IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REFERRED CASE NO.6 OF 2018

C/W

CRIMINAL APPEAL NO.1301 OF 2018 (C)

IN CRIMINAL REFERRED CASE NO. 6 OF 2018

BETWEEN:

I ADDL. DISTRICT AND SESSIONS JUDGE
CHITRADURGA
(SUO MOTU)

...PETITIONER

(BY SRI. VIJAYKUMAR MAJAGE, SPP-II)

AND:

...RESPONDENT

(BY SRI. N TEJAS, ADVOCATE)

THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED U/S.366(1) CR.P.C. FOR CONFIRMATION OF DEATH SENTENCE AWARDED TO ACCUSED SRI. THIMMAPPA BY JUDGMENT DATED: 02.06.2018 AND SENTENCE DATED

04.06.2018 PASSED IN S.C.NO.77/2017 ON THE FILE OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA FOR THE OFFENCE PUNISHABLE U/S.302 OF IPC.

IN CRIMINAL APPEAL NO. 1301 OF 2018 (C)

BETWEEN:

THIMMAPPA
S/O LATE BHEEMAPPA
AGED 41 YEARS
RESIDING AT DHUMMIGOLLARAHATTI
HOLALKERE TALUK – 577 536
CHITRADURGA DISTRICT
(NOW IN J.C. AT BELGAVI CENTRAL PRISON)

…APPELLANT

(BY SRI. N TEJAS, ADVOCATE)

AND:

THE STATE BY HOLALKERE POLICE
REP BY SPP
HIGH COURT BUILDING, HIGH COURT
BENGALURU – 560 001.

…RESPONDENT

(BY SRI. VIJAYKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OD CR.P.C. PRAYING TO SET ASIDE THE JUDGMNET AND SENTENCE PASSED IN ORDER DATED 02-06-2018 PASSED IN S.C.NO.77/2017 ON THE FILE OF THE PRESIDING OFFICER OF IST ADDITONAL DISTRICT AND SESSIONS JUDGE AT CHITRADURGA AND ETC.,

THIS CRIMINAL REFERRED CASE AND CRIMINAL APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, **SREENIVAS HARISH KUMAR J.,** DELIVERED THE FOLLOWING:

JUDGMENT

The I Additional District and Sessions Judge, Chitradurga, having imposed death sentence on the accused for the offence under Section 302 of the Indian Penal Code (for short 'IPC'), has placed the file before this Court for confirmation of the death sentence in accordance with Section 366(1) of the Code of Criminal Procedure (for short 'Cr.P.C.'). The appellant has also preferred an appeal challenging the judgment of conviction and the order on sentence. The accused faced trial in S.C. No.77/2017.

2. The incident leading to accused being tried was that at about 8.30 p.m. on 21.02.2017, the accused inflicted a severe blow on the neck of his mother with a machete that resulted in instantaneous death due to decapitation. The motive appears to be that the wife of the accused had deserted him and that the accused thought that the mother was responsible for his wife deserting him. The incident was reported to the police by PW.4-Sunil kumar.S., the nephew of the accused and grandson of the deceased.

3. The trial court has placed reliance mainly on the evidence of PWs.3, 4, 5, 7 and 9. It is held that though PW.3 is not an eyewitness, being the brother of the accused, he came to know of the incident, came to the spot immediately and then went to police station. He has stated about the quarrels between the accused and his mother in relation to desertion of the former by his wife. The minor contradictions found in his evidence cannot be given so much of importance. PWs.5, 7 and 9 are independent witnesses who have categorically deposed about the overt act of the accused in killing his mother. These witnesses have not at all been discredited. PW6, the daughter of the deceased, has also given evidence that there used to take place quarrels between her mother and the accused and therefore her testimony corroborates the evidence of PWs.3 to 5, 7 and 9. The investigation part is established by PW8. In this view, the prosecution has been able to prove the case beyond reasonable doubt to hold the accused guilty of the offence under Section 302 of IPC.

4. We have heard the arguments of Shri Vijaykumar Majage, learned SPP-II for the State and Shri N.Tejas, learned counsel for the accused.

5. The argument of Shri Vijaykumar Majage is that the learned Trial Judge has imposed death sentence on the accused in the background of the fact that the accused resorted to killing his mother in a very cruel manner. By one stroke he beheaded his mother who was bringing sambar for his dinner. This incident was witnessed by PWs.4, 5, 7 and 9 whose evidence in examination-in-chief has not at all been discredited in the cross-examination. They were very much present at the time when the incident occurred and all of them have consistently spoken that the accused inflicted a blow on the neck of his mother with a machete. Therefore, the evidence of these four witnesses cannot be ignored in spite of some minor contradictions in their evidence. PW.4 who is the grandson of the deceased and eyewitness to the incident, immediately went to police station and lodged a complaint. PW.3 is not an eyewitness but he is the brother of the accused. Soon after coming to know of the incident, he came to the village and then went to police station. PW.6 is the sister of the accused. Both PWs.3 and 6 have given the reason for the incident to occur. Though PWs.3 and 6 are not the eyewitnesses, their testimonies corroborate the evidence given by PWs.4, 5, 7 and

9. The weapon used for committing the offence is also recovered at the instance of the accused. The entire case of the prosecution has been proved. The trial court is justified in imposing death penalty, it requires to be confirmed by this Court in these set of circumstances and therefore, argues for confirming the sentence of death passed by the trial court.

6. Shri N.Tejas, learned counsel for accused, has argued that the accused was not properly defended in the trial court. The cross-examination shows that it is ineffective. This is the reason for the trial court coming to the conclusion that the prosecution was able to prove its case beyond reasonable doubt. He further submits that even though the cross-examination is ineffective, from the material on record it can be demonstrated that the testimonies of the witnesses can be disbelieved. He submits that with regard to seizure of machete, the evidence is inconsistent in the sense that PW.3 has stated that the accused went inside the house after committing crime. Recovery of the weapon is not from inside the house, but it is at another place i.e., backside of the hotel which the accused was running. If according to PW.3, the accused went inside the house, he should have carried the

weapon with him and there was no occasion for the police to recover the weapon from the backyard of the hotel. So this is the main circumstance which cannot be ignored. He submits that the evidence given by PWs.4, 5, 7 and 9 is not worthy of belief because from the evidence given by PW.7 itself, it can be easily inferred that he was not an eyewitness. The trial court has come to the conclusion that PW.7 is also an eyewitness. In this view, holding the accused guilty of the offence under Section 302 of IPC itself is erroneous. He should have been acquitted of the offence. Therefore, he argues for allowing the appeal preferred by the accused and rejecting the reference.

7. We have considered the points of arguments. If we re-appreciate the evidence, the following picture can be obtained.

8(i). PW.3 is the brother of the accused and son of the deceased. He is not an eyewitness, but he states that on 21.02.2017, he received a telephonic call and came to know that his mother had been killed. When he came to the village, the dead body was not there. However, he saw the blood stains at the spot. He states that quarrel used to take place

between his mother and the accused. His evidence is useful only to this extent.

8(ii). PW.4 has stated that on 21.02.2017, around 08.30 p.m., he was standing near the house of the accused talking with some four or five persons. He saw the accused inflicting a severe blow on the head of his mother, which resulted in her head being separated. He was frightened seeing this incident. He says that the accused went inside the house. Thereafter, body was shifted to the hospital. He made a complaint to the police as per Ex.P11.

8(iii). PW.5 has stated that about a year ago, around 08.30 p.m., he was going with one Shivanna in front of the house of the accused. At that time, he saw the accused cutting a plant with a machhu or machete. They saw the deceased coming from temple side with a bowl of sambar for the purpose of serving food to the accused. She called the accused to come and take food. The accused, at that time, cut the head of his mother with a machete. He has stated that he made a call to the police. As per the advice given to him, accused was locked inside the house.

8(iv). PW.7 has also stated that about a year ago, around 09.00 p.m., he was going towards the temple after having meal. When he and others were standing at a place, some villagers came running and told that the accused had killed his mother. So from the examination-in-chief itself, it can be said that he was not an eyewitness, but he came to know about the incident from somebody.

8(v). PW.9 has stated that the accused gave a blow on the neck of his mother with a machete and as a result, she died at the spot. He has stated that the head was decapitated and the reason for the incident was that the accused had a grouse that his mother was responsible for his wife deserting him.

8(vi). Now, if we look at the answers given by all these four witnesses in the cross-examination, it is found that none of them has been discredited. There is no reason to discredit the testimonies of these four witnesses.

8(vii). PW.6 is the sister of the accused and her testimony also discloses that the wife of the accused had deserted him and in this background, he used to quarrel with his mother. She came to know that in the background of this matter, the accused killed the mother.

8(viii). PW.1 speaks about the spot panchanama produced as per Ex.P1 and another mahazar - Ex.P2 in connection with the seizing T-shirt and lungi of the accused as per M.Os.1 and 2 respectively. He also speaks about the seizure of the chopper or the machete as per M.O.3 under the panchanama Ex.P5.

8(ix). PW.2 admits signature on another mahazar - Ex.P7 in relation to seizure of the clothes of the deceased, but does not support the contents of the panchanama.

9. It is true that, as has been argued by Shri N.Tejas, learned counsel for the accused, there is some discrepancy with regard to the seizure of the chopper. According to the investigating officer, it was seized from the backside of the hotel which was being run by the accused. But the evidence of PW.4 shows that the accused went inside the house soon after the incident. If he remained there till arrival of the police, it is not understandable as to how the police could seize the chopper or machete from backyard of the hotel. Any way this is a discrepancy which does not assume so much of significance in the light of the uncontroverted evidence of PWs.4, 5 and 9

being eyewitnesses. PW.7 is not an eyewitness, but no sooner the incident took place than he came to know from a villager about the incident having taken place. He rushed to the spot and saw the dead body. In this view, the evidence given by PW.7 has relevance. Since we find that the testimonies of these four witnesses are believable, it can be said that the trial court is justified in recording conviction against the accused.

10. It is true that cross-examination of the prominent witnesses is not so much effective, but that cannot be a reason for discarding the entire evidence of PWs.4, 5, 7 and 9. Nothing prevented the counsel who appeared on behalf of the accused from effectively cross-examining the witnesses. We do not think this itself can be a ground for remanding the case to the trial court.

11. The entire incident can be clearly brought within the scope of Section 300 of IPC. The accused had a grouse that his mother was responsible for his wife to desert him. It appears that the wife left the company of the accused about four or five years before the incident occurred. It cannot be said that the said reason cannot be accepted as motive for the incident

because the reason thus stated by the witnesses has not been controverted in any way. Moreover, PWs.3 and 6 being the brother and sister of the accused respectively also speak consistently that in the background of the desertion by the wife, there used to take place quarrel between the deceased and the accused. This being the actual position, the motive also stands proved. There is no evidence to hold that the accused was suddenly provoked by the deceased which resulted in accused resorting to killing her. None of the exceptions to Section 300 of IPC can be applied. In this view, offence punishable under Section 302 of IPC has fully been established.

12. The trial court has imposed death penalty. If we read the order of the trial court on sentence, we do not find reasons which prompted the trial court to arrive at a conclusion that the life imprisonment is inadequate. It is a settled principle now that the Court should first record that a rarest of rare case has been made out and then it must take a balance sheet of the aggravating and mitigating circumstances before imposing death penalty. The trial court has not made this effort at all.

13. If we take an analysis of the entire situation, we find that this is not a rarest of rare case though it is a fact that the incident was cruel and brutal. Emotion should not become an influencing factor to impose death penalty. Degree of criminality matters much while imposing death penalty. In this case, the prosecution has not brought on record that the accused is a hardcore criminal. In this view, we do not find that a rarest of rare case has been made out for imposing death penalty on the accused. Only if the Court finds that a rarest of rare case has been made out, it should proceed further to take balance sheet of the aggravating and mitigating circumstances, in the light of the pronouncements of the Hon'ble Supreme Court in the cases of ***BACHAN SINGH v. STATE OF PUNJAB***[1] and ***MACHHI SINGH v. STATE OF PUNJAB***[2]. As we do not find this case has reached that stage, we are not inclined to confirm the death sentence. Next alternative is to impose life imprisonment and hence, we proceed to pass the following:-

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[1] (1980) 2 SCC 684

[2] (1983) 3 SCC 470

ORDER

(i) Criminal Reference No.6/2018 made by the trial court is *rejected.*

(ii) Criminal Appeal No.1301/2018 is *partly allowed*. The death penalty imposed by the trial court is set aside. The accused is sentenced to life imprisonment and fine of Rs.25,000/- (Rupees Twenty Five Thousand only) and in default of payment of fine, he shall further undergo imprisonment for a period of one year. The period of imprisonment he has already spent in jail is ordered to be set off.

Sd/-
JUDGE

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JUDGE

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