

82
145

IN THE COURT OF DISTRICT AND SESSIONS JUDGE, GADAG

PRESENT

SRI.R.J.Satish Singh, B.Com., LL.M.
DISTRICT AND SESSIONS JUDGE,
GADAG

Dated this the 8th day of March, 2012

SC No. 33/2011

Complainant: STATE by Nargund Police
(By Public Prosecutor, Gadag.)

-Vs -

Accused: Irappa Shiddappa Muragannavar,
Age: 24 Years., Occ:Driver, r/o Khanapur,
Tq:Nargund.

(Accused is in J.C.)
(By Sri. B.N.S., Advocate)

= **JUDGMENT** =

- 9/2/12
1. The PI of Nargund police Station has laid the charge sheet against the accused for the offences alleged to have been committed by him punishable u/s U/Secs. 302, 201, 376, 366-A and 364 IPC.
 2. The factual scenario of this case are as under:
That on 28/12/2010 at 18:30 hours at Khanapur village of Nargund Taluk, the accused with an intention to commit rape upon the minor girl Rakshitha aged about 5 years 2 months, kidnapped the said minor girl Rakshitha from the house of C.W.12 Smt.Yankavva Patil by assuring her to give biscuits and took her to the land of C.W.20 Sangappa Hadapada and committed rape twice upon her and also
- 1/7/12



killed her by pressing her neck and put the dead body and stones in a gunny bag and thrown the said gunny bag in Bennihalla with an intention to cause disappearance of evidence by screening himself from legal punishment. Hence the charge sheet.

2. The Committal Magistrate secured the presence of accused and taken to the custody and supplied the copies of charge sheet papers as provided U/Sec.207 Cr.P.C., and committed the case to this Court U/Sec.209 Cr.P.C., since the offences are exclusively triable by the Court of Sessions. The Registry of District Court has received the records from the Committal Magistrate and given number as SC.33/2011. The accused is in judicial custody and his remand was extended from time to time. Thereafter, charge for the offences punishable u/s 302, 201, 376, 366-A and 364 IPC was framed readover and explained to the accused. The accused pleaded not guilty and claimed to be tried.
3. In order to prove the case, the prosecution has examined PWs.1 to 25, got marked Exs.P.1 to 23 and also MOs.1 to 5 are got marked.
4. Thereafter, the statement of accused as required U/Sec.313 Cr.P.C., recorded. The accused denied the imputations appeared against them and did not chosen to lead any defence evidence on his behalf.
5. I have heard arguments of both the side.
6. Thus, the following points that arises for my consideration are:
 1. Whether the prosecution proves beyond all reasonable doubt that on 28/12/2010 at 6:30 p.m. in the house of C.W.12 Yankavva situated at Khanapur village, Nargund Tq., the accused kidnapped the minor girl Kum.Rakshitha aged about 5 years 2 months by assuring her to give biscuits



117A 11

and thereby committed an offence punishable u/s 364 IPC?

2. Whether the prosecution proves beyond all reasonable doubt on the said date, the accused, after kidnapping the minor girl by name Kum.Rakshitha committed rape twice upon her in the land of 20 Sangappa Hadapad and thereby committed an offence punishable u/s 376 IPC?

3. Whether the prosecution proves beyond all reasonable doubt that on the said date, time and place, the accused assured the minor girl to give biscuits with an intention that the said girl may be forced to illicit intercourse and thereby committed an offence punishable U/Sec.366-A IPC?

4. Whether the prosecution proves beyond all reasonable doubt that on the said date, the accused, after committing rape twice upon the minor girl Kum.Rakshitha committed murder by throttling and thereby committed an offence punishable U/Sec.302 IPC?

5. Whether the prosecution proves beyond all reasonable doubt that after committing the murder of minor girl Kum.Rakshitha, the accused put the dead body and stone in a gunny bag and thrown the said gunny bag in Bennihalla with an intention to cause disappearance of evidence by screening himself from legal punishment and there by committed an offence punishable u/s 201 IPC?

6. What order?

17/11/11



7. My answer to the above points are:

1. In the affirmative;
2. In the affirmative;
3. In the affirmative;
4. In the affirmative;
5. In the affirmative;
6. As per final order for the following

REASONS

POINT No.1 to 5:

8. These points are inter connected to each other and require common discussion. Therefore, I would like to deal these points together to avoid repetition of facts.
9. In order to prove the guilt against the accused persons, the prosecution in all examined 25 witnesses and got marked 23 documents and M.O.1 to 5 have been got marked.

- P.W.1 - Sanganasappa, father of deceased and complainant.
- P.W.2 - Prahalladgouda Patil, Pancha for Ex.P.2 Inquest
- P.W.3 - Shankaragouda Karigoudar, Seizure pancha Ex.P.5
- P.W.4 - Hanamappa, Grandfather of deceased and has given missing complaint.
- P.W.5 - Venkavva Patil, deposed about the kidnapping the girl.
- P.W.6 - Ajit Patil deposed about the kidnapping of the girl.
- P.W.7 - Yallappagouda Kagadal deposed about carrying the deceased in a gunny bag by the accused.
- P.W.8 - Bhimappa Talawar deposed about carrying the deceased in a gunny bag by the accused.
- P.W.9 - Gadigeppa deposed about carrying the deceased in a gunny bag by the accused.
- P.W.10 - Hanamappa Talawar deposed about carrying the deceased in a gunny bag by the accused.
- P.W.11 - Rajesab Nadaf, deposed about removing the deceased with gunny bag from Bennihalla.

Tring



- P.W.12 - Shankarappa Tadasi, deposed about removing he deceased with gunny bag from Bennihalla.
- P.W.13 - Shankrappa Hadapad, owner of the land, wherein the accused committed rape and murder.
- P.W.14 - Mallanagouda Kagadal, hearsay witness.
- P.W.15 - Shrinivasreddy Hosamani deposed about his land situated adjacent to Bennihalla.
- P.W.16 - Ramesh Hulakandi, PDO deposed about issuance of Ex.P.7 Property Extract of house, wherein, the accused kidnapped the girl.
- P.W.17 - Yallappa Madiwalar, Engineer, PWD deposed about the issuance of Ex.P.8 sketch.
- P.W.18 - Ishwarappa Mannur, Engineer, HESCOM deposed about issuance of Ex.P.10 certificate with regard to supply of electricity on the day of incident.
- P.W.19 - Shivaleela Tengar, mother of deceased.
- P.W.20 - Dr.Girish Maraddi deposed about conducting of P.M.report as per Ex.P.11.
- P.W.21 - S.A.Venkatapur, PC deposed about carrying the dead body for P.M.report and handing over the cloths of deceased to the I.O.
- P.W.22 - Prabhappa Huded, PC, deposed about carrying FIR and handed over same to the Jurisdictional Magistrate.
- P.W.23 - Yallavva Mangalore, aunt of deceased deposed about kidnapping the girl by the accused.
- P.W.24 - B.Vijaykumar, PI, deposed about the investigation done by him.
- P.W.25 - S.S.Kamathagi, PSI deposed about the investigation done by him.

10. Having carefully gone through the evidence of the prosecution witnesses, now I deem it relevant to re-produce the gist of the each witnesses in support of the prosecution case and to appreciate the same.

11-11-11



11: P.W.1 being the father of the deceased and the complainant. He has spoken about the incident. In his examination-in-chief, he has stated that deceased Kum.Rakshitha aged about 5 years is his daughter. He left his daughter in his in-laws house in Knanapur village of Nargund Taluk and himself and his wife left to Mangalore for coole work. He received telephonic call from his father-in-law on 29/12/2010 about missing of his daughter. Himself and his wife rushed to Khanapur village and made all efforts to trace his daughter. They did not succeed in it. One Hanamanthappa Bheemappa and other villagers told him that they saw the accused carrying his daughter somewhere. He came to know from the police that his daughter was murdered. Accused shown the dead body of his daughter. He was shock to see his daughter's dead body in a gunny bag with two stones and it was immersed in Bennihalla near Knahapur. He identified the dead body of his daughter. He has given complaint to the police and he identified his complaint. He came to know that accused committed rape on his 5 years old daughter and killed her. Further, he came to know that accused taken his daughter from the house of Venkavva i.e., P.W.5, where his daughter was watching T.V. and after the P.M., the dead body was handed over to him for cremation. He performed the last rites of his daughter. This witness was cross-examined. In his cross-examination, he has stated that he has seen the accused in the police custody and a suggestion was put to this witness that T.V. was there in his father-in-law's house. For that, he has denied. Nothing was elicited by this witness which helps the accused. The defence counsel failed to elicit anything which helps the accused. This witness is the father of the deceased Rakshitha and he has deposed the facts, which is within his knowledge.

11 J.M.



ant. He
he has
is his
anapur
galore
-in-law
s wife
e his
appa
used
olice
ty of
in a
ear
has
He
old
ed
re
ty
is
e

12. P.W.2 is the witness to the Inquest mahazer. In his examination-in-chief, this witness stated that on 01/01/2011, the police called him and requested to become a panch witness. The police taken him to Bennihalla. Bennihalla is flowing in front of Khanapur village. The accused shown the spot stating that he has killed the deceased and packed in a gunny bag and also inserted two stones and immersed the gunny bag in the water. The police removed the gunny bag from inside the water and opened it. Inside the gunny bag, he saw the dead body of a female child of 5 years along with two stones. The police have drawn inquest panchanama and readover to him. After going through it, he affixed his signature to the said panchanama. He identified the Inquest panchanama as Ex.P.2 and his signature on it as Ex.P.2(a). Further this witness has stated that along with him one Narayanagouda also present as pancha. He also affixed his signature. He identified two stones which was found inside the gunny bag as M.O.1 and 2. He identified the gunny bag, on which, the dead body was kept, which is marked as M.O.3. He identified the frock which worn by the deceased which is marked as M.O.4. Further this witness stated that police drawn the spot mahazer and he has gone through the contents of the mahazer and affixed his signature. He identified the spot mahazer as Ex.P.3 and also identified his signature on it as Ex.P.3(a). Further this witness stated that in a spot, there exists pumpeet and further this witness stated that the spot mahazer was drawn on the spot. Further this witness deposed that after the mahazer, they proceeded towards the house of Venkavva i.e., P.W.5 from where, the accused kidnapped the deceased child. Accused shown the house from where he kidnapped the deceased child. In the same panchanama, the said fact was mentioned. The

1772777



accused shown the spot, where he has committed the offence. He identified the spot panchanama as per Ex.P.5 and his signature appeared on it as Ex.P.5(a). This witness cross-examined in length. He denied the suggestion that the accused did not shown the place, where he immersed the dead body of the deceased in a gunny bag. Further he has stated that one Shankrappa and Rajesab Nadaf i.e., P.W.11 and P.W.12 removed the gunny bag from the water. Further, he denied the suggestion that M.O.3 is not the gunny bag, which was recovered by the police. The another suggestion was put to this witness that if gunny bag is immersed inside the water, it will decompose. For that this witness stated that if a gunny bag put inside the water and removed after three days, there is no chance of decomposing the gunny bag. Nothing much was elicited by this witness. This witness has spoken the fact that he was called by the police to act as panch witness and accused shown the spot and gunny bag was removed from inside the Bennihalla and dead body of child was found. If I carefully evaluated the evidence of this panch witness, it is crystal clear that the accused shown the spot and body was recovered at the instance of the accused and mahazer was drawn.

13. P.W.3 is the witness to the seizure pancha. In his evidence, he has stated that on 01/01/2011, the police called him and requested him to become pancha. He went to police station and in his presence, frock, two plastic bangles of deceased were seized and Police Inspector drawn the seizure mahazer and he affixed his signature to the seizure mahazer as Ex.P.6 and his signature on it as Ex.P.6(a). He identified the cloths and two bangles of the deceased child as M.O.4 and M.O.5 respectively. In his cross-examination, he has stated that about 5:10 p.m., the police called

1771-211



him to the police station and one Laxmanagouda was with him. He denied the suggestions that he used to visit police station and no articles were seized in his presence. Nothing much was elicited to disbelieve this witness. If I carefully evaluated the evidence of this witness, this witness clearly stated that the seizure mahazer was drawn in his presence and in his presence, two plastic bangles and frock of the deceased were seized.

14. P.W.4 being the grandfather of the deceased and also complainant for missing complaint. In his evidence, he has stated that the deceased was his brother's daughter's daughter. At the time of her death, the deceased was 5 years and two months. The deceased was resided in his elders brother's house. The deceased parents i.e., P.W.1 and P.W.19 were in Mangalore to eke out their livelihood. He further stated that about 11 months back one day he had been to his field to supply water to the crop. One Mallanagouda i.e., P.W.14 called him to his mobile phone and told him that his grand-daughter was missing. Immediately, himself and his brother came to their house and started searching of the deceased Rakshitha. In spite of their efforts, they did not trace her. On next day morning, they made all efforts to trace Rakshitha. But, they did not succeeded. They came to know that their grand daughter deceased Rakshitha had been to the house of Ramanagouda to watch T.V. before she was missing. They went to the house of said Ramanagouda and enquired him. He told that deceased Rakshitha was sitting with other children and watching the T.V. till 6:20 p.m. and accused took her. Immediately, they went to Nargund Police and gave missing complaint. He identified the missing complaint which is marked as Ex.P.6 and his signature on it as Ex.P.6(a). Further he deposed that they called the P.W.1 i.e.,

177177



the father of deceased Rakshitha to his mobile phone and informed about the missing of his granddaughter Rakshitha. On next day, both the parents of Rakshitha i.e., P.W.1 and P.W.19 came from Mangalore and again they started to search for Rakshitha. They again went to Ramanagouda Patil's house. He told them that accused took their granddaughter when she was watching T.V. and P.W.14 Yallappagouda Kagadal told them that accused was carrying their granddaughter. Again one Bhimappa Talawar, Gatigeppa Talawar and Hanamappa Talawar i.e., P.W.8, P.W.9 and P.W.10 told them that accused was taking their daughter on his shoulder and went towards stream. Immediately, they came to police station and informed about the accused. P.W.1 given complaint to the police. After that police told them stating that accused kidnapped their grand daughter and raped her and strangled her and packed in a gunny bag and thrown in a stream. In this cross-examination, nothing was elicited from him. He denied the suggestion that he has deposed falsely.

15. I carefully evaluated the evidence of this witness. This witness has stated the fact about missing of Rakshitha and further he has stated that P.W.8, P.W.9 and P.W.10 told him that the accused was carrying the deceased Rakshitha in a gunny bag.
16. P.W.5 Venkavva Patil, she has stated in her examination-in-chief that she know the deceased Rakshitha, she was residing at Khanapur. Near her house one Rangappa Yallappa Chikkannavar house is situated. She know all the family members of Rangappa Yallappa Chikkannavar. Rangappa's elder daughter by name Shivaleela was given in marriage to Badami, she had one daughter by name Rakshitha, who is aged about 5 years. Shivaleela and her husband went to Mangalore for work by leaving Rakshitha in her



[Handwritten signature]

grand father's house. She further stated that on 28/12/2010 Tuesday at about 6:30 p.m. herself and her husband brother's son by name Ajit Patil i.e., P.W.6 were watching T.V. and at that time, Rakshitha came to her house for watching T.V. by sitting near the door. At about 6:30 p.m., the accused came to her house and he started talking with Rakshitha. After that he took Rakshitha with a pretext to buy biscuits to her. Accused and Rakshitha did not return. They thought that accused might have dropped Rakshitha to her house. On the next day i.e., on 29/12/2009, Rangappa's brother Hanamappa came to her house and told her that his granddaughter is missing and he has filed missing complaint in this regard. The matter was intimated to the father of the deceased. ON 30/12/2010, the parents of deceased came to their village and along with them their father-in-law came to her house and enquired her. She told them that on 28/12/2010 at 6:30 p.m., the accused came to her house and taken Rakshitha. Further she told them that she came to know from others that on 28/10/2010, at 8:30 p.m., some people saw the accused was taking something in a gunny bag on his shoulder and he was carrying Rakshitha near the water tank. This was seen by P.W.7, P.W.8, P.W.9 and P.W.10. Further she came to know that accused kidnapped Rakshitha and raped on her and thrown her body. Further, she came to know that Rakshitha's father-in-law given complaint. On 01/01/2011, when the accused was arrested by the police, she identified the accused. Further she came to know that on 28/10/2010 at 6:00 p.m., the accused taken Rakshitha from her house with a pretext to buy biscuits to her and accused raped Rakshitha twice near the maize field by inserting cloths in her mouth and killed her by throttling her throat. Afterwards, the accused put the dead body in a gunny bag

11/12/11



and inserted two big stones and thrown the gunny bag in a pond situated near the land of Shrinivas Hosamani i.e., P.W.15. She identified the gunny bag and stated that the said gunny bag is belongs to her and she kept the gunny bags outside the house and accused has taken that gunny bag. She do not know when the accused taken that gunny bag. She also identified the frock and bangles which were worn by the deceased Rakshitha. In her cross-examination, she has stated that she has given statement before the police and she has stated that after receipt of complaint, the police came to her house and herself, her husband's brother's son by name Ajit and Rakshitha were watching the T.V. and she categorically admitted that the gunny bag is belongs to her, because, she has put T-mark on the gunny bag. Nothing was elicited by this witness. While this witness giving evidence, this Court recorded the demeanor of witness. But, this witness is not hearing properly and she is suffering from partly deafness. In spite of this, the witness was firm and she has narrated all the facts.

17. P.W.6 in his evidence deposed about kidnapping of deceased Rakshitha. In his evidence, he has stated that he is the resident of Khanapur and he know Rangappa Chikkannavar and their family. Their house is situated near his house i.e., his brother's house. Shivaleela is the daughter of Rangappa and she has given in marriage to Badami. She has one daughter by name Rakshitha aged about 5 years. Shivaleela and her husband went to Mangalore for work and they left Rakshitha in their father's house i.e., Rangappa's house at Khanapur. On 28/12/2010, Tuesday evening when he was watching TV along with his parental father's wife by name Venkappa, at that time, the child Rakshitha came to their house and she sat near the door and started to watch T.V. At



about 6:30 p.m., the accused came near their house and started to talk with Rakshitha. Afterwards, he has taken Rakshitha with a pretext to buy biscuit to her. Accused did not returned to his house. He thought that the accused might have left Rakshitha in Rangappa's house. He was cross-examined in length. But, nothing was elicited by the counsel for the accused. In his cross-examination, he has clearly stated that they have marked letters 'T' or 'P' to identify the gunny bags and he saw the gunny bag in the police station. He identified the said gunny bag as it belong to them. Thus, the evidence of this witness corroborated with the evidence of P.W.5 Venkavva Patil.

18. If I carefully evaluate the evidence of P.W.5 and P.W.6, it is crystal clear that the accused came to the house of P.W.5 and started talking with Rakshitha and he has taken Rakshitha with a pretext to buy biscuit for her. He did not return.
19. P.W.7, P.W.8, P.W.9 and P.W.10 gave evidence about last seen the deceased with the accused. Their evidence place very important role in this case.
20. P.W.7 in his evidence stated that he know Rakshitha. He know the accused. The accused is from their village. On 30/12/2010, when he came back from his field, he came to know from Rangappa Chikkannavar and his son-in-law by name Sanganasappa that their granddaughter by name Rakshitha aged about 5 years 2 months was missing from 28/12/2010 from the house of Tirukanagouda Patil. Further, he came to know that accused taken Rakshitha with a pretext to buy biscuits for her. Rakshitha did not return home, both accused and Rakshitha were missing. At this juncture, he told them that on 28/12/2010 at 8:30 p.m., when he was standing near his house, he saw the accused carrying one

117717



gunny bag and carrying a child with wearing frock and going through bus stand road. He thought that he is carrying some girl and going to their house. He told this fact before them. On the same day, Irappa, Bhimappa, Gadigeppa, Hanamappa also seen the accused carrying the small girl. He was cross-examined in length.

21. In his cross-examination, he has stated that he was standing in front of his house and he has seen the face of the accused in the street light and he has seen the accused from 20 feet distance and he has admitted that he has little eye sight problem and he denied the suggestion denying that due to sight problem, he cannot identify the person who carried the child. Accused was carrying gunny bag on one of his shoulder and carrying the child on another shoulder. The accused was carrying the child on his left shoulder and he was carrying the gunny bag on his right shoulder. He did not enquired the accused.
22. If I carefully evaluated the evidence of this witness, it is very clear that he saw the deceased along with the accused and he has clearly stated that the accused was carrying the child on his shoulder.
23. P.W.8 supported the evidence of P.W.7. In his examination-in-chief, he has stated that he saw the accused carrying one child on his shoulder on 30/12/2010. He came to know that the parents of Rakshitha given a police complaint. After that he came to know that the accused committed rape and murdered the deceased Rakshitha and inserted the body in the sack and inserted stones and thrown it in Bennihalla.
24. In his cross-examination, he has denied the suggestion that he could not recognize the accused because of darkness. This witness

17/1/22



voluntaries that in front of his house, there exists one electric pole along with streetlight. In the said streetlight, he saw the accused and child. Thus, the evidence of this witness corroborates the evidence of P.W.7. This witness saw the accused along with deceased Rakshitha.

25. P.W.9 Gadigeppa Talawar also supported the evidence of P.W.7 and 8. In his examination-in-chief, he has stated that his house is situated near the school. The school is situated near Benni Halla. Any person wants to go to Benni Halla, they should cross his house. One year back at about 8:00 to 8:30 p.m., he saw the accused was carrying a child and moving towards Bennihalla. The child was lying on the shoulder of accused. The accused was also carrying one sack. After two days, he came to know that child is missing and parents of child started to enquire the villagers and he told them that he saw the accused on 30/12/2010 at 8:00 to 8:30 p.m. carrying a child on his shoulder and he was going towards Bennihalla. Nothing was elicited in his cross-examination.
26. In his cross-examination, he has clearly admitted that he told the incident to Rangappa Chikkannavar that accused was carrying child on his right shoulder and accused was also carrying one sack. The right shoulder of the accused was facing towards his house. He has seen the face of the accused and he has not seen the face of the child. He did not made any efforts to talk with the accused. He saw the accused from 200 ft away. Thus, nothing was elicited in his cross-examination.
27. If I carefully evaluated the evidence of this witness, it is clear that this witness has seen the accused along with the child and his evidence is corroborated the evidence of P.W.7 and 8.

177777



28. P.W.10 also supported the evidence of P.W.7, P.W.8 and P.W.9. In his evidence, he has stated that on 30/12/2010 at about 8:30 p.m., when he was returning after feeding to his cows, he saw the accused carrying child and moving towards Bennihalla. Any person wants to go to Benni Halla, they should cross his house. The child was lying on the shoulder of accused. Accused was also carrying one sack. He was cross-examined in length. But, nothing was elicited. He has clearly admitted that the accused was carrying child on his right shoulder and accused carrying one sack on left shoulder facing towards his house. He has seen the face of the accused and he has not seen the face of the child. He did not made any efforts to talk with the accused.
29. Thus, the evidence of P.W.7, P.W.8, P.W.9 and P.W.10 corroborates with each other. Their evidence was not shaken in the cross-examination. Nothing was placed by the defence counsel to disbelieve these witnesses. These witnesses last time saw the accused along with deceased, who was moving towards Bennihalla along with sack.
30. P.W.11 and P.W.12 spoken about removing the gunny bag from Bennihalla. P.W.11 stated in his examination-in-chief that when he was returning from attending the nature call at about 7:30 a.m., he noticed a police jeep near Bennihalla. He went near Bennihalla. Police brought the accused and accused showed the spot in the Bennihalla and told the police that he has thrown the dead body of the child inside the Bennihalla, even told the name of the deceased Rakshitha, grand daughter of Rangappa Chikkannavar. Police asked him whether he know swimming. Himself and one Shankarappa P.W.12 went inside the Bennihalla and started searching. He found the sack and they lifted the gunny bag outside



water and police asked them to open the sack and on opening the sack, they found two stones and dead body of the child. The said dead body was Rakshitha, the grand daughter of Rangappa Chikkannava. He identified the M.O.1 to M.O.4 i.e., two stones, gunny bag and frock, which the deceased was wearing when they lifted the dead body. He was cross-examined in length. But, nothing was elicited from his mouth.

31. P.W.12 has given his evidence as to that of P.W.11. If I carefully evaluated the evidence of P.W.11 and P.W.12, it is crystal clear that the accused shown the place, where he inserted the dead body and P.W.11 and P.W.12, who went inside the water and removed the sack. They opened the sack and found two stones along with dead body of Rakshitha. Thus, there is no iota of doubt that the dead body was found in Bennihalla. Accused shown the spot and dead body was recovered from Bennihalla.

32. P.W.13 is the owner of the land, where accused committed rape on Rakshitha. He has deposed to that effect and said field belong to him. No importance will be given to this witness.

33. P.W.14 is the hearsay witness. He has stated that accused is from his village and Rakshitha was murdered. He came to about the incident.

34. P.W.15 Srinivasreddy Hosmani. He has given evidence that his land is situated adjacent to Bennihalla. In his evidence, he has stated that Bennihalla is situated at about 1 k.m. distance from the plot area of Khanapur and he was owning one pumpset. He grown wheat in his field. He was pumping water from Bennihalla and he used to keep stones to avoid soil erosion. He came to know about the incident and body was found in Bennihalla near the pipe, which is connected to his pumpset. The police came there along with

11/11/11



accused and accused shown the spot and police asked two persons to enter inside the water and to remove the body. The said two persons entered inside the water and removed one sack and when the sack was opened, they found dead body of Rakshitha along with two stones. He identified two stones as M.O.1 and M.O.2 and he stated that he kept those stones under his pumpset to avoid soil erosion. On the bank of Bennihalla, there are so many shrubs were grown. After that, there exists graveyard. People usually will not go there in odd hours that too during night hours. This witness clearly supported the evidence of P.W.11 and P.W.12. His evidence is fully corroborated the evidence of P.W.11 and P.W.12. He stated that accused has shown the spot and at the instance of the accused, gunny bag was removed by two persons i.e., P.W.11 and P.W.12. At this stage, it is relevant to note that P.W.15 stated in his evidence that Bennihalla is situated near the graveyard and there exists waste shrubs and people usually will not go there, especially during night times. Thus, it is crystal clear that the accused intentionally selected this place to dispose of the body of Rakshitha.

35. P.W.16 is the PDO, who issued the property extract belongs to Tirukanagouda Ramanagouda Patil as per Ex.P.7. P.W.17 is the Asst.Engineer, PWD, who prepared the sketch of the house of Tirukanagouda Venkanagouda Patil, where the accused kidnapped Rakshitha and also prepared the sketch of the pump house along with the Bennihalla where the body was found as per Ex.P.8 and P.9 respectively.

36. P.W.18 is the Engineer, HESCOM. His evidence place significant role in this case. The only defence taken by the counsel for the accused that on the date of incident, there was darkness and there



nent]

19

SC 33/2011 [Judgment]

two
said
and
tha
ind
set
ny
le
s.
2.
id
ie
s
it
e
t
t

was no street light. The prosecution examined this witness as P.W.18. This P.W.18 in his evidence stated that on 28/12/2010, electricity was supplied to the village of Knahapur and he has given certificate as per Ex.P.10 stating that there was electricity supply on that day and he has verified the log extract. As per the log sheet, on that particular day electricity was supplied continuously from 7:00 p.m. on 28/12/2010 to 6:00 a.m. on 29/12/2010. Though he was cross-examined in length, nothing was elicited from the evidence of this witness. Thus, it is crystal clear that there was electricity supply on that particular day and there exists electric pole and there is every possibility to P.W.7, P.W.8, P.W.9 and P.W.10 to saw the accused along with deceased moving towards Bennihalla.

37. P.W.19 is none other than mother of the deceased. It is very pathetic scene. She is unable to give evidence, she is continuously weeping. It is unfortunate that the child aged about 5 years 2 months was raped and murdered. In her evidence she has stated that the deceased is her child, she was 5 years at the time of her death. Her house is situated at Khanapur village of Nargund Taluka and her husband house is situated at Kyada village of Badami taluka. Herself and her husband have two children by name Rakshitha, the deceased and another daughter by name Akshitha. They used to do agricultural work for their livelihood. 15 days prior to the incident, they left her daughter deceased Rakshitha in her father's house and herself alongwith her husband went to Mangalore for work. On 29/12/2010 at about 3:00 p.m., her father called her mobile phone No.9880745520 from Khanapur stating that her daughter Rakshitha was missing from 28/12/2010 from 6:30 p.m., she had been to the neighbours house by name Tirukanagouda Ramanagouda Patil to watch T.V., but she did not

11/12/11



returned home and they made all efforts to search her, but they failed. Further her father has stated that he has given police complaint. Immediately, herself and her husband rushed to Khanapur on 30/12/2010 and enquired her father and her uncle. She came to know that on 28/12/2010 at about 6:30 p.m., Rakshitha went to neighbours house to watch T.V. At that time, accused by name Irappa Sidappa Murugannavar went there and took her daughter with a pretext to buy biscuits to her. This was witnessed by the mother of Tirukanagouda by name Venkavva i.e., P.W.5 and her son Ajit i.e., P.W.6. Further she came to know that the accused carried her daughter on his shoulder and going towards water tank. One Hanamant Talwar i.e., P.W.10, Bheemappa Talwar i.e., P.W.8 seen the accused carrying her daughter on his shoulder near the school. Her husband has given complaint before the police and later, she came to know that accused carried her daughter to the land of Sanganna Hadapad in Jawar field and raped and killed her. After the arrest of the accused, she came to know that accused after raping her daughter, killed her and inserted the body inside the sack and also put stones inside the sack and dumped the sack in Bennihalla. Later police recovered the dead body. Nothing was elicited in her cross-examination. At this stage, the Court made observation that the witness started crying in the witness box. It is natural what we can expect from the mother of the child of 5 years 2 month, who was raped and brutally murdered by the accused.

38. The prosecution has examined Dr. Girish Maraddi as P.W.20, who conducted the Post Mortem of the deceased Rakshitha. In his evidence he has stated that on 01/01/2011 at about 10:00 a.m., one P.C. by name S.A. Venkatapur has brought a dead body with a



155 92

[Judgment]

but they
1 police
hed to
uncle.
p.m.,
time,
and
was
i.e.,
that
ing
10,
ier
en
at
n

requisition to conduct P.M. and he observed the body. The body was aged about 5 years and he came to know from records that her name is Rakshitha and he observed external appearance. The body was slightly decomposed with pealed skin all over the body. Cut lacerated wound over vagina, anteriorly upto other urethra measuring 3 cm x 1 cm and there was rupture of hymen seen and he found soft issue injury of neck anteriorly. In Post Mortem, skull and vertebra was intact, membrane are intact, brain and spinal cord congested, as far as thorax, he found walls, ribs and cartilages are intact, pleura also intact, larynx and trachea are misplaced, tracheal rings below vocal cords, both the lungs are congested. He found lungfields not filled with fluid/water, lung tissue was floating. Rupture on hymen seen uteral and vaginal tear cut lacerated wound seen from posterior wall and vagina up to urethra. By seeking external wounds on vagina and urethra/rupture of hymen suggested rape/forced intercourse has happened and soft issue misplaced and anteriorly over neck shows strangulation/squeezing of neck lead asphyxia that dead death. He has given opinion that the cause of death is due to asphyxia by strangulation. To know whether asphyxia due to drowning or not, lung floating test should be conducted. He has conducted lung-floating test and found asphyxia was not due to drowning and he has issued P.M. report as per Ex.P.11. Further, the police asked him on a requisition whether the deceased Rakshitha was undergone rape or not and also asked to know whether wounds are present or not. Further police asked whether semen can be collected from the body. For that he has given answer stating that deceased Rakshitha was undergone rape and there was no semen found because the body was under

11/27/11



water for two days and he issued report to that effect as per Ex.P.12. Nothing was elicited from this witness by the defence.

39. Now, let me advert to the P.M.report, marked as Ex.P.11. In P.M.report, the P.W.20, who has conducted the autopsy clearly stated that the condition of the body was slightly decomposed and peeled skin all over the body and cut lacerated wound over vagina anteriorly upto urethra measuring 3 cm x 1 cm and rupture of hymen seen and soft tissue injury of neck anteriorly and in column more detailed description of injury, the doctor has stated that external wounds on vagina and urethra/rupture of hymen suggested rape/forced intercourse has happened and soft issue misplaced and anteriorly over neck shows strangulation/squeezing of neck lead asphyxia that dead death.

40. Thus, it is crystal clear that the deceased was raped and strangled and in the opinion as to cause of death, this witness has stated that the cause of death is due to asphyxia by strangulation.

41. The Medical evidence shows that the death is due to asphyxia and child was raped. Thus, ocular evidence and P.M.report is consistent to each other. The P.M.report, all the injuries received by the deceased were given in detail and the said injuries received by the deceased correspondence with the version of the prosecution witnesses. There was no reason to disbelieve the P.M.report and the evidence of the doctor, who conducted the asphyxia. The P.M.report clearly shows the commission of offence on the deceased prior to her death. Nothing was elicited by this witness to disbelieve the P.M.report as well as ocular evidence.

42. The prosecution has examined one S.A.Venkatapur, Police Constable, Nargund Police Station as P.W.21 to prove that the



body was handed over after P.M. to Hanamappa Chikkannavar and obtained the receipt. He has identified the receipt and signature on it as Ex.P.14 and Ex.P.14(a) respectively and he has handed over the cloths of the deceased Rakshitha. He has identified the cloths and bangles of the deceased Rakshitha. Nothing was elicited by this witness.

43. The prosecution examined P.W.22 Prabhappa Huded, Police Constable, who carried the FIR.

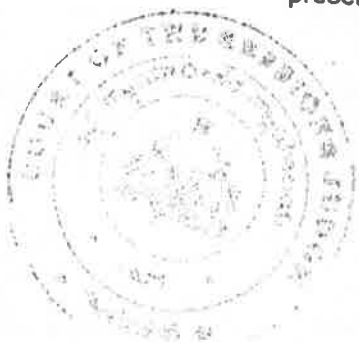
44. The prosecution examined P.W.23 one Yallavva Mangalore, who is the sister of the mother deceased. She is hearsay witness. She has stated that she had been her mother's house at Khanapur for delivery. In her mother's house, Rakshitha aged about 5 years 2 months was staying. Rakshitha's mother and father had been to Mangalore for work. On 28/12/2010, she was staying along with Rakshitha. The said Rakshitha went to her neighbour's house to watch T.V. She waited and after waiting hours, Rakshitha did not returned. She went to the neighbour's house i.e., Tirukanagouda Ramanagouda Patil. Her neighbour Venkavva told her that child was here by watching T.V. and may be she went out. She searched for the child and informed her father and her uncles. They too also searched, but they did not found Rakshitha. Next day also, they did not succeed to find Rakshitha. They all informed the fact to Shivaleela and her husband. Her father has given missing complaint. On 30/12/2010, Rakshitha's mother and father came from Mangalore. Again, all they went to the house of Venkamma and enquired her. She told them that on that day, accused was there in their house and he took the child with a pretext to get biscuits for her. Rakshitha's father gave complaint against the accused before the police. The accused was arrested and accused

17/1/11



shown the scene of offence and confessed the police that he has taken Rakshitha and raped her and murdered and inserted the body in a sack along with stones and thrown the dead body in Bennihalla. Further, he confessed the police that he raped the child Rakshitha in Sanganna Hadapad's field i.e., land of P.W.13. She identified the frock and bangles of deceased Rakshitha. Though she was cross-examined, nothing was elicited from her mouth, which helps the accused.

45. P.W.24 B.Vijaykumar, who is the Police Inspector, who is the IO and conducted the investigation of this case. He has stated in his evidence that he took further investigation of this case from PSI S.S.Kamatagi i.e., P.W.25 and he arrested the accused in front of Goudappagouda Hanamantagouda Kagadal. He has interrogated the accused and accused confessed the crime. He recorded the confession statement of the accused. He has identified the confession statement of accused marked as Ex.P.17 and also identified the signature of the accused on it. He obtained two panchas and asked the accused to show the scene of offence and accused took them to Bennihalla, which is situated near the field of Srinivasareddy Hosamani i.e., P.W.13 and shows the place near the pumpset and told him that he was dumped the dead body inside the pond. he procured two persons i.e., P.W.11 and P.W.12, who know the swimming and asked them to go inside the water and search. Both of them went inside the water and found something touching to their legs and they have lifted the gunny bag. He opened the gunny bag and found dead body of child by name Rakshitha and also two stones and he identified the sack and also identified two stones. He performed the inquest panchanama in the presence of panchas as per Ex.P.2. He asked the complainant to



[Handwritten signature]

he has
rted the
body in
ed the
P.W.13.
shitha.
m her

he IO
In his
PSI
nt of
ated
the
the
also
two
nd
of
ar
dy
id
e
d

identify the body. The complainant identified the body as it is Rakshitha's body. He identified the inquest panchanama. He identified his signature and also stated that he has seized the gunny bag, two stones, one thread used to tie the gunny bag. he has sent the dead body to Government Hospital, Nargund for P.M. thorough PC 978 along with requisitions. He has identified the said requisition marked as Ex.P.18 and 19. He further stated that he conducted the spot panchanama in the presence of witnesses. He has identified signature on Ex.P.3 as Ex.P.3(a). Further stated that the accused took them to the scene of offence, where he kidnapped Rakshitha i.e., to the house of Tirukanagouda Patil and he has drawn the panchanama in the presence of panchas and accused took them to the field, where he raped and strangled to death of the child and drawn the panchanama as per Ex.P.4 and he identified his signature on it as Ex.P.4(a) and recorded the statements of the witnesses and they came to police station and he has sent the accused to Medical Officer, Nargund to know about his potency through P.C. On the next day he got report from the Doctor stating that the accused is having potency to do intercourse. He has arrested the accused and produced before the jurisdictional Magistrate and he has drawn the seizure mahazer of the cloths as per Ex.P.5 and identified his signature on it as Ex.P.5(b) and on 28/12/2010, he requested the AWS PWD to visit the scene of offence and draw the sketch and also requested the Secretary, Grama Panchayath to furnish the katha extract of the house from where accused kidnapped the deceased, Rakshitha and also requested the Tahasildar, Nargund to provide ROR of the field, where the accused committed the offence and disposed the body. On 13/01/2011, he requested the AWS, HESCOM Nargund to give

111/11/11



report about the fact whether the power supply was from 7:00 p.m. to next day 9:00 a.m. on 28/12/2010 in Khanapur village and he received the report from the HESCOM as per Ex.P.10 and received the original FIR of missing complaint from the S.P. Office. Though he was cross-examined, nothing was elicited by the defence.

46. I carefully evaluated the evidence of this witness. this witness has stated that he took the further investigation of the case and after that he drawn the inquest panchanama, spot panchanama and recorded the confession statement of the accused and this witness categorically stated that it is the accused, who has shown the scene of offence and at the instance of the accused person, they removed the gunny bag from Bennihalla and they found dead body of the deceased inside the gunny bag. The counsel for the accused failed to elicit anything from this witness to help the accused.

47. It is well settled provision of law that mere fact that the witnesses are the police officers is not enough to discard their evidence. The evidence of the police officer cannot be underestimated merely because he is a police officer. There is a no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of police officer should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the present case, the evidence of this police officer is fully corroborated with the other evidence. The body was found. At the instance of the accused, panchanama was drawn in the presence of witnesses. Thus, the defence counsel did not placed any materials to disbelieve the evidence of this witness. Thus, the evidence of the police officer is supported with the other evidence and circumstances that assured this Court, that is being stated by this witness is corroborated.

48. P.W.25 is the Police Sub Inspector, Nargund Police Station. In his examination-in-chief, he has stated that he was working as IS at



00 p.m.
and he
received
Though
is has
after
and
ness
the
they
ody
sed

are
ce
a
to
e
s
i

Nargund Police Station and on 29/12/2009 at about 5:00 p.m. he received complaint from the complainant stating that his elder brother's granddaughter by name Rakshitha aged about 5 years 2 months is missing from their neighbours house by name Tirukanagouda Patil. On the basis of the said oral statement, he registered missing case in Cr.No.155/2010. He identified the missing complaint marked as Ex.P.6 and his signature on it as Ex.P.6(b) and sent the FIR and oral statement to the S.P.Gadag. He went to the village and enquired the people and he made all his efforts to search the child, but he unable to find whereabouts the child. On 01/01/2011, one Sanganasappa Tippanna Tengar of kyada village of Badami taluk came to police station at 00:30 hours and given oral complaint to him stating that he suspects the accused and he has recorded the oral statement in missing case Cr.No.155/2010 and sent the copy of FIR to the Jurisdictional Court along with the complaint. He has identified the FIR and complaint as Ex.P.23 and his signature on it as Ex.P.23(a) and handed over the further investigation of this case to the P.W.24. Though he was cross-examined in length, nothing was elicited.

49. I carefully evaluated the evidence of this witness. This witness is a PSI, who registered the missing complaint and he has made all efforts to search Rakshitha, but failed to succeed and his all efforts went in vain. On 01/01/2011, he received oral complaint from P.W.1 stating that he suspect the accused.

50. I have bestowed my anxious considerations to the arguments put forth by the learned Public Prosecutor and the counsel for the accused. The learned Public Prosecutor has argued that this is the case of circumstantial evidence. The prosecution proved the guilt of the accused beyond all reasonable doubt. The accused has

(Signature)



committed the offence. Per contra, the counsel for the defence vehemently contended that there is no eyewitnesses, there is no circumstantial evidence and the prosecution miserably failed to prove the guilt of the accused beyond all reasonable doubt. In the absence of any proof and cogent evidence, the accused is entitled for benefit of doubt.

51. On perusal of the evidence on record, the entire case rests on the circumstantial evidence as no eyewitnesses to the incident. In case where evidence is of circumstantial nature, the circumstances from which the conclusion of the guilt is to be drawn should in first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must be such as to show that within all human probability the act must have been done by the accused.
52. The standard of proof required to convict a person on circumstantial evidence is well-established by a series of judgments of our Hon'ble Supreme Court. According to that standard, the circumstances relied upon in support of conviction must be fully established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and further it must be such as to show that within all human probability the act must have been done by the accused.



gment]

efence
is no
ed to
n the
itled

the
case
rom
first
uld
ed.
ind
sis
a
le
ed
e

n
s
f

53. Now, let me catalogue the chain events to see whether the prosecution has furnished the chain evidence of those circumstances, which completes as not to leave any reasonable ground for conclusion consistent with the innocence of the accused.

54. P.W.1, who is the father of the deceased and the complainant. In his evidence, he has clearly stated that after receiving the phone call from Khanapur, he rushed to Khanapur and when he enquired P.W.5 Venkavva Patil, he came to know that accused taken Rakshitha from the house with a pretext to buy biscuits for her. P.W.4 Hanamappa, the grandfather of the deceased has given missing complaint. P.W.5 Venkavva Patil deposed that the accused taken the deceased, who was watching T.V. in her house with a pretext to buy biscuits for her. The evidence of P.W.5 is corroborated with the evidence of P.W.6 Ajit Patil, who has deposed that he was also watching the T.V. and he saw the accused taking Rakshitha from their house with a pretext to buy biscuits for her. Thus, it is crystal clear that the accused taken the deceased from the house of Venkavva i.e., P.W.5 with a pretext to buy biscuits for her. P.W.7, 8, 9 and P.W.10 these four witnesses seen the deceased lastly along with the accused. They have clearly stated that the accused was going to Bennihalla with a child on his shoulder and gunny bag on his another shoulder. These witnesses clearly stated that they have seen the accused in the light of the street light. P.W.18, ASW, HESCOM has deposed that he has given report as per Ex.P.10. This Ex.P.10 reveals that there was a continuous electricity supply from 28/12/2010 i.e., on the day of incident. Thus, nothing was elicited by the defence to disbelieve the evidence of P.W.7 to P.W.10. Thus, it is clearly established that the

MAH



accused taken Rakshitha from the house of P.W.5 and was carrying Rakshitha towards Bennihalla on that night. As per the evidence of P.W.24, IO, at the instance of the accused, they went to Bennihalla and accused showed the place, where he inserted the dead body. P.W.11 and P.W.12 stated that they removed the gunny bag from Bennihalla. P.W.2 is the panch witness for inquest mahazer, has clearly stated that they found the body inside the gunny bag. P.W.20 Dr.Girish Maraddi, who conducted the autopsy clearly stated that In autopsy found a child was raped and strangled to death. Thus, In my opinion, the chain events are complete. The accused kidnapped the girl from the house of P.W.5 and he carried the girl towards Bennihalla and P.M.report reveals that the child was raped and strangled to death. In my opinion, the chain circumstances are complete.

55. This Court evaluated the evidence of all the witnesses and there was no inconsistency in the evidence. The evidence found reliable and cogent. P.w.5, 6, 7, 8, 9, 10, 11 and 12 are the independent witnesses. The evidence of these witnesses cannot be discarded. They have stated what they have seen.

56. The learned defence counsel vehemently contended why P.W.7, 8, 9 and P.W.10 though seen the accused carrying the gunny bag and child, why they did not made any efforts to talk with the accused. They should be enquired the accused. On that ground, the evidence of P.W.7, 8, 9 and 10 cannot be believed. I do not find any legal strength in the arguments put forth by the learned counsel for the defence. The evidence of the witnesses cannot be discarded merely on the ground that they did not react in any particular manner in a particular situation. I carefully scrutinized the evidence of P.W.7, 8, 9 and 10 and found that there is no scope of



17/11/17

gment]

I was
er the
went
erted
d the
quest
the
opsy
and
are
W.5
als
ion,

ere
ble
ent
d.

8,
g
e
l,
1
1

taking view of false implication of the accused. The defence counsel did not create any doubts about the innocence of the accused. It is needless to say that doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favorite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial as to the guilt of the accused arising from the evidence or from the lack of it, as opposed to mere vague apprehensions. The chain of evidence relied by the prosecution proved that the accused is the author of the crime and the prosecution established that prime charge has been committed.

57. Sec.366-A IPS requires two things (1) inducing a girl under eighteen years to go from any place or to do an act, and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person knowing that she would be forced or seduced to illicit intercourse.

58. In the instant case, the accused taken the girl from the house of P.W.5 with a pretext to buy her biscuits and raped the girl in the field of Shankrappa Hadapad, i.e., P.W.13 and the P.M.report i.e., Ex.P.11 and also the evidence of Doctor i.e., P.W.20, who conducted the autopsy supported the version of the prosecution that the accused raped the girl and strangulated to death. Whether the accused kidnapped the girl with an intention to rape and kill her. Intention may be gathered from intention expressed by the accused prior to, at the time, or after the occurrence. It may be gathered from the act itself and the circumstances in which it was done. A man is assumed to intend the natural and necessary consequences of the act. Therefore, mens rea can be inferred from the act, injuries, circumstances of the case. It is cardinal that prosecution

1/7/77



that prosecution has the burden to prove mens rea beyond reasonable doubt. When the accused is charged with doing an act of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing of the act itself. Thus, the prosecution proved beyond all reasonable doubt that the accused an intention and knowledge to commit the act.

59. As far as motive is concerned, the motive is what makes to accused to the act i.e., the reason that induces a man to do the act that he intends to do and does. Intention shows the nature of the act, which the man believes he is doing. Motive is always relevant as evidencing a state of mind, which is a material element in an offence charged. The prosecution placed sufficient evidence, which is clear and cogent that the accused had an intention, knowledge and motive. Thus, I am of the opinion that the prosecution has proved that whether the accused had intention or knowledge.
60. After careful evaluating the evidence of the witnesses, it is crystal clear that the accused kidnapped the girl with an intention to rape her.
61. Now, let me examine whether the prosecution established the motive for the crime. The prosecution led positive evidence against accused, which is clear, cogent and reliable that the accused had a motive to rape on a minor girl. In the present case, the prosecution through the mouth of the witnesses brought on record that the accused kidnapped the minor girl from the house of P.W.5 and taken her to the field of P.W.13 and raped and strangled to death and accused collected the gunny bag from the house of P.W.5 and taken the body of the deceased to Bennihalla and inserted the body inside the gunny bag and inserted two stones

[Handwritten signature]



beyond
g an act
ous, the
the act
e doubt
ict.
ikes to
the act
of the
levant
in an
fence,
ention,
it the
on or

ystal
rape

the
inst
ad a
tion
the
and
to
of
nd
es

and tied the gunny bag and immersed the gunny bag into the water. Thus, the accused done criminal act with a motive. Though the evidence as to motives with which, the accused commits an offence should be of the strictest act and circumstances which put forward by the prosecution fully established that the accused committed the offences.

62. Now, let me advert to the ingredients of Sec.300 IPC. The offence U/Sec.302 IPC has the following ingredients.

- (i) That the death of some human being was caused;
- (ii) That such death was caused by the accused or was the consequence of the act of the accused
- (iii) that the accused did so
 - (a) with the intention of causing death, or
 - (b) that the accused knew that his act was likely to cause death; or
 - (c) The injury by the accused was sufficient in the ordinary cause of nature to cause death.

63. The prosecution has to prove beyond all reasonable doubt that the death of some human being and such death was neither suicidal nor accidental but, it was homicidal and it was the act of the accused or the consequence of his act, caused such death.

64. In the instant case, the dead body of the child was found and P.W.20 Doctor clearly stated that the child was raped and strangled to death and the evidence of P.W.5, 6, 7, 8, 9 and 10 clearly established that this accused committed the rape and murdered the child and the P.M.report Ex.P.11 clearly reveals that the deceased was raped and strangled to death. Thus, expression corpus delicti was made i.e., the accused has shown the scene of offence and inquest report i.e., Ex.P.2 clearly reveals

MMI

that the body was found and details were mentioned in the inquest report. On perusal of the inquest report, it is clear that the child was died under suspicious circumstances and it was unnatural death and P.M.report reveals the cause of death. Thus, it is clear that the prosecution has proved that there was a motive, intention and act of the accused beyond all reasonable doubt.

65. As far as Sec.376 IPC, the prosecution has proved that the accused had sexual intercourse with the child. The evidence of the Doctor i.e., P.W.20 and Ex.P.11 P.M.report clearly speaks that the child was raped and murdered.

66. Now, let me advert to the ingredients of Sec.364 IPC. When the accused is charged U/Sec.302 and 364 IPC, in order to bring home the charges levelled against the accused, the Court must satisfy that the accused kidnapped the deceased, with an intention to cause death and the point requiring proof that the accused kidnapped or abducted some person in order to that such person may be murdered or may be so disposed of as to be put in danger of being murdered.

67. I have carefully evaluated the evidence of P.W.5 to P.W.10. The evidence of P.W.5 to 10 are cogent and it clearly prove that the accused kidnapped the deceased with an intention to rape and murder.

68. As discussed supra, the accused kidnapped the deceased and taken her to field of P.W.13 and raped the deceased twice and strangled the child to death. After commit the offence, the accused secured gunny bag and inserted the dead body inside it and immersed it in the pond. Thus, tried for disappearance of the evidence of the commission of the offence. He has removed the corpse of murder of child from the scene of offence and inserted



162

99

the gunny bag and immersed in the water. Thus, the prosecution placed sufficient materials to prove that the accused done the act with an intention to destroy the evidence. The accused removed the dead body from the scene of offence with an intention to scream the offence. Thus, the prosecution also proved the guilt against the accused beyond all reasonable doubt that the accused made attempt to disappearance of the evidence.

69. After careful scanning the evidence of the prosecution witnesses, it is not in dispute the death of the deceased. There is ample evidence brought on record by the prosecution to show that the accused committed the offences of rape and murder of the minor child and the prosecution has proved the guilt against the accused beyond all reasonable doubt. From the discussions made above, it is clear that the evidence of the prosecution is cogent, convincing and reliable one. Accused committed rape and murder of the child aged about 5 years 2 months is an extremely brutal grotesque and diabolical. The prosecution has placed sufficient materials to show that the accused has committed the offence of rape and murder. Therefore, I am of the firm view that the evidence placed before the Court by the prosecution is sufficient to convict the accused U/Sec.302, 201, 376, 366-A and 364 IPC. Thus, I answer the above points in the affirmative.

POINT No.6:

31. For the foregoing reasons and discussions, I proceed to pass the following:

ORDER

Acting U/S 235(2) Cr.P.C. the accused is found guilty of the offence punishable U/S 302, 201, 376,

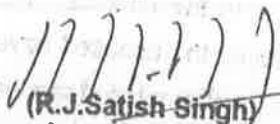
1171711



366-A and 364 IPC, accordingly, I hereby convict the accused for the above said offences.

To hear before sentence.

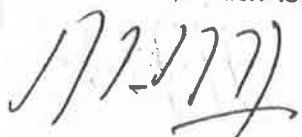
(Delivered to the Stenographer, transcribed by him, corrected by me and then pronounced in the Open Court on this 8th day of March, 2012)


(R.J. Satish Singh)
Sessions Judge, Gadag.

SENTENCE

Heard prosecution. Heard accused regarding sentence. The prosecution vehemently contended that it is the rare and rarest case and extreme penalty of death should be awarded to the accused. Per contra, the accused submitted that he is young age of 23 years. He is having parents and he is from very poor family.

I have carefully perused the arguments of the accused. The case in hand is that the accused kidnapped the child age of 5 years 2 months with an intention to rape her and after raping her twice, he strangled the child to death. Further, he inserted the body in the gunny bag and immersed inside the pond. The accused committed the rape and murder and it is committed in an extremely brutal, grotesque and diabolical manner. The accused committed rape and murder of innocent child of 5 years 2 months, who could not resist or has not provided even excuse, much less the provocation for rape and murder. This case is a rarest of rare case, which would be one which really shock the conscience of humanity. This is one of the rarest of rare case in which extreme penalty of death is called for the murder and rape of the innocent child in cold blood after she had been kidnapped with the promise of giving biscuits. This is the crime of shocking nature, which is so cruel, barbaric and





(162)

100

revolting, it is necessary to impose maximum punishment under the law as a measure of social necessity which may work as a deterrent to the other potential offenders. In my view death penalty may be the only appropriate punishment for a person who kidnapped and raped the child of 5 years 2 months and killed her. This was extremely shocking the judicial conscience. Under the circumstances, I proceed to pass the following

ORDER

- a) The accused shall undergo R.I. for 6 years and to pay a fine of Rs.10,000/- for the offence punishable u/s 364 IPC. In default to pay the fine, he shall sentenced to undergo S.I. for 6 months.
- b) The accused shall undergo R.I. for 6 years and to pay a fine of Rs.10,000/- for the offence punishable u/s 366-A IPC. In default to pay the fine, he shall sentenced to undergo S.I. for 6 months.
- c) The accused shall undergo R.I. for 2 years and to pay a fine of Rs.10,000/- for the offence punishable u/s 201 IPC. In default to pay the fine, he shall sentenced to undergo S.I. for 6 months.
- d) The accused shall undergo R.I. for life for the offence punishable u/s 376 IPC.
- e) For the offence U/Sec.302 IPC, the accused is sentenced to death. He be hang by the neck till he is dead.

sentences (a), (b), (c) and (d) shall run consecutive.

Set off is given to the accused U/Sec.428 Cr.P.C., during the period of his Judicial Custody.

Supply free copy of the judgment to the accused forthwith.

17/11



M.O.1 to 5 are ordered to be destroyed as worthless, after expiry of appeal period.

Office is directed to submit the entire records before the Hon'ble High Court of Karnataka, Bangalore for the confirmation of death sentence.

The death sentence shall not be executed unless it is confirmed by the Hon'ble High Court of Karnataka.

1/1/2012
Sessions Judge, Gadag. 8/1/12

ANNEXURE

LIST OF WITNESSES EXAMINED FOR THE PROSECUTION

- P.W.1 – Sanganasappa
- P.W.2 – Prahalladgouda Patil
- P.W.3 – Shankaragouda Karigoudar
- P.W.4 – Hanamappa
- P.W.5 – Venkavva Patil..
- P.W.6 – Ajit Patil.
- P.W.7 – Yallappagouda Kagadal.
- P.W.8 Bhimappa Talawar
- P.W.9 Gadigeppa
- P.W.10 Hanamappa Talawar.
- P.W.11 Rajesab Nadaf.
- P.W.12 Shankarappa Tadasi.
- P.W.13 Shankrappa Hadapad.
- P.W.14 Mallanagouda Kagadal.
- P.W.15 Shrinivasreddy Hosamani.
- P.W.16 Ramesh Hulakandi, PDO.
- P.W.17 Yallappa Madiwalar, Engineer, PWD
- P.W.18 Ishwarappa Mannur, Engineer, HESCOM
- P.W.19 Shivaleela Tengar
- P.W.20 Dr.Girish Maraddi.
- P.W.21 S.A.Venkatapur, PC
- P.W.22 Prabhappa Huded, PC
- P.W.23 Yallavva Mangalore.
- P.W.24 B.Vijaykumar, PI.
- P.W.25 S.S.Kamathagi, PSI.

1/1/2012



(164)

101

ss, after

LIST OF EXHIBITS MARKED FOR THE PROSECUTION

Ex.P.1 Complaint.
Ex.P.1(a) Signature of P.W.1
Ex.P.2 Inquest Mahazer
Ex.P.2(a) signature of P.W.2
Ex.P.2(b) signature of P.W.24
Ex.P.3 Spot Mahazer
Ex.P.3(a) signature of P.W.2
Ex.P.3(b) signature of P.W.24
Ex.P.4 Spot Mahazer
Ex.P.4(a) signature of P.W.2
Ex.P.4(b) signature of P.W.24
Ex.P.5 Seizure Mahazer
Ex.P.5(a) signature of P.W.3
Ex.P.5(b) signature of P.W.24
Ex.P.6 Complaint
Ex.P.6(a) signature of P.W.4
Ex.P.6(b) signature of P.W.25
Ex.P.7 Property Extract
Ex.P.7(a) Signature of P.W.16
Ex.P.8 Sketch
Ex.P.8(a) signature of P.W.17
Ex.P.9 Letter
Ex.P.9(a) signature of P.W.17
Ex.P.10 Log Extract
Ex.P.10(a) signature of P.W.18
Ex.P.11 P.M.report
Ex.P.11(a) signature of P.W.20
Ex.P.12 Report
Ex.P.12(a) signature of P.W.20
Ex.P.13 Report
Ex.P.13(a) signature of P.W.20
Ex.P.14 Receipt
Ex.P.14(a) Signature of P.W.21
Ex.P.15 Report
Ex.P.15(a) signature of P.W.21
Ex.P.16 Report
Ex.P.16(a) signature of P.W.22
Ex.P.17 Confession Statement
Ex.P.17(a) signature of P.W.24
Ex.P.17(b) signature of accused
Ex.P.18 and 19 requisitions

177/21



Ex.P.20 and Ex.P.21 RTCs
 Ex.P.22 FIR
 Ex.P.22(a) signature of P.W.25
 Ex.P.23 FIR
 Ex.P.23(a) Signature of P.W.25

LIST OF WITNESSES EXAMINED FOR THE DEFENCE SIDE

NONE.

LIST OF DOCUMENTS EXHIBITED FOR THE DEFENCE SIDE.

:NIL:

LIST OF MATERIAL OBJECTS FOR PROSECUTION

MO.1	-	Stone
MO.2	-	Stone.
MO.3	-	Gunny Bag
MO.4	-	Frock
MO.5	-	Bangle piece.

177/1277
 Sessions Judge, Gadag.

8/2/12

SSA



TRUE COPY

[Signature]
 Copyist Examiner
 District Court, GADAG

SC-33/2011
 Ex.P.17(a) signature of P.W.24
 Ex.P.17(b) signature of P.W.24
 Ex.P.18 and 19 redactions

LIST OF EXHIBITS MARKED FOR THE PROSECUTION

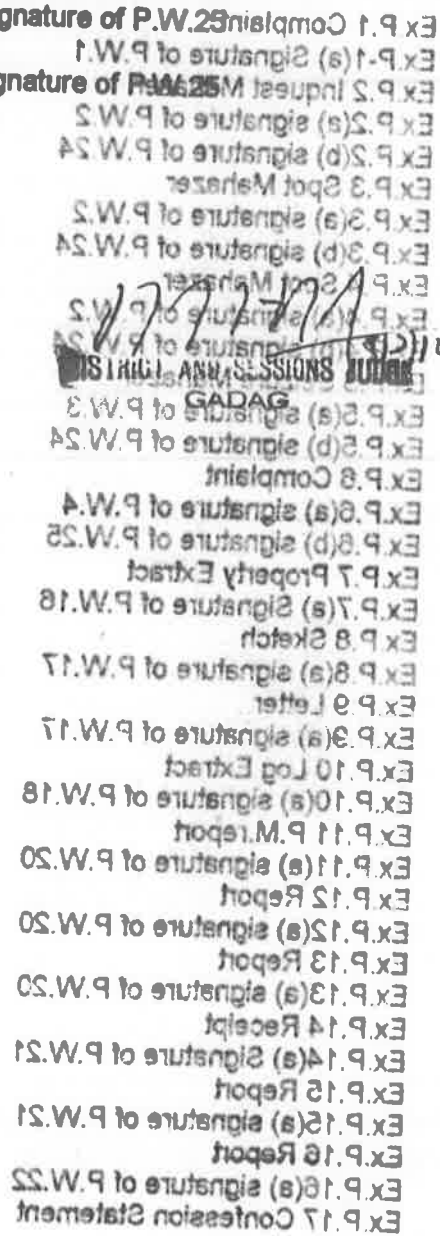
Ex.P.1 Complaint
 Ex.P.1(a) Signature of P.W.1
 Ex.P.2 Inquest Mahazer
 Ex.P.2(a) signature of P.W.2
 Ex.P.2(b) signature of P.W.24
 Ex.P.3 Spot Mahazer
 Ex.P.3(a) signature of P.W.2
 Ex.P.3(b) signature of P.W.24
 Ex.P.4 Spot Mahazer
 Ex.P.4(a) signature of P.W.2
 Ex.P.4(b) signature of P.W.24
 Ex.P.5 Seizure Mahazer
 Ex.P.5(a) signature of P.W.3
 Ex.P.5(b) signature of P.W.24
 Ex.P.6 Complaint
 Ex.P.6(a) signature of P.W.4
 Ex.P.6(b) signature of P.W.25
 Ex.P.7 Property Extract
 Ex.P.7(a) Signature of P.W.16
 Ex.P.8 Sketch
 Ex.P.8(a) signature of P.W.17
 Ex.P.9 Letter
 Ex.P.9(a) signature of P.W.17
 Ex.P.10 Log Extract
 Ex.P.10(a) signature of P.W.18
 Ex.P.11 P.M.report
 Ex.P.11(a) signature of P.W.20
 Ex.P.12 Report
 Ex.P.12(a) signature of P.W.20
 Ex.P.13 Report
 Ex.P.13(a) signature of P.W.20
 Ex.P.14 Receipt
 Ex.P.14(a) Signature of P.W.21
 Ex.P.15 Report
 Ex.P.15(a) signature of P.W.21
 Ex.P.16 Report
 Ex.P.16(a) signature of P.W.22
 Ex.P.17 Confession Statement



Ex B 23 F1B

Ex.P.22 (a) signature of P.W.25n

Ex.P.23(a) Signature of P94625M



SC-33/2011LIST OF MATERIAL OBJECTS FOR PROSECUTION

MO.1	-	Stone
MO.2	-	Stone.
MO.3	-	Gunny Bag .
MO.4	-	Frock
MO.5	-	Bangle piece.

17/12/11 8/12/11
DISTRICT AND SESSIONS JUDGE
GADAG

