a term

which may extend to ten years and also shall be liable for fine.

ii) *It is high time for the State Government to ensure installation of CCTV cameras in the mortuaries of all the government and private hospitals in order to prevent the offence against the dead body of the woman within 6 (six) months from the date of receipt of certified copy of this order.*

iii) *The State Government shall maintain following*

mortuary services:

a) **Mortuary hygiene:** *Regular mopping and cleaning of mortuary should be undertaken so that dead body remains are preserved in a proper, clean environment, thereby maintaining its dignity.*

- b) Secured information:** *The facility should maintain confidentiality of clinical records and must have a mechanism for guarding information related to the deceased, especially for cases that are stigmatized and socially criticised, such as that of HIV and suicidal cases.*
- c) Maintaining privacy of premises:** *Post mortem room should not come under the direct line of sight of the general public/visitors. To ensure the same, provision of curtain, screen or buffer area may be made in a post mortem room.*
- d) Removing physical/ infrastructural barriers:** *The facility must have infrastructure for delivery of assured services, to meet the prescribed norms. All basic requirements must be available and maintained as per the Indian Public Health Standard Guidelines for District Hospitals for management of the dead bodies,*

e) Sensitization of the staff: *The mortuary administration may sensitize the staff from time to time to train them in handling of the dead body and deal with the attendants of the deceased with sensitivity.*

68. In view of the above, we pass the following:

ORDER

- a) Criminal appeal filed by the accused is ***allowed in part.***
- b) The impugned judgment of conviction dated 09.08.2017 and order of sentence dated 14.08.2017 made in S.C.No.82/2015 on the file of the Principal District and Sessions Judge, Tumakuru, convicting the accused under the provisions of Section 302 of IPC with fine of Rs.50,000/- is hereby confirmed.
- c) The impugned judgment of conviction and order of sentence convicting the accused for imprisonment for a period of 10 years with fine of Rs.25,000/- for the offence punishable under Section 376 of IPC is hereby set-aside.

- d) The accused is hereby acquitted under the provisions of Section 376 of IPC for committing the rape on the victim-dead body as there is no provision in the IPC to punish him for the said offence.
- e) The Central Government is hereby recommended to amend the provisions of the IPC as stated supra in order to protect the dignity of the body of the deceased in order to ensure to protect persons right of life includes right of his dead body as contemplated under Article 21 of the Constitution of India within a period of 6 (six) months from the date of receipt of certified copy of this order.
- f) The Registrar General is directed to send a copy of this judgment to:
- i) The Ministry of Home Affairs, Government of India, New Delhi;
 - ii) The Ministry of Law, Justice and Parliamentary Affairs, Government of India, New Delhi;

- iii) The Chief Secretary, Government of Karnataka, Vidhana Soudha, Bengaluru.
- iv) Principal Secretary, Health and Family Welfare Department, Government of Karnataka, Bengaluru.
- g) The assistance rendered by Sri C.H. Hanumantharaya, learned counsel along with Ms.Abhinaya K, Sri K.V.Manoj, and Sri Nithin Ramesh, Amicus Curiae and Sri Kiran S. Javali, learned State Public Prosecutor-I along with Sri Vijaykumar Majage, learned Additional State Public Prosecutor, to arrive at this conclusion is appreciated and placed on record.

**Sd/-
JUDGE**

**Sd/-
JUDGE**