

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF SEPTEMBER, 2026**

PRESENT

**THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND**

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1180 OF 2018

BETWEEN:

STATE OF KARNATAKA
BY HAROHALLI POLICE,
RAMANAGARA,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-1.

...APPELLANT

(BY SRI RANJITH KUMAR, HCGP.)

AND:

1. G.S. MALLAIAH,
S/O SOORAPPA
AGED ABOUT 46 YEARS,
2. ASHOKA,
S/O LATE NAGESH,
AGED ABOUT 26 YEARS
3. SRI. G. M. CHANDRAPPA
S/O MARIDEVARU,
AGED ABOUT 34 YEARS,
4. SRI RAJU @MAHESHA,
S/O LATE MARAPPA @ CHIKKAHONNAIAH,
AGED ABOUT 33 YEARS,

5. SRI. SHIVANNA
S/O LATE PUTTAPPA,
AGED ABOUT 27 YEARS,

ALL ARE RESIDING OF
HALE GABBADI VILLAGE,
HAROHALLI HOBLI,
KANAKAPURA TALUK-562117.

...RESPONDENTS

(BY SRI SHANKARAPPA, ADV. FOR R-1 TO R-5.)

THIS CRL.A. IS FILED U/S 378(1) AND (3) CR.P.C.
PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST
THE JUDGMENT AND ORDER OF ACQUITTAL DATED
12.04.2018 PASSED IN S.C.NO.29/2012 BY THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
RAMANAGARA, SITTING AT KANAKAPURA THEREBY
ACQUITTING THE ACCUSED/RESPONDENT FOR THE
OFFENCE P/U/S 143, 147, 148, 120(B) AND 302 R/W 149
OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 29.07.2026 AND COMING ON FOR
"PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

State has preferred this appeal against the judgment of acquittal dated 12.04.2018 passed in SC No.29 of 2012 by the II Additional District & Sessions Judge, Ramanagara sitting at Kanakapura (for short "the trial Court") wherein the accused came to be acquitted of the offences punishable under Sections 143, 147, 148, 120-B, 302 read with 149 of Indian Penal Code.

2. Brief facts leading to this appeal are that the Circle Inspector of Police, Harohalli Circle, submitted the charge sheet against the accused for offences punishable under Sections 143, 147, 148, 120-B, 302 read with 149 of Indian Penal Code. The case of prosecution is that, Muniraju (now deceased) had love affair with CW31-Kum. Shruti, daughter of accused No.1. Muniraju did not heed advise to come out from the love affair. Being enraged, accused No.1, along with accused 2 to 5, on 01.11.2011 at 6.00 pm, near his under-construction house, hatched a conspiracy to finish Muniraju and in furtherance of the said conspiracy, on 06.11.2011 at about 6.30 pm, accused 4

and 5 took Muniraju to the land bearing Sy.No.46/5A situate opposite to V.S. Bar & Restaurant on Bengaluru-Harohalli Main Road in the guise of having a drink, and about 7.45 pm, with the common object to commit murder, accused 4 and 5 tied the hands and legs, accused No.1 stabbed with knife on the chest, accused No.3 assaulted with knife on right shoulder and on right palm causing bleeding injuries, accused No.2 cut-off the neck with *choori* and committed the murder of Muniraju. Thus, the accused have committed the offence.

3. After filing charge sheet, the learned Principal Civil Judge & JMFC, Kanakapura, took cognizance of the offence and the case came to be registered in CC No.128 of 2012. Since the case was triable by the Sessions Judge, the same was committed to the Sessions Court, wherein it was registered as SC No.29 of 2012.

4. Upon hearing, the trial Court framed charges. The same were read over to the accused in the language known to them. The accused pleaded not guilty, and claimed to be tried.

5. To bring home the guilt of the accused, the prosecution has examined, in all, 32 witnesses as PWs1 to PW32, got marked 44 documents as Ex.P1 to P44 and 19 material objects as MO1 to MO19. On closure of prosecution side evidence, statement of accused under Section 313 of Cr.PC was recorded. Accused denied the incriminating evidence appeared against them, however did not chose to lead any defence evidence on their behalf, but marked the house extract Ex.D1 pertaining to Kanesumari No.230/170 issued by Banavasi Grama Panchayat.

6. After hearing the parties, the trial Court acquitted the accused of the offence punishable under Sections 143, 147, 148, 120-B, 302 read with 149 of Indian Penal Code. Being aggrieved by the impugned judgment of acquittal, the State has preferred this appeal.

Submissions on behalf of the appellant-State:

7. Sri Ranjith Kumar, learned High Court Government Pleader appearing for the appellant-State, would submit that the impugned judgment of acquittal is

illegal, perverse and contrary to law, evidence and material on record and the same has caused substantial miscarriage of justice. The trial Court has not appreciated the material on record in its proper perspective. He would submit that the prosecution has proved the fact that the death of Muniraju is a homicidal death. The prosecution has established specific overt-acts attributable to each of the accused. The evidence of PW3-complainant would disclose the motive for the incident. It is further submitted that although PWs1 and 2 were sought to be examined to establish the last seen theory, their turning hostile to the case of the prosecution, will not affect the case of the prosecution, in view of the evidence of PW3.

7.1. He further submitted that the trial Court has also failed to consider the evidence of PW3 who is the mother of the deceased, which disclose the motive behind the incident. PW6, who is the pancha to the seizure mahazar, is a practicing Advocate. The evidence of this witness disclose the fact that the head of the deceased was cut-off and there were several other injuries found on

the body of the deceased. The recoveries includes in it, the knife that was used to cut the head of the deceased and other deadly weapons.

7.2. The evidence of PW7 and PW9 disclose that he had seen the accused with the deceased at the time of incident. The trial Court has not given any reasoning to disbelieve the evidence of these witnesses.

7.3. The case of prosecution is also fortified by the evidence of PWs10 to 12, who have supported the fact and circumstances appearing against the accused. The facts which are established are consistent only with the hypothesis of the guilt of the accused and are of conclusive nature. He would submit that although some of the prosecution witnesses have turned hostile, but, in view of the other evidence on record, the prosecution has proved the guilt of the accused beyond all reasonable doubt. As held by Hon'ble Supreme Court in a catena of cases "men may lie, but circumstances do not", would aptly apply to the case on hand, is his submission.

7.4. The learned HCGP further submitted that the prosecution has clearly established the motive on the part of the accused behind the incident. The weapons used for committing the offence were recovered at the instance of the accused and on the basis of the voluntary statement of the accused. The prosecution has established that the entire chain and sequences of event found no breakage in the links thereto.

7.5. The learned HCGP would further submit that the trial Court ought not to have relied upon minor discrepancies which would be of no consequence while proving a case as a whole and viewed from any angle, the impugned judgment of acquittal is not sustainable in law. On all these grounds, it is sought to allow the appeal.

8. As against this, the learned counsel appearing for the accused/respondents, would submit that the trial Court has properly appreciated the materials on record in accordance with law and facts, and absolutely there are no materials to interfere with the impugned judgment passed

by the trial Court, and accordingly sought for dismissal of the appeal.

9. Having heard the arguments on both sides and on perusal of material on record, the following points would arise for our consideration:

- i) Whether the Appellant-State has made out a ground to interfere with the impugned judgment of acquittal;
- ii) What Order:

10. Our answer for the above points are:

Point No.1: in the negative

Point No.2: as per final order.

Regarding Point No.1:

11. Before appreciation of evidence on record, it is necessary to refer to the judgments of the Hon'ble Apex Court in the case of CONSTABLE 907 SURENDRA SINGH AND ANOTHER v. STATE OF UTTARAKHAND reported in (2025)5 SCC 433; BABU SAHEBGOU DA RUDRAGOUDAR AND OTHERS v. STATE OF KARNATAKA reported in

(2024)8 SCC 149; CHANDRAPPA v. STATE OF KARNATAKA reported in (2007)4 SCC 415; and H.D. SUNDARA v. STATE OF KARNATAKA reported in (2023)9 SCC 581. The summary of the abovementioned judgment to the principles governing exercise of appellate jurisdiction while dealing with an appeal against judgment of acquittal under section 378 of Code of Criminal Procedure is that the acquittal of the accused further strengthens the presumption of innocence; the appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence; the appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial Court is a plausible view which could have been taken on the basis of the evidence on record; if the view taken is a plausible view, the appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and the appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the

evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible. The interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised only if the judgment of acquittal suffers from patent perversity; the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

12. Coming to the case on hand, the prosecution has alleged that the Circle Inspector of Police, Harohalli Circle submitted the charge sheet against the accused for offences punishable under Sections 143, 147, 148, 120-B, 302 read with 149 of Indian Penal Code. It is the case of the prosecution that deceased-Muniraju had love affair with Kum. Shruti, daughter of accused No.1. In spite of advise, deceased-Muniraju did not change his attitude. Being enraged, accused No.1 along with accused 2 to 5,

on 01.11.2011 at 6.00 pm, near his under-construction house, hatched a conspiracy to finish Muniraju and in furtherance of the said conspiracy, on 06.11.2011 at about 6.30 pm, accused 4 and 5 took the said Muniraju to the land bearing Sy.No.46/5A situate opposite to V.S. Bar and Restaurant on Bengaluru-Harohalli Main Road in the guise of having a drink, and at about 7.45 pm, with the common object to commit murder, accused 4 and 5 tied the hands and legs of Muniraju, accused No.1 stabbed with knife on the chest, accused No.3 assaulted with knife on right shoulder and on right palm, caused bleeding injuries and accused No.2 cut off the neck with *choori* and committed the murder of Muniraju. Thus, the accused have committed the offence.

13. To prove the guilt of the accused, the prosecution, in all, examined 32 witnesses SPW1 to 32 and marked 44 documents as exhibit P1 to 44 and 19 material objects as MO1 to 19.

14. It is the case of the prosecution that PWs1 and 2 are the last seen witnesses. They have not supported

the case of the prosecution. The learned Public Prosecutor has treated them as hostile witness and they were cross-examined with the permission of the court. During their cross-examination, they have categorically denied the statement recorded by the IO under Section 161 of Cr.PC, which are marked as Ex.P1 and 2.

15. PW3-complainant who is the father of deceased Muniraju, has deposed that he has two sons. Deceased Muniraju was working as Cook and another son is a student. Deceased Muniraju had developed love affair with the daughter of Mallaiah, who is also from the same village. She was studying in Jain College and he did not know how their love affair begun. During the lifetime, his son had told him regarding relationship. Mallaiah got warned him through Shivanna and also told that he will murder his son. Chandra and Raja also caused criminal intimidation to his son. The said fact was also told by his son to him. Hence, he told his son to discontinue the love affair. Though his son has got relieved from the love affair with Shruti, but Shruti used to telephone his son.

16. He has further deposed that his son being a Cook, Mallaiah, who was the Member of Panchayat, had refused to give his girl in marriage to his son. Accused No.1 is the father of Shruti and other accused are relatives of accused No.1. On 06.11.2011 Rajanna and Shivanna had telephoned to his son and his son went out with them. The said Rajanna and Shivanna made conspiracy and all their relatives were involved in it. On Sunday, when his son did not return, even after 10 pm, his younger son, Vijaykumar called on his mobile, which was switched off. They thought that he might have gone for work and kept quite. On Monday morning, when he was washing his auto, he received a telephone call, stating that near V.S. Dhaba, his son was murdered. He went to the spot and saw beer bottles, chips, Mobile and his son Muniraju was murdered with stab injuries. At that time, Vishwa and Muniraju told him that on previous night, his son came there, they saw him, Raju and Shivanna taking drinks in the land. At that time, Ashoka, Chandra and Mallaiah were standing on the road. He told that he had been there. He has also deposed that in spite of the fact that

his son and Shruti were advised, he did not know what happened. He has also deposed that he has lodged complaint as per Ex.P3, which bears his LTM.

17. He has further deposed that for the second time police recorded his further statement at the spot and took six photographs as per Ex.P4 to P9. In the said photo, the vehicle which was used by accused is visible.

18. PW4 is the witness to inquest mahazar Exhibit P10. He has not supported the case of the prosecution.

19. PW5 who is the mother of deceased deposed in her evidence that she had seen the dead body at Gabbadi. Her son was in love with the daughter of Mallaiah, for that reason Mallaiah, Raja, Ashoka and Chandra killed him. Her son was killed at the open field opposite to bar. She has also deposed that at the open space itself inquest was conducted by the police, for that she has given her statement. Further she deposed in her evidence that after finishing the work on 5.11.2011, her son came from Bangalore, and while he was going out, at that time she questioned him why he was going outside, then he told

that Raja and Shivanna were calling him. In her opinion she thought that for murdering her son, accused might have called him. At 9.00 pm she telephoned her son but it was switched off, again at 10.00 pm when she telephoned, it was switched off. On the next day in the morning her husband was washing Auto, she received a phone call, she handed over the phone to her husband. Her husband was shaken and she learnt that near V.S.Bar in the open land her son was murdered. They reached there and saw the dead body, neck was cut off, there was piercing on leg and body. She has also deposed that as her son was in love with the daughter of Mallaiah in that regard he was murdered. Further, she deposed that Mallaiah is rich and as they are poor, with an intention not to give his daughter in marriage to her son, he has murdered his son. Further, she deposed that at the spot Beer bottles, vehicle and slippers were lying, Vishwa and Muniraju have seen her son going towards the field at a distance, the accused were standing. She came to know that, as they were friends, she thought that to advise they have taken him and thereby kept quite. She has further deposed that her

husband lodged the complaint and the body was shifted to Government Hospital, Kanakapura and later buried. Suresha and Ravi at 6.00 pm, seen the accused taking her son with them, at that time Mallaiah, Raja, Ashoka and Chandra were there and she deposed that prior to one month of murder Mallaiah had criminally intimidated her son stating that if he intervened with his daughter, he would teach him a lesson, the said fact was told by her son to her when he came to house. She has further deposed that her son told that Shruthi, only comes behind him. Thereby herself and her husband told Mallaiah, that they will advise their son and one month later, her son was murdered and she do not know in that trauma, whether she has given statement to the police or not.

20. PW6 who is the seizure mahazar witness, in his evidence deposed that since 2012 he is practicing as an Advocate at Kanakapura, on 5.11.2011, Muniraju of his village had been to Bangalore, returned on 6.11.2011. He told his mother that Raja and Shivanna have called him and at 5.00 pm Raja and Shivanna took Muniraju. Later

near Hosakote at V.S. Bar and Restaurant purchased liquor, went towards isolated area situated opposite to bar and restaurant, there Chandra, Mallaiah and Ashoka were standing. The said fact was told to him by Muniraju. On that day itself, Shantamma and Muddaiah at 9.00 pm told him that their son had not returned and in that regard their second son telephoned but it was switched off. On the next day at 9.30 am, someone informed through phone to Auto Muddappa stating that his son was murdered in the isolated area situated opposite to V.S. Garden Bar and Restaurant. Further, PW6 has deposed that on 7.11.11 at 9.30 am, the parents of deceased Muniraju reached there. At that time, witnesses Munuraju and Vishwanatha came and told Muddaiah that A4-Raju and A5-Shivanna took their son for having a drink, and the remaining accused A1 to A3, were standing by the side of the road, they had knives at their waist, thereby got written complaint through him, so also deposed that as Muddaiah stated he has written the complaint. Further PW6 deposed that he was there only at 10.50 am, at that time police came to the spot, at 11.45 am, finger print

experts came, there Muniraja's neck was cut off, he was assaulted with knife on right shoulder, on right palm which was pierced on the head, 2 portions pierced, at the spot one leather slipper, right leg slipper toes removed, 3 chips pocket were available along with Muniraju's torn shirt, hairs, empty whisky bottle with glass, 1 pair Hawai slipper, 2 full beer bottle were lying towards southern side, the head of the deceased was lying towards northern side his legs and the body was straight.

21. PW6 has further deposed that at 2.30 pm, body was shifted to Hospital and at 5.30 pm body was brought to the house. Witness Ravi and Suresha came and told that previous day at 6.30 pm near V.S. Garden Bar and Restaurant A-4 and A-5 got drinks parcelled and went away to lonely place, so also deposed that A-1 to 3 were standing by the side of the road opposite to Dhaba, in their waist knives were seen. The said fact was told to Shantamma and Muddaiah. He further deposed that on 12.11.2011 between 3 to 4p.m, all the accused told that they will show the place where weapons were hidden

thereby Harohalli CPI called him as a witness, he has consented to be as witness, gone along with 5 accused, they shown the spot, A2 and A4 searched beside A1 Mallaiah's under-construction house, where at a distance of 5-6 feet bushes were there, they searched, by that time A1-Mallaiah cautioned to the place where knife was available, A4-Raja took the knife and handed over to the police. At that time, accused Ashoka took knife and told that by the said knife he cut-off the neck of Muniraju, on the said knife Gellari Sticker was affixed. A3-Chandra identified another knife who told that with the said knife he cut-off Muniraju's right shoulder and right palm, thereafter accused Mallaiah identified one more knife who told that with said knife he pierced on the chest of Muniraju. For the said seizure mahazar he signed which is as per Ex.P11 and his signature is at Ex.P11(a).

22. He has further deposed that as A1 being the Vice-President of Panchayat, and Muniraju who himself was a cook and son of an auto driver was in love with his daughter, and not interested to give his daughter to

Muniraju, accused Mallaiah, Ashoka, Chandrappa, Shivanna, Raju involved in conspiracy and in that regard murdered Muniraju. He has also deposed that accused, during lifetime of deceased Muniraju, had threatened him with dire consequences. Further, he deposed in his evidence that the accused told that they will show the weapons used for murder. Police called him as pancha, that time he accompanied with police and showed the knives. Chandra told that with knife he assaulted on Muniraju's right shoulder and on right palm, with another knife Mallaiah pierced on the chest of Muniraju and with one more knife accused Ashoka cut off the neck of Muniraju. All the knives were blood-stained.

23. PW7 who is the last seen theory witness, deposed in his evidence that in their farmland for rearing sericultural crop, to put RCC roofing, date was fixed as 7.11.2011. Prior to that day, on 6.11.2011 for laying necessary Iron rods, men were called, he was also there. On 6.11.2011 at 6.00p.m after finishing work when he was proceeding towards Bangalore near Harohalli V.S. Dhaba

deceased Muniraju, accused Raju and accused Shivanna were there. He told A4 to come on the next day for laying electrical pipe, so also told deceased Muniraju to cook for the workers, who agreed to come. At that time accused Raju was bringing liquor bottles from V.S. Garden Bar and Restaurant, for that he told not to drink more as in the morning he has to work, at that time himself and his brother G.M.Ravi were seated for 10 minutes. Thereafter while taking the car reverse to go towards Bangalore, in front of V.S.Garden by the side of the road A1-Mallaiah, A2-Ashoka and A3-Chandra were standing near two bikes, he had talks with them and by telling he is going to Bangalore, he went, at that time he saw knives in their waist, he told the said fact to his brother. Thereafter, sent his brother Ravi and family to Bangalore.

24. PW-7 further deposed that on 7.11.2011 at 6.00a.m his brother Ravi returned from Bangalore. Thereafter, they went to garden. By that time he told Ravi to call Muniraju to ask him to come for cooking. At that time, the phone was switched off. The phone of accused

Raju was also switched off. Hence, after finishing work at 6.00 pm they went to Gabbadi. He has further deposed that deceased Muniraju and daughter of Mallaiah were in love. Also PW-7 deposed that in that regard G.S.Mallaiah was not interested, he learnt about Mallaiah, Ashoka, Chandrappa, Raju, Shivanna and all the accused, conspiring each other and committing the murder of Muniraju. At that time, personally he informed the father of deceased Muniraju about the incident happened on previous day. He has also deposed as to Mahazar Ex.P12.

25. PW8, who is the mahazar witness, has deposed as to the mahazar conducted by the Police as per Ex.P2. PW-09 who is one more last seen theory witness deposed that for sericulture rearing house date was fixed for putting RCC mould as 7th, on 6th he had been to the garden, for moulding work dumped Iron materials, on 6th itself while returning near Harohalli V.S.Dhaba he told Raju for wiring work, at that time Raju, Shivanna and muniraju were seen, himself and his brother were coming in a car, as they saw them, they went near the bar, at that

time they told Raju to come for wiring work, Raju agreed to come in morning, for cooking they told to deceased Muniraju, he also agreed to come in morning, at that time Raju brought 5 beer bottles from the bar, in the deceased Muniraju's bike, deceased Muniraju, Shivanna and Raju went to the field situated in front of Dhaba, for that he told not to drink more as they have to come for work tomorrow, by saying so they turned their car to proceed towards Gabbadi, there Mallaiah, Chandra and Ashoka were standing by parking two bikes, on the road, his brother Suresha spoke with Mallaiah, at that time they saw some weapon in the waist of Mallaiah, said fact was told by his brother to him and thereafter they went towards Gabbadi. He further deposed that on the next day i.e., 7th fixed for moulding, at that time at 5.00a.m by loading the luggage in the vehicle had been to the Maralavadi garden and telephoned to Raju and deceased muniraju, response was switch off, wiring was to be done thereby he came to village, on verification came to know that Mallaiah, Shivanna, Raja, Chandra and Ashoka had murdered Muniraju, as Muniraju was loving the daughter

of Mallaiah, as Mallaiah told one or two times not to come, for the said enmity they conspired and committed the murder, so also deposed that on 7th day they put mould. Also deposed that on 9th, while coming from Harohalli opposite to V.S.Dhaba public had gathered, they went there, where 5 accused and police were present, police asked to identify and then they asked 5 accused, accused told they will say what happened on 9.11.11, so also he deposed that accused also told that they drank 3 bottles, 2 bottles were as it is, Chips were there and also told that they have committed the murder.

26. Further, he has deposed as to the mahazar conducted by police as per Ex.P11 and P12 and also seizure of properties.

27. PW10 has deposed as to the mahazar conducted by police as per Ex.P10.

28. PW11 has deposed in his evidence that, he know Shruthi, daughter of Mallaiah and deceased, he know accused who are before the court. Shruti and Muniraju were in love, when Shruthi was going to school, 2 or 3

times deceased Muniraju had told that he is loving her. Shruti was studying at Jain College, Jakkasandra. He do not know where Shruti was sent. Five years back Muniraju died. He do not know who killed Muniraju.

29. PW12 has deposed in her evidence that she know the accused who are before the court, she know deceased Muniraju and her brother Mallaiah's daughter Shruti. Six years ago, on the day of House Opening ceremony of her brother-in-law's daughter she came to know about the murder of Muniraju. All were aware that Muniraju and daughter of Mallaiah were in love. As all were talking, she came to know about the love affair. She has also deposed that she has given statement to the police. Further, she deposed that she has stated before the police that in spite of the fact that her brother had told not to love Shruti through Villagers, Muniraju continued the affair.

30. PW13 has not supported the case of the prosecution. Even during the cross-examination made by the Public Prosecutor after treating him as hostile witness

with the permission of the court, he has categorically denied as to the Investigating Police recording his statement under section 161 of Cr.PC which is marked as Ex.P13.

31. PW14, attester to mahazar Ex.P1, has categorically denied the contents of the mahazar.

32. PW15 has also categorically denied as to the statement said to have been recorded by the investigating officer under Section 161 of Cr.PC, which is marked as Ex.P10(c).

33. PW16, during her cross-examination by the Public Prosecutor, treating him as hostile witness with the permission of the Court, has categorically denied as to the statement recorded by the investigating officer under Section 161 of Cr.PC, which is marked as Ex.P14.

34. PW17 has categorically denied as to the statement recorded by the investigating officer under Section 161 of Cr.PC, which is marked as Ex.P15.

35. PW18 has deposed in his evidence that the residents of Gabbadi were talking regarding the love affair between Shruti and Muniraju. In that regard nothing happened in their village. Mallaiah had told him that shortly he will do something to Muniraju if he continued the affair and also deposed that after one week or 15 days of said talk, Muniraju died. He has deposed that he came to know that somebody had murdered Muniraju and also deposed that he learnt about the same from the villagers.

36. PW19 deposed in his evidence that Muniraju and Shruti were in love. Two years prior to his death, Muniraju was doing cooking work, Shruti was going to college. Mallaiah had told the father of Muniraju to advise his son not to involve in love with his daughter. Muddaiah told Mallaiah that his boy discontinued the love relationship. Muniraju died 6 years ago. Prior to one month of death of Muniraju, Mallaiah had sent a message to the father of Muniraju to inform Muniraju not to love his daughter, so also deposed that Muniraju died due to

assault and later he came to know that Muniraju was murdered.

37. PW20-Lokesh said to be the attester to inquest panchanama at Ex.P1, has not supported the case of the prosecution.

38. PW21 is the Village Accountant, has deposed regarding issuance of Pahani extract Ex.P17 pertaining to land in survey Number 46/5A.

39. PW22 is a hear-say witness and he has not supported the case of the prosecution.

40. PW23-Mahadevaiah is another witness who has not supported the case of the prosecution.

41. PW24 is the Assistant Engineer of Public Works Department. He has deposed as to the preparation of spot sketch as per Ex.P20, at the instance of Police.

42. PW25 is the Doctor. He has deposed as to conducting the postmortem examination on the dead body of deceased Muniraju and issuance of postmortem report Ex.P21. In the report, he has opined that death is due to

shock and hemorrhage as a result of the injury sustained and the time since death was between 12 to 24 hrs before conducting the post mortem.

43. PW26-Nagaraju, Police Inspector, PW27-Prabhu Swamy HC-160, PW30-Shyam Mahadevagowda, the investigating officers, have deposed as to their respective investigation.

44. PW 28, another Head constable has deposed as to the submitting of FIR to the Court.

45. PW29-Sri Srinivas, ASI, has deposed as to handing over of articles to FSL Authority and obtaining the acknowledgement. He has also deposed that on that day he had taken the seized articles (15 items) to FSL.

46. PW31-Shanad Fathima, Senior Scientific Officer, FSL has deposed as to the examination of 15 sealed items handed over for examination, and after examination, returning the same to the Police along with report Ex.P44.

47. PW32-Naveen who is the hotel worker, has deposed in his evidence that on 7.11.11, 5 people came as

guests to their hotel, reserved room No.113, stayed one day, vacated on the next day. After 2 days, police came along with 5 persons, among them Mallaiah, Shaivanna, Raja, Ashoka and Chandra were there they paid Rs.1,500/- as advance. As six years had lapsed, he cannot say how much amount was returned, as to issuance of receipt or entering the same in the Ledger. He has also deposed that he himself used to write the ledger book and on that day at 4.45 pm the guests obtained room in the name of Mallaiah and the entry in the Ledger was in Mallaiah's hand writing. He has also deposed that police came and inspected the Ledger, took receipt, confirming their stay in the hotel, prepared one document and obtained his signature and the said document is as per Ex.P39 which bears his signature as per Ex.P39(b).

48. A careful examination of the entire material on record makes it crystal clear that Doctor-PW25 has deposed as to the examination of dead body of Muniraju and also issuance of postmortem report as per Ex.P21.

49. Ex.P10 is the inquest panchanama conducted by the investigating officer, which reveals that the investigating officer has conducted the inquest panchanama in presence of panchas with the photographs of the dead body marked as Ex.P4 to P9. The trial court has observed that there is no doubt with regard to homicidal death and held that the prosecution has established that the said Muniraju met a homicidal death. On re-examination of the entire material on record, we do not find any legal or factual error in this regard.

50. With regard to accusation made against the accused is concerned, according to the case of the prosecution, PW1 and 2 are the last seen witnesses. However, both of them have turned hostile. Even during the cross-examination made by the Public Prosecutor after treating them as hostile witnesses with the permission of court, they have categorically denied the statement said to have been recorded by the investigating officer under section 161 of Cr.PC which are marked as Ex.P1 and P2.

51. Though PW23 has deposed to some extent as to the spot of the incident and also MO1 to 12, but in his further examination-in-chief, he has deposed that he has seen two mobiles one Nokia model without battery and another one Micromax model as per Ex.P13 and P14. He has not seen the knives. He has also not seen two other knives. CW5-Shankaregowda had seen the knives at the time of seizure mahazar, on the basis of which he has stated that Suresha and Ravi told him on Monday that Raju, Shivanna and Muniraju were having drinks. On perusal of the said version, it could be gathered that this witness who is the material witness is the father of the deceased, has seen the knives. On scrutiny of evidence, it is seen that he has stated that on the say of CW5-Shankaregowda, he deposed that Suresha and Ravi told him that on Monday, Raju, Shivanna and Muniraju were having drinks. On going through this relevant testimony of the witnesses as he has admitted in the chief-examination itself that he has not seen the knife, as also, he has not seen other two knives, his testimony is to be assessed. PW3 has stated that three knives were at the spot when

the inquest mahazar was done on 07.11.2011 and on scrutiny of his testimony, recovery as per Ex.P11 on 12.11.2011, leads to doubt. Further, he has deposed that Shankaregowda has written Ex.P13 at Hosakote and in the said complaint Shankaregowda himself has written the timing as 11:45 am. It could also be seen that there is an improvement in his evidence that Rajanna and Shivanna being the friends of his son, have gone together. It could be further gathered that when he was examined-in-chief, he has identified the articles, and in view of it, suggestions were put forth by the defence suggesting that as there are cases against Shankaregowda, for that reason, accused were falsely implicated, so also accused No.1 being the witness against Shankaregowda, a case came to be registered and to come out from that case, at the instigation of Shankaregowda, he has falsely deposed. On further scrutiny of evidence of PW1, it could be seen that he has deposed with respect to seizure of mobiles. But on going through the same, it could be seen that no call list was produced to say as to what conversation transpired between them.

52. The trial Court has discussed about the material omissions, contradictions, admissions and improvements of the prosecution witnesses, PW4, 7 and 9 to 13 at paragraphs 68 to 96 of the judgment.

53. With regard to the recovery of weapon is concerned, in paragraph 97, the trial Court has discussed as under:

"97. At this juncture it is pertinent to mention here in the case like on hand recovery must be proved by the prosecution beyond all reasonable doubt but it could be seen that in the instant case recovery of deadly weapons leads to doubt going to the spot by the I.O along with PW-6, 7 & 9 also leads to doubt as such the varacity of complaint as per Ex.P.3 conducting of seizure mahazar as per Ex.P.11 are not sufficient to say that there is recovery. So far as concerned what recovery is shown as per confessional statement, the said recovery leads to doubt as Sec,25 of Indian Evidence Act bars that what statement given before I.O/Police is not admissible in the eye of law in view of the fact that there is no corroborative evidence by PW-6,7 & 9 and the said evidence is already stated supra by way of Kannada version. In this regard reliance is placed on decisions by P.P. on the ruling i.e., Supreme Court of India State of Himachal Pradesh –VS- Jeet

Singh on 15- 3-1999- it is not necessary that other witnesss should be present when the accused was interrogated by the I.O. Perused the said decision, with hearty respect no doubt recording of voluntary statement of accused is not necessary in the presence of other witnesses but the case on hand discloses that there is no coagent testimony with regard to discovery by the seizure mahazar witnesses as per Ex.P.11, as such the concluding of seizure mahazar leads to doubt. Further reliance is placed with regard to Sec.27 of Cr.P.C. i.e., (2017) 2 SCC (Cri), 262 and (217)(3) SCC 760- Evidence Act 1872- S.27- joint/simultaneous/similar disclosures is a myth..... When 2 persons in custody are interrogated separately and symultanelusly and both of them furnished similar opinion leading to discovery of fact which was reduced into writing such disclosures..... do not go out to the purview of Sec.27altogether----- - On scrutiny of the said decision no doubt joint recovery is permissible but in view of the facts and circumstances that there is a contra testimony by PW-6, 7 & 9, with regard to recovery as discussed supra, by giving most hearty respect though joint recovery is permissible it does not rescue the prosecution in the case like on hand. Apart from the above the facts and circumstances compared to the present case on hand are different. Also relied one more decision i.e., 2001 SCC (Cri)248- Sec-27 evidence-Recovery of articles blood stains..... and Larger Bench decision DB Criminal

Leave to appeal No.94/2017 High Court of Rajasthan- Sec.27 of the evidence act-statement should be recorded in presence of and attested by independent witnesses do not lay down the correct proposition of law- gone through the said decisions on going through it though the ratio and principles laid down by Lordships is considerable one and it is not a bar to draw mahazar without independent inhabitant of the locality, but in the present case as the testimony of PW-6,7 and 9 reveals discrepancies and not similar with each other in view of the admission that apart from them other persons were present, so also not corroborative in its nature, as such by giving most hearty respect to the said decisions, same are no way helpful to the prosecution under the circumstances."

54. Further, the trial Court at paragraphs 98 to 102, has observed as under:

"98. In view of the above at this juncture it is pertinent to mention here that the first and foremost duty of the prosecution to conduct the investigation so also to conduct the relevant mahazras in the presence of panchas and on going through the mahazars drawn in this case it could be seen that there is a contrary testimony by the mahazar witnesses which leads to suspicion. Therefore in view of the stated discrepancies and contradictions by the material witnesses as the case

is purely based on the circumstantial evidence, the self surviving evidence of PW-3,PW-5 to 7, PW-9and PW-26 who have stated in favour of prosecution without corroborating their evidence varacity of complaint- Ex.P.3 cannot be relied and submitting of statements of witnesses cannot be considered as evidence. Further it appears that I.O has tried to improve the case of which was not even stated by material witnesses and these improvements are material improvements and said type of case is not sufficient to believe the prosecution case. Further even to draw presumption the prosecution is required to prove the case stating that the accused have committed the offences and to be proved by the prosecution beyond all reasonable doubt. The burden is cast upon the prosecution and the prosecution has to rebut the same. Therefore on appreciation of evidence it becomes highly improbable to say that these accused were involved in the commission of crime. It is also improbable as to whether I.O had been to the spot for conducting mahazars and it is also improbable to accept the evidence of PW-3,PW-5 to 7, PW-9 and PW-26 who are the important material witnesses on whose testimony prosecution intends to prosecute the case as such their evidence cannot be considered as trustworthy and doubt arise as to whether the arguments of P.P. could be accepted, as admittedly there is no corroborative evidence at all by the material witnesses in view of their inconsistent

*testimony the prosecution case cannot be considered, so also there is no any trustworthy testimony by the other witnesses except Village Accountant, Engineer and Doctor. Also the evidence of PW-3 is not sufficient as he clearly deposed that by the side of body weapons were available. No doubt law is changed like a ocean and even without the statement of I.O, conviction and sentence can be passed, provided that solitary statement of material witnesses inspire confidence, but here in this case it could be seen that what evidence given by PW-6 & 7 with regard to last seen theory leads to doubt as if at all they have seen the deceased and accused near V.S.Dhaba bar and restaurant, sighting the knives on the waist of the accused and the fact of talking with them for a 10 minutes what prevented them in not questioning the accused stating why they have kept knives on the waist, as such here there is no wrong if it can be said that no one can keep deadly weapons which will be visible to others and if a person holds any deadly weapon for committing a crime then he will hide the same without notcing it to others in a secret manner, that too there is evidence that the accused by keeping the deadly weapons on waist were standing on the main road which is open space. Of course reliance is placed by way of ruling i.e., **Crl.A.No.1146/2008 vide para No.23---** **Evidence of Investigating officer. --public servants must be presumed to act honestly and conscientiously and their***

evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants. Perused the said decision on its perusal no doubt, the court has to base the evidence of I.O. provided that it should be corroborative along with the evidence of the material evidences whose evidence inspire confidence, as such by giving most hearty respect the said decision is no way helpful to the prosecution, as the facts compared to the case on hand are different.

99. From the above and on a cumulative reading of evidence of witnesses along with suggestion put-forth by the defence. shows that the accused persons cannot be fastened with the allegations of wrong doing and the offended persons cannot be said that they were involved in the commission of offences as alleged, as it is clarified by the defence during the course of cross examination so also during argument, that these accused are responsible for murder. As already indicated above however Ex.P-3 complaint which completely dislodged the prosecution story and in the light of the statements given by the material witnesses there is no evidence which inculcates the case and the fact that the accused have committed the offences, there is no supportive evidence, as it could be seen that there is no investigation with regard to purchase of beer bottles from Restaurant,

so also Bar owner, cashier or workers not enquired and apart from the above there is no investigation pertaining to CC TV footage as pointed out by defence during hearing. Apart from the above motive is in doubt as the said Shruthi and her mother not examined so also with regard to seizure mahazar there is contra evidence by the 2 brothers who are brought from Bangalore. On the basis of evidence of PW-3,PW-5,PW-6,PW-7,PW-09,PW- 26, & PW-31 in the case like on hand so also on the basis of FSL opinion only no inference can be drawn, as in such situation ocular evidence of those who knows the incident has to be given primary importance. But in this case it could be seen that PW-6,7 & 9 who are the 3 important witnesses on whom the entire case is rest upon have given contra evidence and their evidence consists of discrepancies, improments, omissions and admissions , in such situation and in the light of the above facts and circumstances, proceedings which have been initiated against the accused cannot be accepted on the basis of arguments of P.P that too have number of suspicious in nature,. so also on the basis of Ex.P-1 to 44 and on M.O.4, 5 deadly weapons(it is noticed that by oversight M.O 4 & 5 are marked again as M.O.16 & 17) & M.O.15 , that too have against the accused , as such it can be said that no such action could be taken. Therefore, this court is of the view that the submission on behalf of the complainant so also on behalf of PW-6,PW-7 and

PW-9 by the public prosecutor deserves to be unacceptable one as there is ill-conceived on the facts of the case and the statement of prosecution witnesses in the given circumstances were to be given importance, if there is cogent testimony by the star witness including material witnesses. Thus adverse inference can be drawn against the prosecution. Further there is also missing nexus between the role played by I.O and the witnesses examined, there is also a missing nexus as to why PW-1 to 20, 22,23, 26 to 32 deposed in such a manner as stated supra. It was the prosecution to prove that the accused were involved in the commission of crime at the relevant point of time and whether there was incident as alleged or it is just a mere error of investigation. These circumstances have been meticulously considered by this court and on appreciation of evidence has found that the prosecution which is required to prove its case beyond reasonable doubt on par with any other criminal case, have failed to prove the same.

100. At this juncture before going further I intend to quote i.e., it is opened to the court to convict the accused on the basis of evidence of single witness, though it is always open to the court to look for corroboration. Whether the court should seek corroboration or not depends on the facts and circumstances of each case. The court will not insist

on corroboration except where the nature of the witnesses testimony itself requires as a matter of prudence that corroboration should be sought as held in;

AIR 2009 SC 1110, so also in AIR SCW 297:(2008) 15 SCALE 615. Further if the court is satisfied that witness is speaking the truth the court may act upon it as held in AIR 1962 SC 624:1962(1)SCJ 371:(1962) 3 SCR 590:(1996)(i)SCC 614;1966(1)SCJ 496:1996 Cr.L.J.889, AIR 2004 SC2688: 2004 AIR SCW 1244:(2044)12 SCC 269. Further circumstantial corroboration is sufficient, as held in AIR 1976 SC 560:1976 (Cri) 60:(1976) (i)SCC 442, AIR 1957 SC614: (1957) SCJ527:1957 Cr.L.J.1000.

Further in view of the materials placed before the court it is relevant to mention here that in the instant case few witnesses have deposed adversely towards prosecution and have en bloc, given contrary testimony, among whom complainant is also one of the witness, but this court has observed that witnesses may lie but circumstances do not as the chain of circumstances to be looked into thereby it can be said that witnesses rendering evidence in a different way from each other, each person has his own idea of self-esteem and self-thinking, therefore it is impossible to lay down any straight jacket

formula in dealing with such cases, as each case has to be decided on the basis of its own facts and circumstances as ultimately the court of law should assess the evidence with regard to intention to provoke, incite or encourage the doing of an act and each person's behaviour pattern is different from another as observed by Hon'ble Supreme Court in 2009(16) SCC 605. Also if the court analyze the evidence put forth by the prosecution witnesses it do not in any manner create a dent as observed by Hon'ble Supreme Court of India in Crl. Appeal No.1146/2008 dated 20.10.2010. Further the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof as held in AIR 1976 SC 202, AIR 1977 SC 170, AIR 1979 SC 1848 and in AIR 1991 SC 1853. Also that evidence of witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense can be relied upon, as by way of similarity view has been reiterated as held in (2002) 7 SCC 543, (2006)13 SCC 516, AIR 2006 SC 951, AIR 2008 SC 320 and (2009) 6 SC 462, therefore the evidence of witness cannot be discarded as a whole and relevant parts thereof which are admissible in law can be used by the

prosecution or the defense. Also here it is pertinent to mention that it is settled proposition of law that even if there are some omissions, contradictions and discrepancies the entire evidence cannot be discarded, After exercising care and caution and shifting through the evidence to separate truth from un-truth exaggerations and improvements, the court may come to a conclusion as to whether the residuary evidence is sufficient to convict the accused, Thus an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness's as the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses as held in AIR 1972 SC 2020, AIR 1985 SC 48, AIR 1983 SC 753, AIR 2007 SC 2257, (2009)11 SCC 588, (2009) 9 SCC 626 and in AIR 2009 SC 151. Gone through the above said rulings, on going through by giving most hearty respect, the said decisions will not come to rescue in favour of prosecution to the case on hand in view of the tangible/ substantial/ touchable reasons.

101. So far as concerned the citation being produced by the learned counsel for accused i.e., 2008(1) Cro,es 256(SC), 2015(4) & ICLR 982(Raj) Rajasthan High Court(DB) AIR 2002 SC 304,

Criminal Appeal No.1624-1625 of 2013, Criminal Appeal No.9874/2007(Supreme Court of India). Perused the said decisions, on its perusal by giving most hearty respect it is not necessary to recapitate as they are no way helpful to the prosecution since the facts and circumstances as stated in those decisions and the facts and circumstance of present case are different.

102. Hence, in the light of the above, as there is no believable and trustworthy evidence, so also there is no any cogent, concrete, clinicing and corroborative evidence against the accused by material witnesses on whom prosecution case is based it creates doubt whether these accused were the persons involved in the commission of offences or not so also whether these accused were the persons who were involved in hatching a plan to commit the murder of Muniraju and whether the death is caused by these accused or was the consequences of the act of these accused leads to doubt. Thus in view of the admissions, improvements and omissions made by the material witnesses and even there are no strong circumstantial evidence in favour of prosecution Such being the case it can be said that prosecution has miserably failed to establish the guilt of the accused No.1 to 5 beyond all reasonable doubt. Therefore, extending the benefit of doubt, I answer Point NOs 2 to 5 in the Negative."

55. We have re-appreciated the entire evidence independently. On re-appreciation/reconsideration and re-examination of the entire material on record, we are of the opinion that the trial Court has properly appreciated the evidence on record in accordance with law and facts. We do not find any factual or legal error in the impugned judgment of acquittal. Hence, considering the facts and circumstances of the case, and also keeping in mind the afore stated judgments of the Hon'ble Apex Court, we answer Point No.1 in the negative.

Regarding Point No.2:

56. For the afore stated reasons and discussions, we proceed to pass the following:

ORDER

Appeal is dismissed.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn