2025 INSC 108

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 649 OF 2013

THAMMARAYA AND ANOTHER ...APPELLANT(S)

VERSUS

THE STATE OF KARNATAKA ...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. This appeal takes exception to the common judgment dated 3rd August, 2010 rendered by the Division Bench of High Court of Karnataka(Circuit Bench, Gulbarga)[1] in Criminal Appeal No. 964 of 2006 filed by Manoj @ Manohar[2] and Criminal Appeal No. 1157 of 2006 filed by the appellants, Thammaraya[3] and Basappa @ Basavaraj.[4]

2. The three accused persons, namely, Manoj(A-1), Thammaraya(A-2) and Basappa @ Basavaraj(A-3) were tried by the

[1] Hereinafter, referred to as the 'High Court'.
[2] Hereinafter, referred to as 'Manoj(A-1)'(since deceased).
[3] Hereinafter, referred to as 'Thammaraya(A-2)'.
[4] Hereinafter, referred to as 'Basappa(A-3)'.

learned Fast Track Court-1, Bijapur[5] in Sessions Case No. 22 of 2002 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.[6] They were convicted and sentenced in the following terms: -

Manoj(A-1) (since deceased)	i. Under Section 302 IPC r/w Section 34 IPC: Life imprisonment with fine of Rs. 1000/-. ii. Under Section 201 IPC: 7 years R.I with a fine of Rs. 1000/-.
Thammaraya(A-2)	i. Under Section 302 IPC r/w Section 34 IPC: Life imprisonment with fine of Rs. 1000/-. ii. Under Section 201 IPC: 7 years R.I with a fine of Rs. 1000/-.
Basappa(A-3)	i. Under Section 302 IPC r/w Section 34 IPC: Life imprisonment with fine of Rs. 1000/-. ii. Under Section 201 IPC: 7 years R.I with a fine of Rs. 1000/-.

3. The appeal(s) preferred by the accused persons against the judgment of the trial Court came to be dismissed by the High Court, *vide* common judgment dated 3rd August, 2010, which is a subject matter of challenge in this appeal by special leave.

4. Since accused Manoj(A-1) passed away during the pendency of this appeal, Criminal Appeal No. 648 of 2013 filed by him has

[5] Hereinafter being referred to as the 'trial Court'
[6] Hereinafter being referred to as the 'IPC'

been dismissed as abated by this Court *vide* order dated 9th January, 2025.

Brief Facts: -

5. As per the prosecution case, Manoj(A-1) was the nephew of Shrishail, a liquor merchant. He had developed an immoral and illicit relation with the wife of Shrishail. As a sequel to this illicit relationship, Manoj(A-1) hatched a plan to eliminate Shrishail. For this purpose of carrying out the same, he contacted Thammaraya(A-2) and Basappa(A-3).

6. On 24th August, 2001, Manoj(A-1) took Shrishail in his Indica car bearing No. MP-09/HB-7769 on the pretext of taking him to see an expert doctor at Sholapur, Maharashtra. He also instructed Thammaraya(A-2) and Basappa(A-3) to meet them on the way. All the accused persons thereafter committed murder of Shrishail by strangulating him with a nylon rope and abandoned the dead body between Konnur cross to Domnal cross of Bijapur on National Highway No. 13. Before abandoning the dead body, the clothes worn by the deceased Shrishail were taken off and his denuded body was thrown in the forest area near Tungabhadra dam at Hospet. The clothes of deceased Shrishail were thrown away at some different location. Accused Manoj(A-1) made a pretence of

being a victim of dacoity and lodged a complaint[7] before the Solapur Police at Bijapur Naka for the offences punishable under Sections 395, 363, 365, 323, 506(2) IPC read with Section 3(25) of the Arms Act, 1959 and Section 135 of Bombay Police Act, 1951 which came to be registered as Crime No. 165 of 2001 dated 25th August, 2001. It was *inter alia* alleged in the said complaint that when he was near Teramail R.T.O Check Post, some unknown persons, with their faces hidden under a "*Burka*" and armed with weapons had come in two Maruti vans, stopped their car and launched an attack on them. Eventually, the assailants abducted Shrishail. He also alleged that the unknown persons dragged him out of the car and pointed a revolver at him, thereby, looting away money from both, accused Manoj(A-1) and Shrishail. Two of the unknown assailants allegedly also looted the car driven by accused Manoj(A-1), abandoning him at a distance of one furlong.

7. Accused Manoj(A-1), thereafter, sent the information of Shrishail's death at the house of the deceased Shrishail and as a consequence, the wife of the deceased Shrishail, further communicated it to his friends, who were the members of the Wine Shop Merchants Association in Bijapur. The friends of the

[7] Complaint No. 165 of 2001

deceased Shrishail proceeded to Bijapur Naka Police Station, where accused Manoj(A-1) was present. Thereafter, accused Manoj(A-1) was taken to the Commissioner of Police at Solapur.

8. Looking at the suspicious conduct and the flimsy story concocted by the accused Manoj(A-1), the police officers started interrogating him. During the course of interrogation, accused Manoj(A-1) broke down and confessed to have murdered Shrishail by strangulating him with a nylon rope while he was in the car with the aid and assistance of co-accused Thammaraya(A-2) and co-accused Basappa(A-3). He confessed that the dead body of Shrishail was thrown away, after removing his clothes. G. Kandakumar P. Govindaswamy(PW-1), discovered the dead body of the deceased at Smayar factory forest area and subsequently, gave the information[8] of the same to Bijapur Rural Police Station. After the dead body was discovered, an F.I.R.[9] was registered against the accused persons for the offences punishable under Sections 302 and 201 IPC read with Section 34 IPC.

9. The Bijapur police took over the investigation and recovered one gold chain bearing "S" symbol (MO-8), a chocolate coloured diary (MO-2), a gold ring studded with white stones (MO-9), clothes

[8] Exh. P-1
[9] FIR No. 105 of 2001

worn by the deceased(MO-4 & 5), one *Jambia*(MO-1) and one nylon rope(MO-6), which was used for the commission of the offence. All these recoveries were purportedly made in furtherance of the disclosure statements given by the accused persons to the Investigating Officer under Section 27 of the Indian Evidence Act, 1872. Charge sheet was filed against the accused persons for the offences punishable under Sections 302 and 201 IPC read with Section 34 IPC and the case was committed to the learned Fast Track Court-I, Bijapur(trial Court). Upon committal, charges were framed against the accused persons who denied the same and claimed to be innocent. During trial, the prosecution examined 31 witnesses, exhibited 47 documents and 9 material objects to prove its case.

10. The accused persons were confronted with the circumstances appearing against them in their statements recorded under Section 313 of Code of Criminal Procedure, 1973[10]. They denied the prosecution allegations and claimed to be innocent. However, upon conclusion of the trial, the trial Court proceeded to convict and sentenced all the three accused as noted above.[11]

[10] Hereinafter being referred to as 'CrPC'
[11] Refer Para 2 of this judgment.

11. Aggrieved by the conviction and sentence order, the accused persons filed criminal appeals before the High Court, which came to be dismissed *vide* a common judgment dated 3rd August, 2010, which is assailed in the present appeal by special leave.

Discussion and Conclusion: -

12. We have heard and considered the submissions advanced by learned counsel for the parties and have been taken through the impugned judgments and the evidence available on record.

13. The entire case of the prosecution hinges on circumstantial evidence. The law with regard to the appreciation of evidence in a case based purely on circumstantial evidence has been crystallized by this Court in a plethora of decisions. The *locus classicus* on this issue is the case of ***Sharad Birdhichand Sarda v. State of Maharashtra***[12]**,** wherein this Court formulated the five golden principles(Panchsheel) for cases based on circumstantial evidence, which are as follows:-

> "**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

[12] (1984) 4 SCC 116.

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 Crl 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."

14. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably towards the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused.

15. It is also a fundamental principle that a court can convict an accused only if their guilt is established beyond reasonable doubt and not merely on the possibility of guilt. The gap between "may be guilty" and "must be guilty" is significant, separating uncertain speculations from definitive conclusions. Thus, it is the duty of the prosecution to elevate its case from the realm of 'may be true' to 'must be true'.[13]

16. After adverting to the settled principles on cases based on circumstantial evidence, we shall now discuss the evidence in the present case. There is no dispute that the cause of death of Shrishail was homicidal inasmuch as Ravi Basavaraj Akki, the Medical Officer(PW-13) gave a categoric opinion in his testimony, stating that the death of Shrishail was caused by asphyxia resulting from strangulation.

17. The case as against accused Manoj(A-1) was based on three incriminating circumstances i.e., 'motive', 'last seen' and 'recoveries'.

18. So far as the surviving accused persons, Thammaraya(A-2) and Basappa(A-3) are concerned, we find that the only piece of

[13] Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793.

circumstantial evidence available on record against them is that of 'recoveries'. As per the prosecution, accused Thammaraya(A-2) made a disclosure statement leading to the recovery of one gold chain, one *Jambia* and a diary, which were all seized in the presence of panch witnesses i.e. Ektarsab Hajisab @ Hayatsab Honnutagi(PW-8) and Srimant, son of Khandu Hakke. Accused Basappa(A-3) also made a similar disclosure statement, in furtherance whereof, a ring studded with white stones was recovered. These recovered articles were produced by the prosecution before the trial Court as material object Nos. 1, 2, 8 and 9. The prosecution claims that these were the ornaments worn by the deceased Shrishail at the time of the incident.

19. While analyzing the jurisprudence concerning the proving of disclosure statements, this Court has held in ***Babu Sahebagouda Rudragoudar and Other v. State of Karnataka***[14], as follows:

> "**64.** The manner of proving the disclosure statement under Section 27 of the Evidence Act has been the subject-matter of consideration by this Court in various judgments, some of which are being referred to below……..
>
> **66.** Further, in ***Subramanya v. State of Karnataka (2023) 11 SCC 255*** , it was held as under :
>
> > "**76.** Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries

[14] (2024) 8 SCC 149.

in accordance with law. Section 27 of the Evidence Act reads thus:

> '**27.** How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.'

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness

> on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."
>
> (emphasis supplied)

20. On going through the evidence of Basanagouda, the Investigating Officer(PW-27), who purportedly recorded the disclosure statements of accused persons Thammaraya(A-2) and Basappa(A-3), which led to the recovery of the articles allegedly looted from the person of the deceased Shrishail at the time of the commission of the offence, we find that his testimony is woefully lacking on the material aspects required to prove the disclosure statement followed by the recovery. The relevant extract from the evidence of the Investigating Officer(PW-27) is reproduced hereinbelow for the sake of ready reference: -

> **"**...On 3.9.2001 I arrested accused Tammaraya Biradar and Basavaraj @ Basappa Mallappa Hattaraki both resident of

> Yelagi village, Indi taluka and interrogated them. They accepted the commission of the murder of the Rudragouda. I recorded their voluntary statement and also took their finger prints for verification. On the basis of voluntary statement of Tammaraya Patil, I conducted the recovery panchanama with the help of panchas. Ek tarsab Hayatsab Honnutagi and Shrimanth s/o Khandu Hakke. I recovered one gold chain bearing 'S' symbol which was of a disco model weighing of about 8 ½ grams, one chalklate colour diary written in bold letters as "Sonni telephone Index", Knife of about 15" long including handle with one side sharpened. Secondly, I conducted the recovery panchanama with the same panchas on the basis of voluntary statement given by Basavaraj @ Basappa Hattaraki. I recovered one white stone ring gold weighing about 8 grams and a diary on which it was written as "personal memorandam".....**"**

21. A cautious appraisal of the above extract from the evidence of the Investigating Officer(PW-27) would reveal that he did not depose the exact words as narrated by the accused Thammaraya(A-2) and accused Basappa(A-3) in their disclosure statements. In fact, he even did not care to exhibit the disclosure statements of which he was the scribe in his deposition. He also did not depose in clear words that the accused persons had led him to the place mentioned in the disclosure statements and got the articles recovered. No connection between the accused and the particular articles recovered is visible from the testimony of the Investigating Officer(PW-27). The Investigating Officer(PW-27) also failed to exhibit the recovery memorandums. There is no indication in the deposition of the Investigating Officer(PW-27) that he sealed

the recovery articles or got the same subjected to test identification at the hands of the relatives of the deceased Shrishail.

22. Furthermore, another very crucial missing link in the prosecution case that it failed to conduct the Test Identification Parade(TIP) of the recovered articles, thereby, bringing the identification of the material objects in Court for the first time, is under a cloud of doubt. It is a case of sheer negligence and dereliction of duty on the part of the Investigating Agency and the Public Prosecutor for not conducting Test Identification Parade(TIP). This Court shed light on the purpose of Test Identification Parade(TIP) in ***Ramkishan Mithanlal Sharma v. State of Bombay***[15], wherein it held as follows:

> "**20.** … These parades are held by the police in the course of their investigation for the purpose of enabling witnesses to identify the properties which are the subject-matter of the offence or to identify the persons who are concerned in the offence. …the identifying witnesses are explained the purpose of holding these parades and are asked to identify the properties which are the subject-matter of the offence or the persons who are concerned in the offence."
>
> (emphasis supplied)

23. This Court has further noted the significance of Test Identification Parade(TIP) in ***Munna Kumar Upadhyay alias***

[15] (1954) 2 SCC 516

Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh[16], wherein it was held:

> "**66**. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature." .....
>
> (emphasis supplied)

24. Therefore, this material omission on part of the Investigating Officer(PW-27) in not conducting a Test Identification Parade(TIP) of the recovered articles, more particularly when the case of prosecution is based solely upon recoveries of these articles, has created holes in the fabric of the prosecution story, which are impossible to mend.

25. Every piece of relevant fact needs to be sewn *via* the golden thread of duly proved circumstances, in order to ultimately formulate the fabric of guilt. Sadly, in the present case, the *facta probantia* fails to sustain and support the alleged *factum probando*, rendering the prosecution's case miserably weak. Hence, the evidence led by the prosecution against the accused person is woefully short of the mandate to prove the case beyond reasonable doubt.

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[16] (2012) 6 SCC 174.

26. Thus, we have no hesitation in arriving at a conclusion that neither the disclosure statements of the accused persons were proved as per law, nor the prosecution was able to establish the factum of recoveries of allegedly looted articles purported to have been made on the behest of the accused persons by leading proper evidence. No other evidence was led by the prosecution to bring home the guilt of the accused persons Thammaraya(A-2) and Basappa(A-3).

27. In wake of the above discussion, the chain of circumstantial evidences in the present case cannot be held to be so complete, so as to lead to the only hypothesis of the guilt of the accused which is totally inconsistent with their innocence.

28. Resultantly, the conviction of the accused Thammaraya(A-2) and accused Basappa(A-3) recorded by the trial Court and affirmed by the High Court is unsustainable in the eyes of law. The impugned judgments do not stand to scrutiny and are hereby quashed and set aside.

29. The appellant Thammaraya(A-2) and appellant Basappa(A-3) are acquitted of the charges. They are on bail and need not surrender.

30. The appeal is allowed, accordingly.

31. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANJAY KAROL)

.....J.
(SANDEEP MEHTA)

New Delhi;
January 22, 2025.