IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 445 OF 2017

C/W

CRIMINAL APPEAL NO. 1918 OF 2016

In Crl.A.No.445/2017

Between:

The State of Karnataka
By Tumakuru Town Police Station,
Represented by State Public Prosecutor,
High Court Building,
Bengaluru-560001.

...Appellant

(By Smt. Rashmi Jadhav, HCGP)

And:

1. Rajeevalochanababu
   S/o. Late Chikkanna,
   Aged about 50 years,
   Real Estate Business,
   R/o. Aralimaradapalya,
   150 ft, Main Road,
   Sira Gate, Tumakuru-572137.

2. Yogeesha
   S/o. Ramanna,

Aged about 45 years,
Agriculturist,
R/o. Chikkaveeraiahnapalya,
Sira Gate, Tumakuru-572137.

3. Abdul Nabi @ Chandpasha
S/o. Gaiban Sab,
Aged about 47 years,
Rice Business, Gurudeva Rice Mill,
Satyamangala Road,
R/o. Near Navagraha Park,
Aralimaradapalya, Tuda Layout,
Sira Gate, Tumakuru-572137.

4. Somanna @ Somashekara
S/o. Shivarudrappa,
Aged about 47 years,
Real Estate Business,
R/o. Anandamallappa's House,
KHB Colony, Sira Gate,
Tumakuaru Native Place,
Aralaguppe, Tiptur Taluk-572201.

5. Yadukumara
S/o. Gurusiddappa,
Aged about 47 years,
Panipuri Business,
1st Cross, Near Ganapathi Temple,
Vinobanagara, Tumakuru-572101.

6. Siddalingaiah
S/o. Siddappa,
Aged about 65 years,
Agriculturist and Real Estate Business,
R/o. Hebbaka, Tumakuru Taluk-572101.

…Respondents

(By Sri. Hashmath Pasha, Senior Advocate for
Sri. Nasir Ali and Sri N.A.Kariappa, Advocates
for R1, R2, R4 and R3 respectively.
Sri. B.G.Fayaz Sab, Advocate for R5;
Sri. V.B.Siddaramaiah, Advocate for R6)

This Criminal Appeal is filed u/s.378(1) and (3) Cr.P.C praying to grant leave to appeal against the impugned judgment and order of acquittal dated 23.09.2016 passed by the learned Principal District and Sessions Judge, at Tumakuru in S.C.No.216/2012, thereby acquitting the respondents/accused of the offences p/u/s 143, 148, 302, 201, 114 r/w 149 of IPC and etc.

In Crl.A.No. 1918/2016

Between:

Smt. Kalpana
W/o. Late Narasimha Murthy,
Aged about 29 years,
R/o. Aralimaradapalya,
Near 80 Feet Road,
Siragate, Tumakuru-572101.

...Appellant

(By Sri. Sudeep Bangera, Advocate)

And:

1. D.Rajeevalochanababu
   S/o. Late Chikkanna,
   Aged about 50 years,
   Real Estate Business,
   R/o. Aralimaradapalya,
   150 ft Main Road,
   Sira Gate, Tumakuru-572137.

2. Yogeesha
   S/o. Ramanna,
   Aged about 45 years,
   Agriculturist,
   R/o. Chikkaveeraiahnapalya,
   Sira Gate, Tumakuru-572137.

3. Abdul Nabi @ Chandpasha
   S/o. Gaiban Sab,
   Aged about 47 years,

Rice Business, Gurudeva Rice Mill,
Sathyamangala Road,
R/o. Near Navagraha Park,
Aralimaradapalya, TUDA Layout,
Sira Gate, Tumakuru-572137.

4. Somanna @ Somashekara
S/o. Shivarudrappa,
Aged about 47 years,
Real Estate Business,
R/o. Anandamallappa's House,
KHB Colony, Sira Gate,
Tumakuaru -572137.

5. Yadukumara
S/o. Gurusiddappa,
Aged about 47 years,
Panipuri Business,
1st Cross, Near Ganapathi Temple,
Vinobhanagara, Tumakuru-572101.

6. Siddalingaiah
S/o. Siddappa,
Aged about 63 years,
Agriculturist and Real Estate Business,
R/o. Hebbaka, Tumakuru Taluk-572101.

7. State of Karnataka
By Tumakuru Town Police Station,
Now Represented by
The State Public Prosecutor,
High Court Building,
Bengaluru-560001.

…Respondents

(By Sri. Hashmath Pasha, Senior Advocate for
Sri. Nasir Ali and Sri N.A.Kariappa, Advocates,
for R1, R2, R4 and R3 respectively.
Sri. B.G.Fayaz Sab, Advocate for R5;
Sri. V.B.Siddaramaiah, Advocate for R6;
Smt. Rashmi Jadhav, HCGP for R7)

This Criminal Appeal is filed u/s.372 Cr.P.C praying to set aside the order dated 23.9.2016 passed by the Principal District and Sessions Judge, Tumakuru in S.C.No.216/2012 for the offence p/u/s 143, 148, 302, 201, 114 r/w 149 of IPC and convict the respondent/accused no.1 to 6.

These Criminal Appeals, having been heard & reserved on 24.07.2023, coming on for pronouncement this day, ***Sreenivas Harish Kumar J.,*** pronounced the following:

JUDGMENT

Criminal Appeal No. 1918/2016 is filed under Section 372 of Code of Criminal Procedure (for short 'Cr.P.C.') by the first informant, namely Smt. Kalpana, the wife of the deceased Narasimha Murthy. Criminal Appeal No. 445/2017 is by the State. Both the appeals are directed towards judgment of acquittal dated 23.09.2016 in Sessions Case No. 216/2012 on the file of Principal Sessions Judge, Tumakuru.

2. The respondent nos.1 to 6 faced trial for the offences punishable under Sections 143, 148, 302, 201, 114 read with 149 of the IPC. PW1-Kalpana made a report of the incident to the police at 5.45 p.m. on 11.10.2011 as per Ex.P.1. She stated to the police that

her husband-Narasimha Murthy had some differences with accused no.4-Somanna relating to purchase of a landed property at Kora village near Tumakuru, with accused No.1 Rajeevalochana Babu in relation to running of cable network, and with accused no.2-Yogeesha in regard to sale of a site. All the three used to quarrel with her husband. On 11.10.2011, around 12.30 p.m. her mother in law and husband saw Somanna, Rajeevalochana Babu and Yogeesha, and three to four other persons standing in front of the house of Rajeevalochana Babu discussing something among them. The mobile phone of Narasimha Murthy required repair as his child had thrown it on the ground. Therefore at 2.00 p.m. Narasimha Murthy left home towards the city area of Tumakuru to get the mobile phone repaired. Around 4.00 p.m. PW1 saw Rajeevalochana Babu, Yogeesha and Somanna going towards Sira Gate by riding two wheelers. A little while later she and her mother in law saw many people going towards 80 feet road near Sira Gate. As they also proceeded towards that place, somebody gave a drop to

her on a two wheeler. There she saw her husband's dead body amidst a pool of blood. She suspected involvement of Somanna, Rajeevalochana Babu, Yogeesha and other three or four persons. Based on the report made by PW1, the police initiated investigation and filed charge sheet against six accused persons who are respondents in these two appeals.

3. The prosecution examined 28 witnesses and relied on 36 documents-Exs.P1 to P36 and 14 material objects-M.O.1 to M.O. 14. Exs.D1 and D2 are the statements of PW5 and PW6 respectively got marked while cross examining them.

4. The main reasons for acquitting the accused are that the testimonies of the eyewitnesses-PW2, PW3 and PW4 are unreliable, the motive is not proved and recovery of weapons as also clothes of accused is doubtful.

5. We have heard the arguments of Sri Sudeep Bangera, learned advocate for the appellant in Crl. A. No.

1918/2016, Smt. Rashmi Jadhav, learned High Court Government Pleader for the State, Sri Hashmath Pasha, learned senior advocate for accused nos.2 and 4, Sri Kariappa N.A, learned counsel for accused no.3, Sri B.G. Fayaz Sab, learned counsel for accused no.5 and Sri V.B. Siddaramaiah, learned counsel for respondent no.6.

6. Sri Sudeep Bangera made an initial submission that even in an appeal against acquittal judgment, entire evidence can be re-appreciated. Sri Hashmath Pasha also submitted that evidence can be re-appreciated; but his further submission was that the judgment of acquittal should not be upset unless the appellate court finds that the trial court has not appreciated the evidence properly and if two views are possible to be taken, that benefit should always be given to the accused. In this regard both of them cited a few decided cases upon which we may place reliance now itself. Firstly, we refer to the decision cited by Sri Sudeep Bangera. In ***Motiram Padu***

Joshi & Others Vs. State of Maharashtra[1], it is held that:

> *"23. While considering the scope of power of the appellate court in an appeal against the order of acquittal, after referring to various judgments, in Chandrappa v. State of Karnataka, (2007) 4 SCC 415, this Court summarised the principle as under:-*
>
> > *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
> >
> > *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
> >
> > *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its*

[1] 2018 SCC Online SC 676

own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a

competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. In ***Munishamappa & Others Vs. State of Karnataka & connected appeals***[2], it is held that:

"16. The High Court in the present case was dealing with an appeal against acquittal. In such a case, it is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court, in other words, should not interfere with an order of acquittal merely because two views are possible. The interference of the High Court in such cases is governed by well-established principles. According to these principles, it is only where

[2] 2019 SCC Online SC 69

the appreciation of evidence by the trial court is capricious or its conclusions are without evidence that the High Court may reverse an order of acquittal. The High Court may be justified in interfering where it finds that the order of acquittal is not in accordance with law and that the approach of the trial court has led to a miscarriage of justice. …"

8. In the case of ***Hari Ram & others Vs. State of Rajasthan***[3], it is held that:

"4. Mr. Sushil Kumar Jain, the learned Additional Advocate General for the State of Rajasthan on the other hand contended that the power of the High Court while hearing an appeal against an order of acquittal is in no way different from the power while hearing an appeal against conviction and the Court, therefore was fully justified in re-appreciating the entire evidence, upon which the order of acquittal was based. The High Court having examined the reasons of the learned Sessions Judge for discarding the testimony of PWs 6 & 7 and having arrived at the conclusion, that those reasons are in the realm of conjectures and

[3] 2000 SCC Online SC 933

there has been gross miscarriage of justice and the mis-appreciation of the evidence on record is the basis for acquittal, was fully entitled to set aside an order of acquittal and no error can be said to have been committed. It is too well settled that the power of the High Court, while hearing an appeal against an acquittal is as wide and comprehensive as in an appeal against a conviction and it had full power to re-appreciate the entire evidence, but if two views on the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, then the High Court would not be justified in interfering with the acquittal, merely because it feels that it would sitting as a trial court, have taken the other view. While re-appreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the learned trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as

otherwise, there would be gross miscarriage of justice. …"

9. Sri Hashmath Pasha has placed reliance on ***State of Rajasthan Vs. Kistoora Ram***[4] and ***Mahavir Singh Vs. State of Madhya Pradesh***[5]. In ***Kistoora Ram*** it is held:

"8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."

10. In ***Mahavir Singh*** it is held:

"12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent court after a full-

[4] 2022 SCC Online 684
[5] (2016) 10 SCC 220

fledged trial, and once the trial court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate court while passing an order has to give clear reasoning for such a conclusion."

11. Keeping in mind the principles enunciated above, we proceed further. Before referring to the actual findings of the trial court, we refer to the evidence of PW1, 2, 3, 4 and 5 in their examination in chief. PW1 is the first informant being the wife of the deceased. PW5 is the mother of the deceased. PW2, 3 and 4 are the eyewitnesses.

12. The oral testimony of PW1 is like this: Fourth accused Somanna is the husband of her husband's elder sister and that she had seen all the six accused earlier. She has spoken about the motive and also about later part of the incident. We will deal with motive a little later while discussing the evidence of the witnesses examined in this behalf by the prosecution. As regards the incident she stated that on 11.10.2011, at about 12.30 p.m. she saw all the accused having gathered in front of the house of first accused-Rajeevalochana Babu. His house is situated at a visible distance from her house. At that time her husband, i.e., the deceased, mother in law and her child were present. All of them saw the accused talking among themselves pointing their hands towards their house. At about 2.00 p.m., her husband went out of the house towards city on his motorcycle for getting his mobile phone repaired. Her mother in law was constantly watching the accused standing in front of the house. The accused persons were standing in front of the house of

accused no.1 till 4.00 p.m. and thereafter they went towards Sira Gate. Second accused Yogeesha left that place riding one motorcycle and the fourth accused Somanna and another went on another motorcycle. The others took an autorickshaw to go towards Sira Gate. Sometime later, she saw many people going towards 80 feet road and she too went to see as to what had happened. Somebody going in that direction gave her a drop till 80 feet road. Reaching that place, she saw her husband having fallen down being murdered. She stated that her mother in law also came to that place very soon. She saw many injuries on her husband's body. She stated that all the six accused had killed her husband. The motorcycle belonging to her husband had fallen at the place of incident. On the same day evening she went to police station and made a complaint, i.e., written report as per Ex.P.1.

13. PW5 is the mother of the deceased. She too has given evidence with regard to disputes between her

son and the accused. In regard to the incident her evidence is that about two years ago, she saw the first, second and fourth accused sitting in the veranda of the house of first accused. She also saw three to four persons being there at that time. They all raised their hands and made a gesture seeing her son that they would assault him. Her son said that he was afraid of it and therefore went inside the house. Around 2.00 p.m. her son went out of the house for getting the mobile telephone repaired. All the persons sitting in the veranda of the house of first accused saw her son leaving the house. After her son left the house, she did not go inside the house but sat on a stone. One Rajasab of the neighbouring flour mill asked her as to why she was sitting there and she told to him that her son who had gone towards city had not yet come back. The time then was around 4'o clock. All the six persons seen in the veranda of the house of the first accused went towards Sira Gate. She also went towards Sira Gate. She stated that six persons who went towards Sira Gate were Rajeevalochana Babu, Yogeesha,

Somanna, Chand Pasha, Yadukumara and Siddalingaiah. She was standing at that place for about 45 minutes and sometime later, while she was still standing there, saw Rajeevalochana and Yogeesha coming on one motorcycle from Sira Gate, and Somanna on another motorcycle. She observed blood stains on their clothes. Then she saw many people going towards Sira Gate. Her daughter in law Kalpana asked as to why people were going like that and she too went to that place with the child. By that time one boy came riding a motorcycle, he took her on the motorcycle towards 80 feet road. She saw her son's motorcycle and daughter in law weeping. She saw a dead body. Some women standing at that place did not allow her to go near the dead body stating that the dead body was that of her son. As she asked the women as to what had happened, they told her that four persons killed her son inflicting injuries with machetes and knives.

14. If PW1 and PW5 deposed in the above manner as regards the incident, the oral testimonies of PW2, PW3 and PW4 being the eyewitnesses is as below:

PW2 Timmaiah was a vegetable vendor at Vinayaka Nagar vegetable market, Tumakuru. He was a resident of Puttaswamayanapalya, near Sira Gate. He was living there for the past 15-20 years. On 11.10.2011, he was to go to the house of one Kumbanna at Nagannanapalya and from there to market. In between 4.15 and 4.30 p.m., he was coming from Nagannanapalya riding his bicycle on 80 feet road. On the way he saw one person coming on a motorcycle being stopped by four others. Those four persons picked up quarrel with the motorcycle rider and one of them held his shirt collar. As he was looking at them, they stabbed on the stomach of the rider, i.e., the deceased. (It is recorded in the deposition sheet that the witness himself stated that he did not know the name of the deceased at that time). He has stated that all the four persons stabbed the rider of the motorcycle three or four

times on his neck, chin and left shoulder. The rider fell down. Then the person who held the shirt first held both the legs of the rider. Another assaulted on the stomach and rib cages with a machete. One person took a knife and stabbed on the neck and then on stomach. He saw two persons standing in front of the mill saying loudly, "Don't leave, finish him off". Thereafter out of four, three persons left that place on the motorcycles towards Aralimaradapalya and the another went towards Sira Gate riding a motorcycle. The persons standing in front of the mill walked towards Tumakuru city. The time then was 4.30 p.m. After all the assailants left that place, PW2 went near the place of incident and saw the person attacked being dead. By that time many people gathered and he heard those people talking among themselves that the deceased was from Aralimaradapalya who had involved in real estate business and that the assailants were Somanna, the brother in law of the deceased and Yogeesha. He also heard the name of Rajeeva, i.e., first

accused, being taken by the persons who gathered there. He gave the statement before the police on 12.10.2011.

14.1 On 18.10.2011, the police called him to police station and showed five persons to him and asked whether they were the persons who were involved in the incident. He identified them and said to the police that they were the very persons whom he saw inflicting injuries to the deceased. In the court he gave the overt act of each one of them stating that Somanna held the shirt collar first and held the legs of the motorcycle rider after he fell down. Rajeeva inflicted injury with a knife on the neck and the stomach. Yogeesha assaulted with machete on the neck and the stomach. He stated further in the court that Chand Pasha, i.e., accused no. 3, was not in the police station at that time and therefore he asked the police about another person who had stabbed and to that, the police replied that his name was Chand Pasha and had not been still arrested. He then identified other two persons in the police station stating that they were the persons who

were standing in front of the mill. They were, accused no.5-Yadukumara and accused No.6-Siddalingayya. He identified all the accused in the court also. He also gave one more statement before the police after identifying them in the police station. During examination in chief he identified the weapons which the accused had with them at the time of committing the offence.

15. PW3-Hanumantharaju has given evidence stating that on 11.10.2011, one Mastry Ranganna asked him to come near municipal complex situate near Sira Gate. At 4.00 p.m., he was standing on the service road in front of municipal complex waiting for Mastry Ranganna. At that time a commotion that erupted on 80 feet road attracted his attention and as he looked around, he saw one person sitting on the motorcycle and four others quarrelling with him. Suddenly one person standing behind the rider held the shirt collar of the rider. The other took a knife and stabbed the rider with that knife on left and right side of the chin, and left shoulder four times.

Two persons were standing in front of the flour mill and they were shouting loudly "Don't leave, finish him off". By that time one among four took a knife and stabbed on the neck of the bike rider. As the bike rider fell down, one held the legs and the other took a knife and assaulted on the left side of the rib cages and on the stomach. Afterwards three persons left that place riding two motorcycles and the fourth one went towards Sira Gate on the motorcycle. The persons who were standing in front of the mill went towards Tumakuru city sitting in an autorickshaw. After all of them left that place he went to that place and saw the bike rider being dead. The people who gathered at that place were talking that the person who had been killed was Narasimha Murthy of Aralimaradapalya and the assailants were Yogeesha, Somanna and Rajeeva. The time was 4.30 p.m. On the next day morning the police called and enquired him.

15.1. His further evidence is that a week after the incident the police called him to station. After going to

police station he saw five persons being caught by the police. The police told the names of those five persons to him. He stated in the court that of the five persons shown to him, Somanna had held the legs of the deceased, Rajeevalochana stabbed with a knife on the neck and Yogeesha inflicted injury on the rib cages and the stomach with a machete. Siddalingayya and Yadukumara were the persons who were standing in front of the mill and instigating the others. His further evidence is that two months after, the police again called him to the station and asked him to identify another. At that time he identified accused no.3-Chand Pasha. PW3 identified all the six accused in the court. The trial court has made a note that PW3 correctly identified all the six accused.

16. The evidence of PW4-Shivarudrayya is that on 11.10.2011 he went to the house of his niece Shivamma to extend invitation in connection with annual death ceremony. Shivamma's house was situated near Sira Gate. After visiting her house, he visited a cement shop

which was situated by the side of municipal complex building. The shop was closed and the neighbours of the shop told him that the shop owner had gone out to bring his daughter. He stood there. The time then was 4.30 p.m. He heard a commotion going on in front of the flour mill on the road. Four persons had stopped a motorcycle rider; one of them was seen holding the shirt collar of the rider. One person inflicted three or four injuries on the chin of the motorcycle rider. Another was seen inflicting injury on the neck. As the bike rider fell down, one person held the legs. By that time, two persons standing near the flour mill were seen saying, "Don't leave, finish off.": Then one person took a machete and inflicted injury on the stomach and right side of the rib cage. That person died. Out of four persons, three persons left that place on the motorcycle towards Aralimaradapalya and the another went towards Sira Gate. Two persons standing in front of the flour mill went towards Tumakuru city. When he saw the dead body he noticed the intestine having come out. Many people gathered but PW4 did not go near as he was

very much afraid. The persons who had gathered there were found talking that the deceased was Narasimha Murthy and that the assailants were Somanna, Rajeevalochana and Yogeesha and that the murder might have taken place in the background of some monetary transaction.

16.1. It is the further evidence of PW4 that in between 6 or 6.30 p.m. on the same day, the police asked him whether he had seen the incident. As he said that he had seen, he was asked whether he was ready to give statement. Next day he was called to police station to make a statement. Again he was called to police station a week after. He was asked whether he was able to identify five persons who were arrested. They were all shown to him. At that time he identified accused no.1-Rajeevalochana. When accused no.5 was shown to him in the police station, it appears that he identified him saying that he was the person who inflicted injury with a machete, but later on he said that it was Yogeesha,

accused no.2 who inflicted injury with a machete. The other two standing in front of the mill were also identified by him. He identified accused no.4-Somanna stating that he was the person who held the legs of the deceased. For the first time he identified five accused in the station. After two months the police called him to station again and asked him to identify the sixth one. He identified him stating that he was the person who inflicted two or three injuries with a knife on the neck portion. In the open court also he identified all the six accused.

17. The trial court has made a note that PW4 complained of threat given to him by accused nos.1 and 2 and about seeking protection. It is also noted that PW4 had made a complaint against those two accused at Bellavi police station.

18. Incidentally evidence of PW6-Abdul Razak may be referred here though he was not an eyewitness. He stated that on 11.10.2011 at 12.30 p.m., when he was going in front of the house of accused no.1-

Rajeevalochana Babu, he saw Rajeevalochana Babu, Yogeesha and Somanna, and three to four other persons having gathered and conversing among themselves. On the same day at 4.30 or 5.00 p.m., he came near flour mill situate by the side of house of PW5. He saw accused no.1- Rajeevalochana, accused no.4-Somanna and accused no.2-Yogeesha and three or four persons going towards Sira Gate riding the motorcycles. Sometime later he saw Yogeesha and Rajeevalochana Babu coming on one motorcycle and Somanna on another motor cycle from 80 feet road. He was going towards municipal complex to buy some medicines and he saw them at that time. When he saw them, he observed the blood stains on their clothes. Then he ran towards complex and saw the people running away. He heard people talking that a murder had taken place. When he went to that place he saw the dead body of Narasimha Murthy. He also saw the wife and mother of the deceased Narasimha Murthy being there. Sometime later police came to that place. When he saw the dead body, he found injuries on the palms, cheeks, rib

cage and the neck. He identified accused nos.1, 2 and 4 in the court saying that they were the persons whom he saw on the date of incident.

19. PW1, 5 and 6 are the main witnesses for the prosecution to prove the 'motive'. Incidentally reference may also be made to the evidence of PW7, 8, 9, 10, 11 and 12.

20. PW1 has taken the names of accused nos.1, 2 and 4 in Ex.P1 to state that there existed differences between these three accused and her husband. In the examination in chief she stated that her husband was carrying on cable network business with accused no.1, and in this connection accused no.1 refused to return the investment made by her husband when the former told that he alone would do the business. Accused no.4 was the brother in law of the deceased, i.e., the husband of the sister of the deceased. As against accused no.4, PW1 stated that her husband and PW-11-Sumitramma (Sumitra) had jointly purchased one acre 38 guntas of

land at Kora village, but the agreement in that regard stood in the name of PW5-Gangamma. The daughters of the vendors of the land later on instituted a suit in the civil court at Tumakuru. In connection with this transaction, accused no.4-Somanna wanted a share and also wanted a plot to be given to him. He used to quarrel with the deceased and PW5.

20.1. In regard to accused no.6, PW1 stated that he was the one who mediated as a broker when her husband purchased the land at Kora village and he wanted Rs.50,000/- to be given to him towards his commission. Although the deceased had made that payment, accused no.6 was pestering the deceased for a further sum of Rs. 1.5 lakhs. He had also told that in case his demand was not satisfied, he would get filed a suit through the daughters of the vendors. Then regarding involvement of accused no.3-Chand Pasha, PW1 stated that the brother in law of accused no.3 had requested the deceased to find out a buyer for his house; the deceased had found out a

buyer; the brother in law of accused no.3 died; and then accused no.3 got transferred the house to his name prevailing on his sister. The deceased having come to know of this questioned accused no.3.

20.2. As against accused no.5-Yadukumar, PW1 stated that her mother in law, i.e., PW5, had sold three acres of land out of three acres 16 guntas that belonged to her, and had retained 16 guntas for herself. Accused no.5 wanted remaining 16 guntas to be sold to him but the deceased and PW5 were reluctant to sell that piece of land.

20.3. As regards accused no.2-Yogeesha, PW1 stated that he (accused No.2) was also a real estate agent. The deceased mediated for the sale of a site, but accused no.2 was also involved in the sale of the same site. Since one client of the deceased bought that site, accused no.2 objected to it stating that he was deprived of the brokerage that he was getting because of intervention

of the deceased. In this connection accused no.2 had enmity against the deceased.

21. PW5 has attributed the same 'motive' against all the accused with some variations when compared to the testimony of PW1. PW6-Abdul Razak stated that PW5 whom he knew for about 20 years by then, had succeeded to her father's property. She had a land near Marelanahalli. She sold that land to one Mohana of Bengaluru. Accused no.4 and his wife Kamalamma, the daughter of PW5 quarrelled with PW5 as they were not given any share in the consideration amount. He stated that accused no.4 and his wife were living in the house of PW5 earlier and after the quarrel they separated and shifted their residence to another house. He also stated that accused no.4 and his wife had asked the deceased to give them a site which was situated by the side of the house of PW5 but the deceased told them that he would get another site for them without agreeing to give the site which they wanted. In this connection there had taken

place quarrels and they were brewing enmity against the deceased. PW6 also stated about the cable network business that the deceased was doing with accused no.1 and the quarrel that had ensued when the deceased wanted his investment back. He has also given evidence about the quarrel taken place between the deceased and accused no.2-Yogeesha in relation to sale of a site in which they were involved as brokers. He stated that accused nos. 1, 2 and 4 were friends and accused no.4 was the reason for the rest two developing grudge against the deceased.

22. PW7-Nagaraj is the cousin of PW1. He knew about all the accused. His evidence shows that accused no.4 and his wife were living in the house of PW5 and after quarrelling with her, they went out of the house and started living separately. The quarrels used to take place in connection with their demand for a site and share in the sale consideration amount. Therefore he, one Shambulingappa and Raghu had convened a panchayat in

which the deceased, PW5, accused no.4, and his wife Kamalamma had participated. The demand of accused no.4 and his wife was that they wanted a share in the sale consideration and a site, but PW5 refused saying that it was her separate property and they could take their share in the ancestral property. He further stated that accused no.4 had brought accused no.1 and 2 to the panchayat, and when the deceased took objection for the participation of accused Nos. 1 and 2 in the panchayat as they were enemical towards him, accused no.4 said at that time that those persons were his friends and he would participate in the panchayat provided deceased was ready to meet the demands of accused no.1 and accused no.2. But the deceased did not agree for that and hence the panchayat was not successful. It is his further statement that when the deceased expressed a fear for his life, another panchayat was convened in the presence of Kuppuru Ramanna and in that panchayat accused nos.5 and 6 participated, but that panchayat also did not see success.

23. PW8-Ramanna was the president of Oorukere Gram Panchayat. He knew the deceased, and knows PW5. He stated that the deceased was a supporter of Bharatiya Janata Party. He stated that accused no.4 was living in the house of PW5 with his wife and because of some family disputes they went out of the house of PW5. As he did not testify that he had participated in the panchayat, he was treated hostile by the public prosecutor. In the cross examination by the public prosecutor, he clearly refuted to have given statements before the police about the differences between the deceased, and accused nos.1 and 2. But he admitted a suggestion that he had advised all of them several times and tried to bring about settlement.

23.1. The prosecution has elicited from him that on 11.10.2011, he had made calls to the deceased and was waiting for him at about 3.15 p.m. He had made calls at 4.10 p.m. and 4.30 p.m and, at about 4.50 p.m. he came

to know from one Devaraj that Narasimha Murthy had been killed.

24. The purpose of examining PW9 is to prove that he purchased three acres of land from PW12-Dr.Bhakthavatsalam and one Mohan who had purchased the said land from one Manjula. Ex.P5 is the agreement under which he agreed to buy land from Bhakthavatsalam and Mohan. He stated that as he was in need of money, he agreed to sell the land to Chandrayya, Yadukumar and Balachandra by executing the agreement as per Ex.P.6. Yadukumar was the person identified by him in the court as one of the accused. PW10-Balachandra stated that he knew accused no.5-Yadukumar for the last three years; PW9-T.G. Ramesha had entered into agreement to buy three acres of land in Sy. No. 31/11 and PW9 had requested him to invest money in buying the land; and accused no.5-Yadukumar had also participated as one of the purchasers in the transaction.

25. The evidence of PW11-Sumitra is that accused no.4 and his wife Kamalamma were living in the house of the deceased and PW5, later on they set up their own residence, that she and the deceased had invested money for buying a land measuring 1 acre 38 guntas from Devaraj son of Rudramuni, that in connection with that transaction accused no.6 demanded commission of Rs.50,000/- and that the deceased made that payment. She was partly treated hostile and in the cross examination by the public prosecutor she admitted the suggestion that the daughters of Rudramuniyappa instituted suit against her challenging the sale transaction and that they filed the suit on the instigation of accused no.4.

26. PW12-Dr. Bhaktavatsalam has given evidence with regard to a suit, O.S. No. 276/2006 going on at Tumakuru court in connection with land measuring three acres in Sy. No. 31/11 of Marelenahalli. In that suit, K.Manjula wife of Nirmal kumar was a party. Smt.

Manjula executed a power of attorney in the name of PW12. As she fell ill she wanted to sell the land and at that time an advocate by name Shankar introduced a buyer namely Ramesha. One Yadukumar participated in the negotiations. PW12 identified accused no.5-Yadukumar in the court. He also stated that PW5-Gangamma, Laxminarayan Shetty and Mohana were the parties in the suit.

27. Ex.P2 is the spot mahazar drawn in the presence of PW1 and PW13. At that time the police collected blood stained mud and sample mud marked as M.O.1 and M.O.2 respectively. Panchas to the inquest are PWs14, 15 and 21.

28. The panchas to recovery mahazars are PWs16, 17, 18 and 24. The oral testimony of PW16 is that on 18.10.2011 he witnessed seizure of the clothes belonging to accused nos.1, 2 and 4. Ex.P11 is the mahazar drawn in his presence in the police station. In this regard he stated that accused nos.1, 2 and 4 were wearing pants

which contained blood stains. The police seized and packed them in his presence. He identified these pants at M.Os.9 to 11. He further stated that accused no.2-Yogeesha took him, the police and accused nos.1 and 4 to his house where there was a water tank. From inside the tank, two weapons namely a machete and a bharji were taken out. The police seized them and drew up a mahazar as per Ex.P.12 in his presence at that place. He identified the weapons marked as per M.Os. 3 and 5. He also identified his signature on another mahazar drawn as per Ex.P13 at the place of incident. He identified accused nos.1, 2 and 4 in the court.

29. PW17-Shivakumar has also spoken about seizure of the pants of accused nos.1, 2 and 4 in the police station on 18.10.2011 under the mahazar-Ex.P.11. He identified the pants-M.Os.9 to 11. He has also spoken about accused no.2 taking all of them to his house and showing a water tank where he had thrown the weapons. He stated that the weapons were removed from the tank

and seized under the mahazar-Ex.P.12. He identified the signature. He then spoke about drawing of another mahazar-Ex.P.13 at the place of incident shown by accused nos.1, 2 and 4 to the police. He identified accused nos.1, 2 and 4 in the court.

30. PW18-K.S. Nanjappa was examined to establish the mahazars drawn as per Exs.P.12, 14, 15, 17 and 18. He stated that on 18.10.2011, he came to Tumakuru from his village-Katenahalli in connection with his personal work. When he was passing by town police station, the police called him and asked him to be a witness for certain seizures they were going to effect. The police showed accused nos.1, 2 and 4 to him and then secured another pancha. They all went towards Gubbi town. After crossing Gubbi, they traveled for two kilometers in Tipatur road. Accused no.4 asked the driver to stop the vehicle near Heruru village. Accused no.4 led the police and others, crossed the road and showed a motorcycle which had been parked to the north of an electric pole. He said that the

said motorcycle belonged to him and he had to stop the motorcycle there because of exhaustion of petrol. The colour of the motorcycle was red, of the make 'Hero Honda CD 100' bearing reg. no. KA-16-E-3135. The police opened the petrol tank, it was found empty. The police noted the engine and the chassis numbers and then seized it by writing mahazar as per Ex.P.14. Accused no.4 told that after leaving his motorcycle there at that place, all the three rode a single motorcycle to go to his sister's house at Nonavinakere village, Tipatur taluk. Then all of them went to that village. They were taken near the house of one Prasad which was situated inside a garden land. He showed one motorcycle bearing reg. no. KA-06-Q-8953 of maroon colour. The police seized the said vehicle by drawing a mahazar as per Ex.P15 in his presence.

30.1. PW18 further stated that after writing the above two panchanamas, accused nos.1, 2 and 4 said that they would show the place where they had burnt their blood stained shirts. Again they came towards Heggere

and led them to a vacant land situated by the side of medical college. There all of them saw signs of something like clothes being burnt. The grass around that place was also burnt. The accused said that they had burnt their shirts there. The police collected the ash and small pieces of unburnt clothes in a plastic jar and sealed it by writing a panchanama as per Ex.P.16. He identified his signature and the panchanama and stated that one Virupaksha was also present at that time and put his signature.

30.2. The further part of evidence of PW18 in regard to identification of accused nos.1, 2 and 4 in the open court is of some significance. When he was asked whether he could identify accused nos.1, 2 and 4 in the open court, it was his clear answer that since he was seeing them after two years, he had some doubt whether he was able to identify them, however he said that he would make an attempt to identify them. First he identified accused no.4-Somanna and accused No.2-Yogeesha by their names. It appears that seeing accused no.1, he identified him saying

that he was Yogeesha, but very soon he said that he was not Yogeesha but Rajeeva. The trial court also ascertained the names of all the three and found that the names given by him were correct. He also identified the two motorbikes marked M.Os.13 and 14.

30.3. His evidence also discloses that after they all returned to police station in the evening the police told him that another mahazar was to be drawn. The police produced another accused by name Yadukumara, i.e., accused no.5, and told that certain documents were to be seized in the house of accused no.5. Thereafter they all went to the house of accused no.5 as shown by the latter. Accused no.5 took them to a bed room in his house, opened an almirah and produced three documents written on stamp papers. They were all agreements in relation to land belonging to PW5. The police seized them by writing a mahazar as per Ex.P.17. He stated that the police wrote another mahazar in the house of accused no.5 as per Ex.P.18.

31. PW24-Manjunatha was examined to prove seizure of a button knife marked M.O.4 at a rice mill where third accused-Chand Pasha was said to be working by writing a mahazar as per Ex.P.22. But he did not support the prosecution.

32. PW22 was the junior engineer who prepared sketch of scene of occurrence as per Ex.P20. PW23 was the doctor who conducted autopsy over the dead body of the deceased, Ex.P.21 is the postmortem report. PW25 to PW28 are the police witnesses.

Analysis:

33. Overall survey of the evidence as made above indicates that PW1 to PW5 are the main witnesses, and to some extent evidence of PW6 also appears to be relevant. PW1, 5 and 6 are not the eyewitnesses. Therefore the evaluation of the evidence of PW2 to 4 must be first made with reference to their answers in the cross examination. They are chance witnesses; there is no doubt in it. Unless there is convincing evidence that they were present at the

place of incident and that's how they could see the incident, their testimonies can't be acted upon. Before assessing their evidence a brief reference may be made to the findings recorded by the trial court for not believing their testimonies.

34. The evidence of PW2 shows that on 11.10.2011, he visited the house of one Kumbanna around 4.15 or 4.30 p.m. and thereafter he was going towards the market via 80 feet road riding his bicycle and during that time he saw the incident. But PW2 has stated that he did not know the accused prior to the incident and stated in the cross examination that there was no necessity to pass through 80 feet road if one wanted to go from Puttaswamayanapalya to Sira Gate. This is one reason given by the trial court. Then the other reason is, if really PW2 met Kumbanna on the date of incident, the investigating officer should have cited Kumbanna as a witness and the prosecution should have examined him. Kumbanna was neither cited as a witness nor examined.

In this view the testimony of PW2 cannot be accepted. There is also another reason recorded by the trial court that, if PW2 was really present at the spot, the police who arrived there within no time should have recorded his statement. There is no explanation for making no effort to record the statement of PW2 at that time. And his statement was recorded on the next day and therefore possibility of concoction cannot be ruled out. In addition, PW2 could not have seen the weapons standing at a distance of 150 feet when the incident was going on and for this reason there was no possibility to identify the weapons. Even PW2 was not present when the weapons are seized and for these reasons identification of weapons by PW2 appears that he is not a truthful witness. The omissions and improvements found in the testimony of PW2 was considered to be another factor to disbelieve him.

35. In regard to the evidence of PW3, the trial court has recorded findings that he was from a village called

Oorukere to which place PW1 belonged before her marriage with the deceased. His evidence is that he wanted to meet Ranganna and while waiting for him standing near municipal complex, he saw the incident. If this was the reason for his presence at that time, Ranganna should have been examined. In the cross examination he stated that he came to know only two days prior to coming to court for giving evidence that PW1 was also from Oorukere and therefore this aspect would also give rise to doubt him. In this regard it is held by the trial court that PW3 was connected to the complainant, i.e., PW1 in one way or the other. His identification of the button knife as per M.O.4 is found to be unbelievable because he could not have seen any of the accused holding the button knife standing at a distance of 30 feet and he was also not present when the knife was seized. There was no chance that PW4 could have seen the knife and his identification of knife-M.O.4 raises suspicion. He was also not able to name the make of the motorbike which was found at the spot and the other motorbikes

which the accused used for fleeing the place. His statement was also not recorded by the police even though he states that he was very much present when the police came to the spot immediately. When he stated that he had not seen the accused on earlier occasions, test identification parade should have been conducted for identification of the accused. Moreover in line no. 4 of page no.9 of the deposition of PW3, he has clearly stated that he had not seen any of the accused persons before coming to court. This evidence of PW3 is thus contrary to his own earlier statement and therefore his presence at the spot becomes doubtful.

36. Assessing the evidence of PW4, the trial court has recorded findings that he was from a place called Aslipura which was at a distance of 12 kms from the spot. While deposing before the court, he identified Chand Pasha as the person whom he identified in the police station but on being alerted by public prosecutor he immediately stated that Chand Pasha was not present in the police

station. PW4 also identified accused no.5 stating that he too assaulted the deceased, but the case of the prosecution was that accused nos. 5 and 6 did not assault, rather they instigated the other accused, and thus looked contradiction in the evidence of PW4 could be noticed and therefore he appears to be a tutored witness. His identification of M.O.4-the button knife becomes doubtful because he was not present at the time of its seizure. His evidence discloses that he did not go near the place of incident and therefore there is no possibility of his seeing the weapons.

37. Though a big crowd had gathered there and a number of shops were situated surrounding the place of incident, none of the locals or the shop owners was examined. The overall assessment made by the trial court is PWs.2 to 4 might not have spoken truth and they appeared to be planted witnesses.

38. Commenting on the findings of the trial court in regard to the evidence given by PWs.2 to 4, Sri Sudeep

Bangera, learned counsel for *de facto* complainant or the first informant, argued that there was no reason for the trial court to record a finding that PWs.2 to 4 were not the eyewitnesses and that they appeared to be planted. The trial court has failed to notice the suggestions given to the witnesses during their cross examination in such a way as admitting the presence of PWs.2 to 4 at the time of incident. If Kumbanna and Ranganna were not cited as witnesses, it was not a reason to disbelieve the testimonies of the eyewitnesses. The presence of PWs.2 to 4 was admitted by the defence and in this view, the trial court should not have opined that non-examination of Kumbanna and Ranganna would make the testimonies of the eyewitnesses unbelievable. Their evidence actually discloses that they were very much present and saw the incident. The police also enquired them at that time. But their statements were recorded on the next day. If for some reason their statements were not recorded on the same day, it is not a matter to be looked seriously; there was no long gap of time in recording their statements; and

the testimonies of the witnesses becomes unbelievable when their statements under section 161 Cr.P.C were recorded many days after the incident without explanation for delay. This kind of a situation is not forthcoming here. There is explanation why the statements were not recorded on the same day, the trial court has missed to notice this aspect. Merely for the reason that one of them belonged to Oorukere village, it cannot be said that he knew PW1. Actually the evidence shows that PW1 and PW5 did not know any one of PWs.2 to 4. Is it possible to draw an inference that just because PW1 and one of the eyewitnesses hail from the same village, they knew each other? The trial court has misinterpreted one answer of PW3 that he had not seen the accused before coming to court. That is not the meaning that can be attributed to the answer thus given by PW3. Their evidence is very natural, their presence cannot be doubted at the time of occurrence and hence their testimonies should not have been rejected.

39. Smt. Rashmi Jadhav submitted that the findings recorded by the trial court based on testimonies of PW2 to PW4 are wrong, they were eyewitnesses, and they have offered explanation for their presence at the scene of occurrence.

40. Sri Hashmath Pasha, learned senior counsel argued that the trial court is justified in holding PWs.2 to 4 as planted witnesses. They were unknown to the accused. Chance witnesses are those who are not known to the accused or to the victims and for some reason they would witness an incident or in other words they are strangers. While assessing the evidence of such witnesses, as is in this case, a greater caution should be taken; chances of planting the witnesses cannot be ruled out. Unless the prosecution proves as to what made them to be there at the time of incident is convincingly established, their testimonies cannot be relied upon. Referring to the testimonies of PWs.2 to 4 he argued that each one of them has come up with a reason to see the incident of attack on

Narasimha Murthy. PW2 has clearly stated that there was no need to pass through 80 feet road to go to market; this shows that he could not have passed through 80 feet road. If really he came to meet Kumbanna, the prosecution should have cited Kumbanna as a witness and examined him. Similarly Mastry Ranganna whom PW3 wanted to meet should have been examined. PW4 has got an explanation that he visited the house of his niece Shivamma to extend invitation to her. Shivamma was not examined or the neighbour of the cement shop where PW4 enquired about the owner of the cement shop should have been examined as a witness. Then only the evidence of prosecution would have become believable. The trial court has rightly come to the conclusion that non-examination of the said persons makes the testimonies of PWs.2 to 4 unbelievable.

41. Sri Hashmath Pasha further argued that the FIR, the inquest report and the remand applications do not show that PWs.2, 3 and 4 are the eyewitnesses. In the

remand applications there is no mention that the investigating officer gathered information from the eyewitnesses. There is nothing to show in the remand application dated 18.10.2011, there were eyewitnesses. Only after arrest of accused nos.1, 2 and 4 on 18.10.2011, it appears that the names of PWs.2 to 4 emerged and therefore they are planted witnesses. He further argued that, since PWs.2 to 4 were strangers, as according to them and that they had no chance of clearly seeing the faces of the assailants standing at some distance, the investigating officer ought to have arranged for test identification parade. PWs.2 to 4 identified the accused in the police station, probably on the information given by the police. That means it was a tainted identification and in this view it is not safe to rely on the testimonies of PWs.2 to 4. His conclusion on this point is that the findings of the trial court are correct.

42. Learned counsel Sri Fayaz Sab and V.B.Siddaramaiah argued on same lines with Hashmath Pasha.

43. Now if the evidence given by PWs.2, 3 and 4 is put to analysis, what appears is that each one of them has given a reason to prove their presence at the time when the incident had occurred. All these three witnesses were subjected to lengthy cross examination. The defence has made an attempt to doubt the presence of PW2 by eliciting an answer from him that there was no occasion to pass through 80 feet road to reach Sira Gate. PW2 has admitted this suggestion. But from this answer, an inference in favour of defence cannot be drawn because what PW2 has stated in examination in chief is that he went to the house of Kumbanna of Nagannanapalya and from there he went towards market via 80 feet road. The house of PW2 is situated at Puttaswamayanapalya near Sira Gate. Therefore for this reason he might have answered in the cross examination that there was no need

to pass through 80 feet road to reach Sira Gate. If he had been questioned whether one should pass through 80 feet road while going to market from Nagannanapalya, his answer would have been different. The finding of the trial court in this regard and the argument of Sri Hashmath Pasha referring to this answer of PW2 in the cross examination is therefore not sustainable.

44. It is true that in the cross examination PW2 has stated that when he was witnessing the incident, he saw many persons gathering there, that he did not question the accused and that nobody made any effort to catch hold of the accused. These are the usual questions put to an eyewitness in the course of cross examination. If the witness or anybody gathered there did not dare to interfere, it is not a matter to be seriously considered to disbelieve the testimony. Whether to interfere or not depends on various factors, usually one does not dare to interfere in a state of fear; it is quite common among strangers; only somebody closely related to the victim of

the incident can be expected to interfere for the rescue of the victim. Therefore it is a matter not to be given so much of importance.

45. As has been argued by Sri Sudeep Bangera, certain suggestions are given to PW2 admitting his presence. First suggestion given to PW2 was, when he was at the spot, MLA Shivanna also came there. He admitted this suggestion. When the counsel for accused no.3 cross examined PW2, a suggestion was given that he was behind the motorbike rider. It appears that this kind of suggestion was given probably for the reason that because PW2 was behind the motor bike, he could not have seen the faces of accused or the motor bike rider. Though PW2 denied the suggestion that he was behind the motorbike, he stated further that the motorbike rider was coming in the opposite direction and thereby he could see him. Whatever may be the suggestion, it implies his presence. Then he was also suggested that whether anybody among the people who had gathered there took

the name of Chand Pasha, and to this suggestion he answered that somebody told his name. He was further suggested that he went to the market thereafter. PW2 denied the suggestion saying that he remained at the spot till 5.30 p.m. This suggestion also implies the presence of PW2 at the spot. When the counsel for accused no.5 cross examined PW2, a specific question was put to him in the following manner:

> *20. Question : Look Timmaiah, is it so that you came riding bicycle when you came in 80 feet road?*
> *21. Answer : Yes*
> *22. There was no luggage on the bicycle. It is true that I stopped the bicycle to see the galata (quarrel). If it is suggested that when I was coming on the bicycle, the quarrel was going on, I state that the quarrel had just commenced. …*
> *(translated from Kannada to English by us).*

46. Therefore the above suggestions, though denied by the witnesses, flew from the defence and they appear

as if the presence of PW2 is admitted. When presence of PW2 is admitted, non-examination of Kumbanna is of no consequence. In fact examination of Kumbanna was not at all necessary.

47. The testimony of PW3 is sought to be impeached for two reasons, firstly that he happens to be the relative of PW1 and secondly that Ranganna whom he wanted to meet was not examined. PW3 hails from a village called Oorukere and the parental home of PW1 is also Oorukere, there is no dispute about it. But the answer of PW3 is that he did not know PW1 till two days before he came to court for giving evidence. When he was questioned that both of them hail from the same place and they were known to each other, his answer was that he did not know her earlier and only two days before the date of coming to court he came to know about it. Assuming that both of them are from the same place, it is not possible to opine that for that reason only he was a planted witness. He has firmly refuted the suggestion

that one Shambulingayya, the senior uncle of PW1 is related to him.

48. Even to PW3, certain suggestions are given admitting his presence. When the counsel for third accused cross examined PW3, a very affirmative suggestion was given to him that he was standing near municipal complex. PW3 admitted it, and even his testimony in the examination in chief is that he was standing near municipal complex at about 4.00 p.m. on 11.10.2011 waiting for arrival of Ranganna. Apart from this suggestion, he was given a suggestion in the other way. It is, "It is true that I saw the weapons on the date of incident and that I am seeing the same weapons again in the court." (translated from Kannada). If this were to be the nature of suggestions, as has been rightly argued by Sri Sudeep Bangera, they tantamount to admitting the presence of PW3 at the time when the incident took place. For this reason non examination of Ranganna pales into

insignificance, it was not necessary that he should have been examined by the prosecution.

49. It is necessary to refer to one finding of the trial court that PW3 had not seen the accused before coming to court. This is incorrect assessment of the answer of PW3. While cross examining PW3, a suggestion was given that he had not seen the accused before (ಹಾಲಿ ಆರೋಪಿಗಳನ್ನು ನಾನು **ಆ ಮೊದಲು** ನೋಡಿಯೇ ಇರಲಿಲ್ಲ ಎನ್ನುವುದು ಸರಿ). The words "ಆ ಮೊದಲು" (before that) should be understood in the context of the date of incident. If PW3 admitted the suggestion, he only meant saying that he had not seen the accused before the date of incident, not before the date of coming to court to give evidence.

50. So far as PW4 is concerned, the reason for his being able to see the incident according to his testimony in the examination in chief is that, after extending invitation to his niece Shivamma in connection with some ceremony in his house, he went to make some enquiry in the cement

shop which was situate near the complex building. The shop was closed and as he was standing there, he could see the incident. He is not related to PW1 and PW5. He is a mason by profession and for this reason he might have gone to cement shop. His presence at some distance from the scene of occurrence is thus forthcoming. To this witness also the counsel for accused no.5 has given a suggestion that he could turn around and see the incident going on only when he heard two persons standing near flour mill saying loudly, "Don't leave him, finish him off." (translated from Kannada). PW4 admitted this suggestion. Therefore presence of PW4 is also admitted.

51. It is not that only from the aforementioned suggestions, the presence of PW2 to PW4 at the scene of occurrence can be inferred, but certain other reasons can also be pointed out here. All the three witnesses have consistently spoken about the injuries inflicted by accused nos.1 to 4. The description of overt act given by them is almost consistent with description of the injuries

mentioned in the inquest report and the postmortem report. It is highly impossible that they were able to give the overt act of each of accused nos.1 to 4 had they not seen the incident. For instance all of them have consistently spoken that it was accused no.4-Somanna who held the shirt collar of the deceased first and then he was the person who held the legs of the deceased after he fell down from the motorcycle. Like that PWs.2 to 4 have given evidence as to what they saw. All of them did not stand at the same place while watching the incident, they stood at different places. If for this reason there are some variations in their testimonies in narrating the incident, it is quite natural and no importance can be given to trivial discrepancy in their evidence.

52. PW3 was questioned in the cross examination whether he saw Timmaiah-PW2 and Shivarudrayya-PW4. His answer was that he did not see them, and he volunteered to say how he could see as to who were all present at that time. When a big crowd gathered, it is

quite impossible for anybody to remember the faces of the persons who were there at that time. The questions of this nature are usually put to witnesses, but if the eyewitnesses answered that they were not able to remember the faces because of gathering of a large number of people, the presence of the witness cannot be doubted and it is quite natural for anybody to answer like that especially when the witnesses are strangers. The witnesses are truthful in admitting that they had not seen the accused before the incident.

53. It is true that the investigating officer did not arrange for test identification parade, and PWs.2, 3 and 4 identified the accused in the police station. This kind of identification led to vehemence arguments by Sri Hashmath Pasha that the identity of the accused has not been established. He has placed reliance on three rulings as to necessity of holding test identification parade. In the case of ***Kanan & Others Vs. State of Kerala***[6] it is held

[6] (1979) 3 SCC 319

that if no test identification parade is held, it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in the court. In ***Mohanlal Gangaram Gehani Vs. State of Maharashtra***[7] it is held that, identification of the accused in the court in the absence of prior identification during test identification parade becomes valueless. The third judgment is in the case of ***Mohd. Iqbal M. Shaikh & Others Vs. State of Maharashtra***[8]. In this case it was observed that if the witnesses did not know the accused persons by name but could only identify from their appearance, then a test identification parade was necessary so that the substantive evidence in court about the identification would get corroboration from the identification parade. What is the evidentiary value that can be attached to a test identification parade and what actually constitutes a substantive evidence is discussed by the Hon'ble Supreme Court in the case of ***Malkhansingh***

[7] (1982) 1 SCC 700
[8] (1998) 4 SCC 494

and Others vs State of M.P[9] It is held in para 7 as below :

> *"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions,*

[9] *[(2003) 5 SCC 746]*.

when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad vs. Delhi Administration : AIR 1958 SC 350; Vaikuntam Chandrappa and others vs. State of Andhra Pradesh: AIR 1960 SC 1340 ; Budhsen and another vs. State of U.P. : AIR 1970 SC 1321 and Rameshwar Singh vs. State of Jammu and Kashmir : (1971) 2 SCC 715).”

54. In this case accused nos.1, 2, 4, 5 and 6 were identified by PWs.2 and 3 in the police station on 18.10.2011 and accused no.3 was identified sometime later. If test identification parade had been held, it would have strengthened the prosecution case. PWs.2, 3 and 4 have stated to have seen the incident standing at a certain distance and were able to see the faces of the accused. What the evidence discloses is that when PWs.2, 3, and 4 were asked to come over to police station for identification of the accused, it is not that the police told them the names of the arrested accused and that they were the persons who were involved in the incident. Their evidence is that when they went to police station, they were asked whether they could identify some persons who were there in the police station and only thereafter they identified them in the police station. In the decisions cited by Sri Hashmath Pasha the factual position is somewhat different. In the case of ***Kanan*** the accused was identified for the first time in the court; never before the accused had been identified by the witness. The Hon'ble Supreme

Court drew an inference that if the witness knew them by their face and if he was able to identify in the court for the first time, the name of the accused should have been supplied by someone else. In the case of ***Mohanlal Gangaram*** the circumstance under which it was held that test identification parade was necessary is found in paragraph nos.19 and 20 of the judgment.

> *"19. Another important circumstance which discredits the testimony of PW5 (Shetty) is that he admits that although he did not know the accused from before the occurrence yet the accused was shown to him by the police at the police station. The relevant statement of PW5 may be extracted thus:*
>
> > *I had seen the accused before coming to the court and after the incident, I had seen the accused 10 days after I was discharged from the hospital. I was shown these accused by the police at the police station.*
>
> *20. Thus, as Shetty did not know the appellant before the occurrence and no test identification parade was held to test his power*

of identification and he was also shown by the police before he identified the appellant in court, his evidence becomes absolutely valueless on the question of identification. On this ground alone, the appellant is entitled to be acquitted. It is rather surprising that this important circumstance escaped the attention of the High Court while it laid very great stress in criticizing the evidence of Dr.Heena when her evidence was true and straight forward."

(emphasis supplied)

55. In the case of ***Mohd. Iqbal*** also the facts would show that the accused were shown to the witnesses several times in the police station and therefore the identification of the accused by them in the court was found to have lost its value.

56. Therefore what appears is that the Hon'ble Supreme Court in the above three cases expressed an opinion that test identification parade was necessary in the given set of circumstances. Test identification parade has to be held when the witness could have a fleeting glimpse

of the accused. The witnesses should not have seen the assailants ever before the incident. If the incident takes place in a dim light then the chances of anybody seeing the faces of the assailants is scarcely possible. Test identification parade is necessary to be held in situations like this. The identification of the accused in the parade by the witnesses fortifies their oral testimonies in the court.

57. In the case on hand though identification of the accused for the first time took place in the police station, it is not that the police told PW2 to PW4 that the persons arrested by them were the very same persons who had committed crime and gave their names to identify them in the court at a later stage. They simply asked them whether they could identify. Here lies the difference. If the police told them that they had arrested the accused who were involved in killing of Narasimha Murthy, then the identification gets vitiated. But if the witnesses were simply asked whether they could identify, it did not amount to feeding the information to the witnesses for

identification purpose. Whether identification of accused in the police station suffices the situation is to be decided by the court in the background of evidence brought on record. Here in this case PWs.2, 3 and 4 identified the accused with reference to the overt act of each of the accused and not by taking their names. It is necessary to refer to one answer of PW3 in the cross examination. Refuting the suggestion that he did not see five accused in the police station, he also denied another suggestion that the police told him that all the five persons were the very same persons who committed murder; his clear answer is that five persons were shown to him and then he was asked whether he could identify them. After he identified them, the police told the names of those five. The evidence of PW2 discloses that after he identified accused nos.1, 2, 4 and 5 in the police station, he would ask the police as to where was the other person who had inflicted stab injury. At that time the police told that he was Chand Pasha, i.e., accused no.3, and that he was not yet arrested. This is how the evidence has come, but

unfortunately the trial court has drawn an inference that PWs.2, 3 and 4 could identify the accused in the police station on the basis of information provided by the police. This kind of inference should not have been drawn by the trial court. It is very important to note here that even in the court, the witnesses were able to identify the accused correctly with reference to their overt act. By that time they knew the names and therefore they might have identified by taking their names. In these circumstances we do not find any infirmity in the evidence as regards identification of the accused notwithstanding the fact that test identification parade was not held.

58. The trial court has missed to assess the testimonies of PWs.2, 3 and 4 with reference to the evidence of PWs.5 and 6. Though PWs.5 and 6 were not eyewitnesses, they, as their evidence discloses, were able to see accused nos.1, 2 and 4 fleeing away on the motorbikes. She has stated that accused nos.1 and 2 were riding one motorbike and Somanna was riding

another motorbike and she saw the blood stains on their clothes. In fact, the evidence given by PW5 shows that she too was asked to come over to police station to identify some of the arrested persons and going to police station, she identified accused nos. 1, 2, 4 and 5. This identification was eight or ten days after the incident.

59. PW6 also knew accused nos.1, 2 and 4 even before the incident occurred. When he came near the house of PW5 around 4.30 or 5.00 p.m, he saw accused nos.1, 2 and 4 going towards the complex building and very soon returning from that place on their motorbikes. When they were returning, PW6 saw blood stains on their clothes. Therefore the evidence given by PWs.5 and 6 in this regard are so connected with the fact in issue about the involvement of the accused which can be brought within the scope of Section 6 of the Indian Evidence Act. Their evidence lends support for the testimonies of PWs.2, 3 and 4.

60. The incident occurred in broad day light. The evidence discloses gathering of many people at the time of occurrence. The argument advanced on behalf of the accused was that the investigating officer had not made any effort to examine any of the persons who had gathered there or the shop keepers or the residents of that locality. In fact the investigating officer has given an answer that nobody came forward when he made enquiries. The evidence discloses that PWs.2, 3 and 4 said that they were present and were ready to give statement. If for any reason nobody from the surrounding vicinity is cited as a witness and examined in the court it is not a ground for coming to conclusion that PWs.2, 3 and 4 are planted witnesses. In this context one judgment of the Supreme Court cited by Sri Sudeep Bangera may be referred here. In ***Rupinder Singh Sandu Vs. State of Punjab***[10], it is observed:

> *"51. Admittedly, the incident took place in broad daylight in a busy area of Patiala City.*

[10] (2018) 16 SCC 475

> *Obviously, the incident would have been witnessed by many others. It is, therefore, the submission of the accused that the non-examination of any person other than PWs 3 and 4 renders the evidence of PWs 3 and 4 untrustworthy.*
>
> *52. We find it difficult to accept the submission. The mere fact that some more witnesses, who would have witnessed the occurrence, were not examined does not render the evidence of PWs 3 and 4 untrustworthy. In fact, in a matter like this, examining any other witness who was supposed to have witnessed the offence would increase the burden of the prosecution to establish that such a witness is not a chance witness."*

61. Sri Hashmath Pasha has placed reliance on two judgments of the Supreme Court in regard to appreciation of the chance witnesses. The first one is in the case of ***Ravi Mandal Vs. State of Uttarakhand***[11] and ***Bahal Singh Vs. State of Haryana***[12]. These two judgments can be distinguished on facts. In the case of ***Ravi***

[11] (2023) SCC Online 651
[12] (1976) 3 SCC 654

Mandal, the clear finding is that PW5 had no chance of seeing the incident. The reasons are found in paragraph no. 27 of the judgment which is extracted as below:

> *"27. The explanation offered by PW-5 for his presence at the spot at that odd hour appears false. According to PW-5, he was having an upset stomach, therefore, while watching a night show of a movie, to attend to nature's call, he came out of the cinema hall and, while he was easing himself, he got the chance to witness the incident. It be noted that the investigating officer (PW-10) and PW-7, a gram vendor in that cinema hall, have deposed that there are toilets in the cinema hall where no money is charged for their use. This falsifies the explanation of PW-5 that he went out of the cinema hall to ease himself because cinema hall charged money for use of the toilet. Otherwise also, PW-10 (the investigating officer) in his deposition had stated that he was not shown the place where PW-5 squatted to ease himself."*
>
> *(emphasis supplied)*

The factual position extracted above discloses that the witness therein was found to be a planted witness in

the above set of circumstances. Same is not the position in the case on hand.

62. In the case of ***Bahal Singh***, the Hon'ble Supreme Court has actually held that the evidence of a chance witness cannot be held to be unbelievable and all that requires is careful scrutiny. The observations are found in para no. 10 which is extracted as below:

> *"10. As to the presence of PWs.4 and 5 at the time and place of occurrence the trial court entertained grave doubts. If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. In the instant case, PWs 4 and 5 were agnatic relations of the deceased – one of them a close one. The reason given by them for being at the place of occurrence did not appear to be true to*

> *the trial court. There was not any compelling or sufficient reason for the High Court to differ from the evaluation of the evidence of the two chance witnesses. It may well be as remarked by the High Court that the respondent was also their collateral but they appeared to be partisan witnesses on the side of the prosecution and hence their testimony was viewed with suspicion by the trial Judge."*

Careful scrutiny of the evidence given by PWs2, 3 and 4 does not disclose that they are planted witnesses, there is explanation as to how they could witness the incident being present at that place and time. Their explanation is worth believable.

63. Sri Hashmath Pasha has placed reliance on the judgment of Supreme Court in the case of ***Sonia Bahera Vs. State of Orissa***[13] which was in the context of eyewitnesses not disclosing the incident to anybody on the date of incident. Therein PWs.1 and 2 were the eyewitnesses and the finding recorded is that they did not

[13] (1983) 2 SCC 327

disclose the incident to anybody in the village even though they claimed to be eyewitnesses. PW2 was found to have not disclosed the incident to her husband examined as PW3. According to PW2, the appellant-accused had taken an axe from her house and did not return it. PW3 came to know that axe was missing from his house. PW3 being the owner of the axe did not disclose about the missing of the axe when he gave information to the police. The court found conflict in the testimonies of PWs.2 and 3. There was also extra judicial confession which was found unreliable. In this situation the judgment of conviction was set aside. Factual position in ***Sonia Bahera*** being completely different, it is of no avail to the accused herein.

64. Our conclusion therefore is that testimonies of PWs.2, 3 and 4 are trustworthy. The efforts made by the defence counsel to discredit these three witnesses have gone futile. It appears that the trial court has searched for the reasons with a view to disbelieving their testimonies.

65. Discussing the aspect of 'motive', the trial court has held that the prosecution has failed to prove motive. It was the argument of Sri Sudeep Bangera that in a case where the testimonies of the eyewitnesses are believable, motive for the incident does not assume so much of importance. However, in the present case the evidence given by PWs1, 5 and 6 establishes the motive for the incident. The trial court has given reasons which are not at all sustainable. It appears that the trial court has misinterpreted the evidence and wrongly applied the principles laid down by the Supreme Court which the trial court has referred. Sri Hashmath Pasha argued that the trial court has rightly come to conclusion that motive has not been established. If PWs.2, 3 and 4 are not the eyewitnesses, necessarily motive must be proved. Learned counsel Sri Fayaz Sab and Sri V.B.Siddaramaiah also argued that the conclusions drawn by the trial court in regard to the motive are well reasoned and therefore this court cannot take a contrary view.

66. So far as motive is concerned, it has to be stated like this: The well established principle is that in a case which is based on direct testimonies of the eyewitnesses to the incident, the aspect of motive does not assume so much of significance if the testimonies of eyewitnesses are found trustworthy. But in a case based on circumstantial evidence, motive has to be proved. It may also be said that if the eyewitnesses do not support, then the court may consider the circumstances to examine whether the accused could be connected with the crime based on the circumstances and in that event again motive assumes importance. In fact a decision of the Supreme Court in the case of ***Prem Kumar & Another Vs. State of Bihar***[14] was cited before the trial court, and referring to this decision, the trial court has held that there is no quarrel with the principle of law enunciated there, but proceeded to hold that motive has not been established. This conclusion was given by the trial court

[14] 1995 SCC (Cri) 445

before discussing the evidence of the eyewitnesses. Whatever may be the style of writing the judgment, the main reasons given by the trial court for disbelieving the testimonies of PWs.1, 5 and 6 as regards motive are as follows:

66.1. PW1 has admitted that her husband had no office for running his real estate business. She does not know the details of the persons who were coming to meet her husband. No documents in connection with the real estate business are produced. There was no name for the cable TV business; PW1 has stated that she does not know the name. PW1 does not know the property which her husband and accused no.2 had dealt with; she does not know the commission amount due.

66.2. When civil disputes were pending with regard to landed property there was no necessity for accused no. 4 to get involved in a crime. A civil case had been filed by Smt.Manjula against the deceased and therefore deceased might have had enmity against others also. The reason

why PW1 has not complained against others is not forthcoming; why she should blame accused nos.1, 2 and 4 only and it is not the case of the prosecution that PW1 did not know the other accused.

66.3. Referring to the evidence of PW5 it is observed by the trial court that if accused no.1 had thrown out the deceased from cable TV business, there was no necessity for him to attack the deceased as he had not suffered any loss. The evidence of PW5 is contrary to the evidence of PW1 in that if PW1 has stated that she does not know the place where her husband was doing cable TV business, PW5 states that the business was being carried on in the first floor of the house. Even with regard to sale of property at Chikkaveerayyanapalya said to have been negotiated by the deceased as a broker, if PW1 has given evidence that the dispute was with regard to quantum of brokerage, PW5 gives another reason that accused no.2 and the deceased had dealt with the same property with different persons. As against accused no.3, it appears that

PW5 knew him earlier and that the enmity between accused no.3 and the deceased developed after the death of the brother in law of accused no.3. If that were to be the case, PW5 should have identified accused no.3 in the court, instead she identified accused no.5 stating that he was accused no. 3. This shows that the evidence of PW5 as against accused no.3 is not believable.

66.4. Referring to the evidence given by PW6, it is opined by the trial court that his evidence is also not believable for the reasons that he stated that accused no.4 had quarreled with PW5 and the deceased in regard to sale of a property to Mohan. He also stated that there were differences between accused no.1 and the deceased in regard to cable TV business. Then he stated that there were differences between accused no.2 and the deceased as both of them dealt with the same property with different persons. He stated that there was no office for cable TV business, again his evidence is contrary to the evidence of PW5. The conclusion of the trial court is that

none of PWs.1, 5 and 6 has given consistent evidence with regard to motive. It appears that the prosecution tried to produce some documents at a later stage of the proceedings to prove the business transactions of the deceased. Referring to this the trial court has opined that if PW1 stated that she threw out all the documents of her husband's business, how could the prosecution produce the documents at a later stage. This raises doubt in the prosecution case. It is also held by the trial court that in order to prove the enmity between the deceased and one of the accused in regard to real estate business, a buyer or a seller should have been examined. There is also no material to show that Rs. 5 lakhs had been paid to Musthafa, the brother in law of accused no. 3.

67. The above conclusions of the trial court cannot at all be accepted. Though it may be true that there are some variations in the oral testimonies of PWs.1, 5 and 6, overall appreciation of their evidence shows that the deceased had involved in cable TV operation and real

estate, and that there were differences between him and accused no.4-Somanna in regard to sale of a property that belonged to PW5. If PW5 showed accused no.5 in the court and said that he was accused no.3, she had an explanation for that. She stated that accused no.3 was not coming to her house frequently. It is to be noted here that she correctly identified accused no.3 little later. This is noted in deposition sheet. *De-hors* the contradictions and omissions that has been elicited during cross examination, the core of their evidence indicates enmity that all the accused nurtured against the deceased. The trial court should have assessed the evidence of PWs.1, 5 and 6 in the background of evidence given by PW7 to 12. It was the proper way of appreciating the evidence with regard to motive. Instead the trial court has independently assessed the evidence of PWs.7 to 12. The evidence of these witnesses is already referred above. The trial court appears to have lost sight that PW7 to 12 are examined to establish the various transactions. Even the documents as per Ex.P5 and P6 are also marked. PW7

has stated about a panchayat convened for finding a solution to the differences. He has stated that accused nos.4, 5 and 6 also participated in the panchayat. His one answer in the cross examination is that even though he does not know that the accused are connected with the crime of murder of Narasimha Murthy, they were all enemies to Narasimha Murthy. The trial court has not believed the testimony of PW7 because he belongs to a village called Oorukere, which is the maternal place of PW1. This should not have been the sole ground. Though PW8 was partly treated hostile, his evidence also discloses that he too intervened to bring about settlement between the deceased and accused nos.1 and 2. When he was cross examined by the counsel for accused nos.1, 2 and 4, he refuted the suggestion that he did not try for compromise between the deceased and, accused nos.1 and 2. Actually the evidence of PW8 shows that the deceased had expressed before him that he had a life threat from the accused. It is interesting to note here that in the cross examination on behalf of accused nos.1, 2 and

4, it was elicited from him that the police initially suspected him because of telephone calls made by him to the deceased. When it was suggested to him that he did not make any effort to bring about settlement between the deceased and, accused nos.1 and 2, and that the deceased had not expressed any fear for his life, he refuted this suggestion. That means PW8 affirmed what the deceased had told about life threat to him. The evidence of PW9 also discloses the transaction of purchase of three acres of agricultural land from Dr.Bhakthavatsalam and Mohana. PW12 is Dr.Bhakthavatsalam. The evidence of PW10 shows that accused no.5-Yadukumara was involved in purchase of three acres of land in Sy. No. 31/11. He has not been cross examined at all. PW11-Sumitra has stated about purchase of one acre 38 guntas of land jointly by her and the deceased and payment of Rs.50,000/- to accused no.6 towards brokerage. When she was questioned about the civil litigations initiated by the children of Rudramuniyappa in regard to the agricultural land measuring one acre 38 guntas, she answered that

accused no.4 was the instigator for institution of a suit. PW12 has also taken the name of accused no. 5 at the time when agreement came into existence. Therefore the conjoint reading of the evidence of PWs.1, 5 and 6, and 7 to 12 would lead to a definite conclusion about the motive that the prosecution has projected for the incident to take place on 11.10.2011. More than all this, while cross examining PW28 i.e., the investigating officer, suggestions were given to him admitting the entire transactions of accused nos.1, 2 and 4. In paragraph no. 189 of the deposition of PW28, these suggestions are found, unfortunately the trial court has not looked into it. This indicates that the trial court has failed to appreciate the evidence properly. Therefore our conclusion is that the prosecution has proved motive behind the incident and this strengthens the testimonies of the eyewitnesses.

68. PWs.16 to 20 and 24 are the witnesses examined by the prosecution for establishing the recovery of incriminating articles. The trial court has held that the

recoveries are doubtful. The following are the reasons given by trial court :

68.1. Ex.P.11 was the mahazar drawn in connection with seizing three pants belonging to accused nos.1, 2 and 4. This mahazar was drawn in the police station on 18.10.2011. M.Os. 9, 10 and 11 are the pants. PWs.16 and 17 are the witnesses to Ex.P.11. The trial court did not believe the testimonies of these witnesses for two reasons that it is impossible to believe that the accused were wearing the same pants from 11.10.2011, i.e., the date of incident, till 18.10.2011. In Ex.P11 it is written that the blood stains were washed in water and if it was so, the testimony of PW16 that the stains were visible from a distance of ten feet cannot be believed. Another reason for disbelieving Ex.P11 is that PW16 firstly stated that he signed a document on 18.10.2011 at Sira Gate and very soon he retracted that answer by saying that he affixed the signature in the police station. Therefore this was a contradiction. PW16 further stated in the cross

examination that the accused were taken inside a room in the police station for changing the pants and subsequently the pants were seized. So the pants were not removed by the accused in front of the witness and he does not know whether other pants were arranged for the accused persons for wearing.

68.2. Another mahazar was drawn as per Ex.P.12 for seizing the weapons marked M.Os.3 and 5. This mahazar was drawn in front of the house of accused no.2 after recovering the weapons from a water tank, i.e., a sump. According to prosecution, accused no.2 made a disclosure of throwing the weapons in the sump and that he would show that place. PWs.16 and 17 are the witnesses to this mahazar. The witnesses stated that a policeman entered the sump and removed the weapons from inside the sump in which there was water to a depth of 6.5 feet. The witnesses do not know the name of the police who got into the sump. But in Ex.P12 it is not written that a policeman entered the sump, what is written

is some person entered the sump. The evidence of PW17 is not believed by the trial court. It appears to be that he did not know the name of the person who had key of the house of accused no.2. This observation appears to have been made in the background of the answer given by PW17 that when the investigating officer, the other police and others, and he went to the house of accused no.2, the door of the house was locked. Another comment of the trial court is that PW17 did not know the name of the police who got into the sump. Thus seen according to the trial court, the evidence of PW17 is contrary to the contents of mahazar. PWs16 and 17 were found to be somehow connected to PW5. One witness was relative of PW5, another was working in the shop of uncle of PW1. If PW16 and 17 stated that the weapons are sealed at the place where they were recovered, the eyewitnesses stated that the weapons were shown to them in the police station. Again this would lead to doubt the sealing of the weapons in a white cloth at the spot.

68.3. Ex.P13 is another mahazar drawn at the place of occurrence. The case of the prosecution is that after seizing M.Os.3 and 5, accused nos.1, 2 and 4 said that they would show the place where they committed crime and therefore while returning, the investigating officer drew up a mahazar as per Ex.P.13. This mahazar and the testimonies of PWs.16 and 17 are disbelieved giving reason that there was no need to draw mahazar after returning from the house of accused no.2; this mahazar could have been drawn while going to the house of accused no.2 as they had to pass through this very same place, i.e., the place of incident, to reach the house of accused no.2. There is no explanation for this. The trial court has also noted the difference in timings given by the witnesses in drawing the three mahazars when compared to the timings mentioned in the mahazars. The signatures of the local witnesses had not been obtained on Exs.P11 to 13 is the another reason not to act upon the mahazars.

68.4. PW18 is a witness for the mahazars Exhibits.P14, 15, 16 and 18. He stated about seizure of motorcycle bearing reg. no. KA-16-E-3135 marked M.O.13 by drawing a mahazar as per Ex.P14 at a place near the house of one Mahadevaiah, two kilometers away from Gubbi town. PW19-Hanumakka and PW20-Mahadevaiah were examined by the prosecution to prove the parking of the motorbike by some two persons. Because PWs.19 and 20 did not support, the evidence of PW18 cannot be based to hold that seizure of two motorbikes have stood proved. There is another mahazar as per Ex.P15 in connection with seizure of a motorcycle bearing reg. no. KA-06-Q-8953 marked M.O.14. This mahazar was drawn in the farm house of Shashikala, the sister of accused no.4, at a village called Herur. PW18 did not give the distance between his village Kodihalli to Heruru. According to prosecution one Prasad, husband of Shashikala was present when Ex.P15 was drawn and M.O.14-motorbike was seized. But Prasad was not cited as a witness, neither he was examined in the court. There is no evidence how

the motorbikes were transported from the places of seizure to Tumakuru. These are all the doubtful circumstances which make the testimony of PW18 with regard to mahazar-Ex.P15 unbelievable.

68.5. One more mahazar was drawn at a place near Siddartha Medical College as per Ex.P18. This was the place where accused nos.1, 2 and 4 burnt their shirts. This mahazar is mainly disbelieved giving the reason that if these three accused thought of burning their shirts, they could have burnt their pants containing blood stains and why they continued to wear the blood stained pants till 18.10.2011 is not answered.

68.6. With regard to seizure of M.O.4, a knife as produced by accused no.3, the prosecution drew up a mahazar as per Ex.P22. For proving the same PW24 was examined but he did not support the prosecution. Therefore the trial court has held that seizure of incriminating materials have not been proved.

69. The argument of Sri. Sudeep Bangera was that the reasons recorded by the trial court are wholly unsustainable in that the trial court has lost sight of the fact that the investigating officer could recover the weapons, the vehicles and the clothes of the accused based on disclosure made by them after their arrest. The information given by the accused in their confession statements led to discovery, which is very much admissible. The evidence in this regard should not have been disbelieved. When accused 1, 2 and 4 produced the pants before the police on 18.10.2011 in the station, it is quite obvious that they would be provided with alternative clothing; whether the accused 1, 2 and 4 removed the pants inside or outside a room and who provided them another set of pants are all very trivial aspects which should not have drawn the attention of the trial court.

69.1. His further submission was that it was only at the instance of accused 1, 2 and 4, two motor cycles on which they fled the place of incident were seized. PW18,

an independent witness has supported not only the mahazars drawn in connection with seizure of motorcycles but also all other seizure mahazars. The trial court has conveniently ignored the evidence of PW18, only for the reason that PW19 and PW20 did not support the prosecution case with regard to recovery of motorcycles. This shows that the approach of the trial court is wrong.

70. Smt. Rashmi Jadhav, also highlighted that the trial court has wrongly appreciated the entire evidence placed by the prosecution in regard to seizure of incriminating materials.

71. On the contrary, Sri. Hashmath Pasha, Sri. S.B. Fayaz Sab and Sri. V.B.Siddaramaiah argued in unison that for no reason the evidence in regard to recovery of incriminating materials can be believed; Sri. Hashmath Pasha especially pointed out that the same witness, i.e., PW18 would participate in all the mahazars; the investigating officer made no effort to procure local witnesses and this itself is sufficient enough to draw an

inference that PW18 was a stock witness for the police. PW16 and PW17 are interested witnesses. The trial court has rightly noticed this aspect. And PW19 and PW20 have not supported. Another point that Sri. Hashmath Pasha argued was with regard to seizure of blood stained pants from accused 1, 2 and 4, what he tried to point out was that it was impossible to believe that those accused were wearing the blood stained pants from the date of incident till such time as police would seize them. This was firstly impossible and secondly improbable a conduct. In regard to tainted seizures and recoveries, Sri. Hashmath Pasha has placed reliance on two judgments of the Supreme Court in the cases of ***State of U.P. Vs. Arun Kumar Gupta***[15] ***and Babudas Vs. State of M.P.***[16]***.*** Lastly he argued another point that the seized weapons which had been sealed were shown to PW4 in the police station by opening the seals. This becomes evident from an answer given by PW4 in the cross examination, and therefore the

[15] ***[(2003) 2 SCC 202]***
[16] ***[(2003) 9 SCC 86]***

possible inference is that the recovery of weapons as depicted by the prosecution was doubtful; they appear to be planted weapons; In this view the prosecution case fails.

72. Before assessing the quality of evidence brought forth by the prosecution in regard to seizure of incriminating materials, it is necessary to state that the case that rests on direct evidence of eyewitnesses, seizure of incriminating materials supplement the testimonies of eyewitnesses, if they are trust worthy; any discrepancy in the evidence in regard to seizure and recovery does not supplant or out shadow the eyewitnesses' account. But not so in a case based on circumstantial evidence where recovery itself becomes an important link in the chain of circumstance. With this subtle distinction, the evidence has to be assessed.

73. PW16 and PW17 have testified three mahazars Ex.P11, Ex.P12 and Ex.P13. Ex.P11 was drawn in the police station in connection with seizing the blood stained

pants of accused nos.1, 2 and 4. As has been argued by Sri. Hashmath Pasha, it appears to be very queer, and looks askance if accused nos.1, 2 and 4 had worn the blood stained pants from 11.10.2011 to 18.10.2011. Searching questions are put to PW16 that blood stains were whether visible from a distance of 10 ft. It is curious to note as to why these three accused did not burn their pants when they burnt their shirts. PW16 and PW17 cannot have answer, but the investigating officer has stated in the examination in chief that accused nos.1, 2 and 4 had been to Lepakshi, the place where they were apprehended, and when he enquired them, they told that they washed the pants and wore the same again. The investigation has also stated that the blood stains were still visible in spite of washing the pants, and before seizing them, he arranged for alternative pants which were procured from the respective houses of accused 1, 2 and 4 by sending a police constable. In Ex.P11, it is written that before seizing the blood stained pants, alternative arrangement had been made by procuring other pants.

As disclosed by accused 1, 2 and 4 to the investigating officer, they were wearing the very same pants. Except a suggestion being given to the investigating officer that the pants were not seized, there is no further cross examination on this aspect. This is the explanation available in the testimony of the investigating officer, and it appears to be acceptable and probable. It is not the case of defence that the pants marked as per MO9 to MO11 are planted.

74. The prosecution cannot be expected to give explanation for burning of shirts only. If at all any explanation was to be given, accused 1, 2 and 4 should have given, not the prosecution. And it was not necessary for the investigating officer to have questioned the three accused as to why they burnt their shirts only. If the trial judge had read the evidence of PW28, the investigating officer, he would have found answers for the doubts expressed by him in his judgment.

75. Ex.P12 is the mahazar drawn in front of the house of accused no.2 who according to PW28, made a disclosure in his confession statement that he had thrown the weapons into the sump of his house. Based on this information PW28 was able to recover and seize three weapons marked MO3, MO4 and MO5. PW16 and PW17 are witnesses to these mahazars and have testified the same. Perusal of cross examination of PW16 and PW17 relating to seizure of MOs9 to 11 shows that they have not been discredited. It was much argued that PW16 and PW17 are interested witnesses. It was pointed out that if PW16 was related to PW5, PW17 belonged to the village Oorukere and was working in the shop (Mandi) of one Vijaya Kumar, a relative of PW1. When it was suggested to PW16 in the cross examination that he was purposefully made a witness to the mahazars as he was relative of Gangamma (PW5), his answer was that he did not know the purpose of the police, but he had not deposed falsehood. Likewise PW17 refuted the suggestion that he knew the fact that his shop owner Vijaya Kumar was

related to Kalpana (PW1). About six to seven persons came to that place, and nobody signed the mahazar. Very strangely suggestion given to PW17 was that all those six or seven persons were neighbours. If the people from surrounding places were not ready to sign the mahazar, what the investigating officer could do.

76. Ex.P13 is another mahazar drawn at the place of occurrence. Though this is second mahazar drawn at that place, it appears that it was drawn again as accused nos.1, 2 and 4 said that he would show the place of crime. PW16 and PW17 have established the fact of three accused showing the place and drawing up of this mahazar. If Ex.P13 was drawn at the very place where the spot mahazar as per Ex.P2 was drawn, it only confirmed that it was the place where the accused committed crime; and if they had shown another place, it would have given scope for doubting the involvement of all the accused in the incident dated 11.10.2011.

77. The doubt expressed by the trial court is why Ex.P13 was not drawn while going to the house of accused for the purpose of seizing weapons. PW28 has an answer that while going to house of accused no.2, they did not pass through 80 ft. road and they went by another road. PW17 has also stated that they went to house of accused no.2 by another road situate adjacent to the road where the incident occurred. Merely for the reason that Ex.P13 was not drawn while going to the house of accused no.2, that mahazar cannot be disbelieved. If there is no consistency in the evidence of PW16 and PW17 in regard to time of drawing mahazars as per Ex.P11 to Ex.P13, it is not a matter of significance; the trial court has missed the fact that there was a gap of three years between the date of mahazars and the date when they were examined in the court, PW28 has given the timing when mahazars were drawn and the timings are also noted in the mahazars. PW28 has not been discredited in this regard.

78. In regard to seizure of two motorbikes, marked MO13 and MO14, the reasons recorded by the trial court cannot be accepted. It has wrongly held that PW19 and PW20 have not supported, in fact PW18 has given a full account of seizure of motorbikes abandoned by accused 1, 2 and 4 by drawing mahazars as per Ex.P14 and Ex.P15, seizure of burnt pieces of shirts as per Ex.P16, seizure of some documents (Ex.P5, Ex.P6 and Ex.P17) under a mahazar marked Ex.P18 which was drawn in the house of accused No.5.

79. If cross examination of PW18 is seen, it becomes very clear that he has withstood the cross examination and more particularly denied a suggestion that he is the relative of the deceased. He has given full description of the places where the two motorbikes had been abandoned, and who were all present at the time of seizing the motorbikes. In fact he has stated that the local persons namely Mahadevaiah (PW20) and Hanumakka (PW19) were present. The trial court has discarded the

evidence of PW18 only for the reason that PW19 and PW20 did not support the prosecution. That inference should not have been drawn, because, they do testify the fact of seizure of motorbikes. The trial court appears to have not read the evidence of PW19 and PW20 properly. Actually PW19 has stated that the police obtained her signature while taking custody of a motorbike parked near her shop. She has very clearly stated that motorbike had been parked near her shop for about three or four days. The Public Prosecutor treated her hostile partially, and in the cross-examination by the Public Prosecutor, she admitted the suggestions that one day around 5.30 p.m one person brought a motorcycle and parked it near a light pole and a week after, the police brought three accused persons and took her signature. She might not have identified three accused persons in the court, but her other testimony stands. The defence counsel has failed to discredit her.

80. PW20 has also very clearly stated that he did not know any one of the accused, but he saw a red colour Hero Honda motor cycle being parked in front of his house which is situate adjacent to the house of PW19. He saw police carrying the motorbike. He saw three to four persons being with police at that time. What more is required to believe the evidence of PW19 and PW20? Unhesitatingly it can be said that the trial court has not applied its mind to the testimonies of PW19 and PW20. It appears that just by seeing the note made about granting permission to the Public Prosecutor to cross examine these two witnesses, the trial court came to a conclusion that PW19 and PW20 did not support. It is a wrong conclusion. Therefore the evidence of PW18, PW19 and PW20 is believable and thereby the mahazars as per Ex.P14, Ex.P15, Ex.P16 and Ex.P18 are proved.

81. The last mahazar is Ex.P22, drawn in connection with seizure of a button knife marked MO4. According to prosecution, this knife was seized after accused no.3

disclosed that he had kept that knife in the table drawer at Gurudeva Rice Mill. Ex.P34 is the portion of voluntary statement of accused no.3 that led to discovery. PW24, a witness to Ex.P22 has admitted his signature on it, but does not testify the seizure of MO4 in his presence. However, he has stated that the police obtained his signature at Gurudeva Rice Mill. Whether he testifies the seizure of knife in his presence or not, but has admitted to have put his signature at Gurudeva Rice Mill, which is also the case of prosecution. Rest has been proved by PW28.

82. Therefore it can be said that, in regard to various mahazars, the approach of the trial court is erroneous from the outset. It has given importance to trivial aspects which should not have influenced to disbelieve the seizure of incriminating materials. The two rulings in ***Arunkumar Gupta*** and ***Babulal (supra)*** are distinguishable on facts. ***Arun Kumar,*** is a case based on circumstantial evidence where, as noted above, every circumstance is important. In ***Babulal***, the observation is

that witness to recovery was a stock witness to police. But in the case before us, though PW16, PW17 and PW18 are common witnesses to some mahazars, it cannot be said they were stock witnesses and explanation is forthcoming as to why the police could not get the attestation of local people. Therefore these two rulings are not applicable. The conclusion therefore is entire evidence in regard to recovery and seizure under various mahazars is believable.

83. Then certain others points, that are very technical, but made prominent by Sri. Hashmath Pasha require to be answered. The first point is about registration of FIR. Ex.P1 is the written report given by PW1. His argument was PW26 and PW27 received wireless information about the incident when they were in the police station. PW28 also received information when he was on rounds. First PW26 reached the place of incident and then PW27 and PW28 also reached that place. By 5.00 p.m, three police officers were near the dead

body. It was necessary that crime should have been registered. PW1 was there at the scene of occurrence. Her statement could have been taken to register FIR. Without registration of FIR, the police officers started making enquiry, and thus investigation commenced. The investigation is therefore vitiated. Second point was that according to the evidence given by PW26, he made a note of telephonic information that he received in the general diary and then went to place of incident. If there was an entry in the general dairy, it became FIR, and Ex.P1 a report made by PW1 could not have been made use of in view of section 162 of Code of Criminal Procedure. Third point was that if PW1 knew the names of assailants, she should have disclosed the same before the police. Without doing so, she went to police station at 5.45 p.m with a written report and in that report she implicated accused nos. 1, 2 and 4 by their names specifically. That means Ex.P1 was the outcome of deliberation and fabrication. Another point argued by him in this regard was though FIR was registered at 5.45 p.m, it reached the Magistrate at

10.20 p.m. The distance between the police station and the residence of Magistrate was not far. This delay is not a matter to be ignored, as any delay in registration of FIR and forwardal of it to Magistrate have the serious consequences of falsely implicating innocent persons. He also argued that the scribe of Ex.P1 and the police constable who carried the FIR to be submitted to the Magistrate have not been examined. The last point that he argued was that in none of the remand applications, the names of eyewitnesses are mentioned. From 11.10.2011 till 18.10.2011, there was no information about availability of eyewitnesses, and if PW2 to PW4 were cited in the charge sheet as eyewitness, they were nothing but planted witnesses.

84. Sri. Sudeep Bangera argued that there was no delay in registration of FIR, the evidence of PW28 discloses efforts made by him to obtain statements of PW1 and PW5 at the spot, and thus seen no fault can be found with the investigating officer. He also submitted that any

lapse in procedure cannot be given too much of prominence.

85. The trial court has held that there was no delay in registration of FIR and its reaching the Magistrate.

86. The first three points canvassed by Sri. Hashmath Pasha can be answered together. It is true that the evidence of PW26 discloses that on 11.10.2011, when he was SHO, somebody called to the police station and informed him of a murder having taken place at 80 ft. road, Sira Gate, Tumkur. Immediately he went to the spot, saw the dead body and sent wireless information to his superior officers. PW26 could have registered FIR on receiving telephonic information. But in this regard it has to be stated that if he had received a definite information of a murder, he was supposed to register FIR; if the information was cryptic, he was not required to register FIR. If he thought of going to spot, it means the telephonic information

given to him was cryptic. In this regard reference may be placed to some judgments of the Supreme Court.

87. In the case of ***Ramsinh Bavaji Jadeja Vs. State of Gujarat***[17]***,*** it is held :

> *"8. In the case of Tapinder Singh v. State of Punjab'[(1970)2 SCC 113] it was said by this Court, that anonymous telephone message at police station that firing had taken place at a taxi stand; does not by itself clothe it with character of first information report, merely because the said information was first in point of time and the said information had been recorded in the daily diary of the police station, by the police officer responding to the telephone call. Again in the case of Soma Bhai v. State of Gujarat [(1975) 4 SCC 257] in respect of an information given to the police station by telephone, it was held : (SCC p. 271, para 19)*
>
> *"The message given to the Surat Police Station was too cryptic to constitute a first information report within the*

[17] ***(1994) 2 SCC 685***

meaning of Section 154 of the Code and was meant to be only for the purpose of getting further instructions. Furthermore, the facts narrated to the P.S.I. Patel which was reduced into writing a few minutes later undoubtedly constituted the first information report in point of time made to the police in which necessary facts were given. In these circumstances, therefore, we are clearly of the opinion that the telephonic message to the Police Station at Surat cannot constitute the FIR and the High Court was in error in treating the FIR lodged in the present case as inadmissible in evidence."

Recently, in the case of Dhananjoy Chatterjee alias Dhana v. State of W.B. [(1994) 2 SCC 220] it was said the cryptic telephonic message received at the police station from the father of the deceased had only made police agency run to the place of occurrence and to record the statement of the mother of the deceased; the investigation commenced thereafter".

88. In the case of ***Damodar Vs. State of Rajasthan***[18]***,*** it is held that :

> *"10. Coming to the question whether the message received on telephone would be treated as the FIR, the D.D. entry (Ex.P.21) shows that an unknown person had given an information about a vehicle hitting the deceased. In order to constitute the FIR, the information must reveal commission of an act which is a cognizable offence.*
>
> *11. As observed by this Court in Ramsinh Bavaji Jadeja v. State of Gujarat, [1994] 2 SCC 685], the question as to at what stage the investigation commences has to be considered and examined on the facts of each case, especially, when the information of an alleged cognizable offence has been given on telephone. Any telephonic information about commission of a cognizable offence, if any, irrespective of the nature and details of such information cannot be treated as first information report. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on the*

[18] ***(2004) 12 SCC 336***

basis of that information to find out the details of the nature of the offence, if any, then it cannot be said that the information which had been received by him on telephone shall be deemed to be a FIR. The object and purpose of giving such telephonic message is not to lodge the first information report but to make the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information the officer in charge is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information to investigate such offence then any statement made by any person in respect of the said offence including about the participants shall be deemed to be a statement made by a person to the police officer in the course of investigation covered by Section 162 of the Code".

(emphasis supplied)

89. Same view has been taken in ***Mundrika Mahto and Others Vs. State of Bihar***[19] and ***Vikram and Others Vs. State of Maharashtra***[20]***.*** Therefore it becomes clear that if PW6 received cryptic information of a murder and for this reason he did not register FIR, it cannot be given significance. The information given to PW26 by somebody among the public was to draw the attention of the police to take action and nothing more. Moreover section 154 Cr.P.C. clearly states that FIR is to be registered only in respect of an offence which has been committed, that means the information given to the police must disclose a crime being committed. If the information does not disclose definitely that a crime has been committed, or if the information is about possibility of crime being committed, the first duty of the police is to ascertain whether crime has

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[19] ***[(2002) 9 SCC 183]***
[20] ***[(2007) 12 SCC 332]***

been committed or not and then register FIR. About the possibility of crime being committed, the police has to take preventive measures.

90. PW26 has answered in the cross examination that he made an entry of the telephonic information that he received in the general diary of the station and then proceeded to the spot. Again with regard to this, it may be stated that entry in the general diary can be treated as first information if it was a definite information, or else not.

91. After coming to spot any of the police officers present there could have *suo moto* registered FIR having seen the dead body. If they did not, again it cannot be said to be a short coming in the procedure for, as their evidence discloses they wanted somebody who had gathered there to give information regarding the crime. If they started enquiring the people who had

gathered there, including PW1 and PW5, it did not amount to investigation. They wanted information for registration of FIR. The best persons to make a report of the crime were PW1 and PW5.

92. There is no denial of the fact that neither PW1 nor PW5 made a statement before the police at the spot. They could have given statement so that FIR could have been registered even earlier. If something is required to be stated in this regard, it is this: PW1 is the wife and PW5 is the mother of the deceased. They would reach the place of incident within a few minutes of occurrence, and if they were waiting near the dead body being grief stricken, and if for that reason, the police officer did not record their statement, there was nothing wrong in it. Though it is true that the law must be set into motion at the earliest point of time, at the same time human considerations should not be ignored. If cross examination of PW28 is seen, the efforts made by him to record statements of PW1 and PW5 are forth coming. He enquired both of them

within five minutes after reaching the spot. He has stated that when he enquired PW1, she told him that she would come over to police station and lodge a complaint. He could not record statement of PW5 because she was in a state of shock. Either of PW1 or PW5 was the best person to give first information of the incident, and if PW1 had decided to go to police station and if for this reason, her statement was not recorded, it was a decision taken by PW28 or any other police officers present at the spot in their discretion, which in the given set of circumstances cannot be viewed seriously and suspiciously.

93. By 5.45 p.m. PW1 would go to police station to make a report as per EX.P1. There is no evidence to come to a conclusion that Ex.P1 is foisted to falsely implicate accused Nos. 1, 2 and 4. As discussed already both PW1 and PW5 knew about the enmity between the deceased and the accused, and as their evidence discloses, they had seen all the accused having gathered in the house of accused No.1 in the morning of the day of incident. If she

specifically implicated accused nos.1, 2 and 4 in Ex.P1, that means she might have suspected their involvement; the language used in Ex.P1 might appear to be like implicating accused nos.1, 2 and 4, but it cannot be understood in that way. It is to be noted here that what is written in Ex.P1 is Rajeeva, Somanna, Yogeesha and three or four others. This was nothing but a suspicion.

94. While there was no delay in registration of FIR, the delay in receiving of the same by the Magistrate, does not assume so much significance in this case. Delay or inordinate delay in giving first information to police may be a factor, in the absence of suitable explanation for the delay, to hold that it could be outcome of embellishments, fabrication, concoction as the case may be. In this case the police constable who carried FIR could have been examined. Mere non-examination does not have negative impact on other reliable evidence placed by the prosecution. PW27 who registered FIR has stated in the cross-examination that he dispatched FIR at 6.15 p.m.

That means after registration of FIR at 5.45 p.m, it was dispatched from the police station within thirty minutes, there was no delay at all. The decision of the Supreme Court in ***Maharaj Singh vs State of U.P [(1994) 5 SCC 188],*** cited by Sri Hashmath Pasha has no application here for, the facts therein indicate that FIR was found to be anti timed and had not been recorded till inquest proceedings were over. This is not the allegation here. That apart, there is no allegation that FIR was tampered with after its dispatch from police station and before it reached Magistrate.

95. Sri Hashmath Pasha has placed reliance on a judgment of the Supreme Court in the case of ***Bachu Narain Singh vs Naresh Yadav and Others***[21] with regard to effect of delay in registration of FIR. The facts therein discloses that the person who lodged FIR claimed to be an eyewitness. But when inquest report was being prepared nobody claimed to be an eye witness. The

[21] ***[(2003) 12 SCC 647]***

doubtful circumstance pointed was if the first informant, who was the brother of the deceased, had seen the incident, he could have given the information immediately to the police. His late arrival nearly an hour and half after the incident gave scope for viewing him suspiciously. So the facts in the cited decision are entirely different. Here PW1 was not an eyewitness; even she did not claim to have seen the incident.

96. Whether Ex.P1 is hit by section 162 Cr.P.C. is to be examined. Section 162 Cr.P.C. could have been applied only if the entry made by PW26 in the general diary can be treated as first information. We have already held that the entry in the general diary cannot be treated as first information and in this view section 162 Cr.P.C. cannot be invoked at all. If for argument sake, section 162 Cr.P.C. can be applied, the entire testimony of PW1 cannot be discarded at all. The reason is, if for any reason section 162 Cr.P.C can

be applied as against Ex.P1, it i.e., Ex.P1 transforms into statement under section 161 Cr.P.C. Without there being a statement under section 161 Cr.P.C, section 162 Cr.P.C cannot be directly invoked. In that event, unless contradictions or omissions with reference to Ex.P1 are elicited from PW1 and duly proved, her entire testimony stands. We do not find any major contradiction in the testimony of PW1 being brought on record. The evidence of PW1 therefore becomes believable. In this view the argument on this point fails.

97. Another point is about not mentioning the names of PW2 to 4 in the remand applications. We have perused the remand applications and in none of them, the names of PW2 to 4 are forthcoming. Certainly this is a lapse in the investigation, but question is whether it is so serious and assumes significance to hold that PWs2 to 4 were planted

witnesses. The evidence of the police officers especially that of PW28 shows that PW2 to 4 were very much present at the scene of occurrence on 11.10.2011. PW2 has stated that after the police came to the spot, they started enquiring everybody including himself and he revealed to them what he had seen. PW3 has also stated that he disclosed to the police that he had seen the incident and he was asked to come to the station on the next day for giving statement. PW4 has stated that the police enquired him at about 6.00 pm on 11.10.2011. That means all the three witnesses disclosed what they had seen. If the police did not record the statement at that time, it is a lapse on their part. Their names ought to have been mentioned in the remand application dated 18.10.2011 after the arrest of accused nos.1, 2 and 4. Again not mentioning of it is a lapse. But these lapses cannot be given so much significance or importance to hold that the entire investigation

is vitiated. Any infraction in the procedure cannot be given prominence. It appears that this point was not raised during trial.

98. It was also pointed out by Sri. Hashmath Pasha that while the accused were examined under section 313 Cr.P.C, they were not questioned that their clothes contained blood stains. He also argued that the weapons were not sent to FSL for detection of blood stains. Any omission to question the accused about blood stains does not result in effacing the core strength in the evidence placed by the prosecution; it is again an irregularity in the trial. If it was so much necessary, any omitted question may be put to the accused in the appeal, and even if the accused had been questioned during appellate stage, they would have denied it. There is a reason for not sending weapons to FSL. The blood stains cannot be expected to remain once two weapons were

thrown into water, and sofar as the button knife is concerned, PW28 has stated that he sent it to FSL for chemical examination. In Ex.P36, the FSL report, nothing is mentioned about MO4. By this itself, eye witnesses' account cannot be discarded.

99. Dog squad was secured to the scene of occurrence. Sri. Hashmath Pasha argued that securing a sniffer dog would rule out possibility of involvement of accused. This point of argument cannot be accepted. This only shows the investigating officer's diligence.

100. It is true that certain contradictions and omission in the testimonies of PW2, PW3, PW4, PW5, PW6 and PW7 are proved through PW28. In our opinion these discrepancies are not so material to be given importance.

101. Presence of MLA Shivanna at the spot was made a prominent point of argument in the

sense that the deceased was a supporter of a political party to which MLA Shivanna belonged and therefore accused were falsely charge sheeted due to political pressure. This was yet another futile attempt by the defence to create doubt in the prosecution case. As an MLA, if Shivanna visited the scene of crime, it only showed his concern, his involvement in the investigation is not at all forthcoming.

102. Seen whether the defence has brought in evidence having semblance of probability, what appears is only one suggestion being given to the prominent witnesses that somebody who came in a car assaulted Narasimha Murthy to death and fled away. If this was a fact which lay within their knowledge, nothing prevented them from proving it. No further effort was made. The witnesses denied the suggestion. The defence theory failed. Therefore, what is ultimately deducible is that the

prosecution has been able to prove its case beyond reasonable doubt that Narasimha Murthy met a homicidal death at the hands of accused 1 to 6. With all certainty, in the light of clear account given by eyewitnesses and the nature of injuries mentioned in inquest report as also the post-mortem report, the incident of killing Narasimha Murthy was a murder.

103. Further what needs to be stated is that the evidence on record only discloses commission of offence under sections 302, 114 and 201 of IPC. Merely for the reason that there were six accused, charge sheet was also filed invoking section 149 IPC besides sections 143 and 148 of IPC. But there are no materials to opine that all the six accused constituted an unlawful assembly and committed an act of rioting with deadly weapons. What the evidence shows is sharing of common intention by all the accused. Since, very routinely

the investigating officers as also the trial courts invoke section 149 of IPC whenever number of accused persons is five or more, and section 34 of IPC whenever their number is more than one and less than five, distinction between common intention and, common object is required to be pointed out. 'Common intention' and 'common object' are two features with subtle distinction. In two decisions of the Supreme Court, the distinction is sought to be explained. In ***Nanak Chand Vs. State of Punjab***[22]***,*** the following is the observation:

> *"7. It was, however, urged on behalf of the Prosecution that section 149 merely provides for constructive guilt similar to section 34 of the Indian Penal Code. section 34 reads:*
>
> *"When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone".*

[22] ***(AIR 1955 SC 274)***

This section is merely explanatory. Several persons must be actuated by a common intention and when in furtherance of that common intention a criminal act is done by them, each of them is liable for that act as if the act had been done by him alone. This section does not create any specific offence.
As was pointed out by Lord Sumner in AIR 1925 PC 1(A)

> *"a criminal act' means that unity of criminal behaviour which results in something, for which an individual would be punishable, if it were all done by himself alone, that is, in a criminal offence".*

There is a clear distinction between the provisions of sections 34 and 149 of the Indian Penal Code and the two sections are not to be confused. The principal element in section 34 of the Indian Penal Code is the common intention to commit a crime. In furtherance of the common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation section 34

provides that each one of them would be liable for that crime in the same manner as if all the acts resulting in that crime had been done by him alone.' There is no question of common intention in section 149 of the Indian Penal Code. An offence may be committed by a member of an unlawful assembly and the other members will be liable for that offence although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, every member of the unlawful assembly would be guilty of that offence, although there may have been no common intention and no participation by the other members in the actual commission of that offence……"

104. ***Chittarmal Vs. State of Rajasthan***[23] is more elucidative than ***Nanak Chand; Chittarmal*** holds the following view :

> *"14. It is well settled by a catena of decisions that section 34 as well as section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre- concert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under section 149 overlaps the ground covered by section 34.*

[23] ***(AIR 2003 SC 796)***

Thus, if several persons numbering five or more, do an act and intend to do it, both sections 34 and section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of section 34 for section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of section 34 for section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non applicability of section 149 is, therefore, no bar in convicting the appellants under section 302 read with section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See Barendra Kumar Ghosh Vs. King Emperor : AIR 1925 PC 1; Mannam Venkatadari and others vs. State of Andhra Pradesh : AIR 1971 SC 1467 ; Nethala Pothuraju and others vs. State of Andhra Pradesh : AIR 1991 SC 2214 and Ram Tahal and others vs. State of U.P. : AIR 1972 SC 254).

So if the common feature in section 34 and section 149 of IPC is participation of several persons, notable distinction is, common intention requires prior meeting of minds or pre-concert, but common object does not require that element; in order to invoke section 149 of IPC, a gathering of several persons must be proved to be an unlawful assembly for the purposes enumerated in section 141 of IPC. A person may become a member of unlawful assembly without prior concert and if the evidence discloses his overt act in one way or the other, he is as much liable for all the offences committed by the unlawful assembly as the other member even though the latter's overt act is different. Only from the facts and circumstances of a given case, a decision either to invoke section 34 or section 149 of IPC must be taken.

105. In the instant case, the evidence actually discloses common intention. All the

accused had different reasons to hate the deceased. The evidence given by PW1 and PW5 discloses it. All the accused gathered in the house of accused no.7 a few hours before the incident occurred, and all of them left the house seeing the deceased leaving the house in the afternoon to get his mobile phone repaired. All these factual situations only depict common intention though the accused were six in number. Therefore accused cannot be convicted for offences under sections 143 and 148 of IPC. However, section 34 can be invoked in view of clear dictum in ***Chittarmal***.

106. Further the proved facts also disclose that accused 1 to 4 actually inflicted injuries to the deceased, while accused 5 and 6 being there instigated accused 1 to 4. Therefore accused nos. 5 and 6 can be found guilty of offence under Section 114 IPC, and eventually they have to be convicted for the offence under section 302 IPC

being abettors. Accused nos. 1, 2 and 4 burnt their shirts and therefore they can be held guilty of offence punishable under section 201 of IPC as the act of burning shirts, which are stained with blood, amounted to causing disappearance of evidence.

107. Now from the foregoing discussion, we are of definite view that the judgement of acquittal has to be reversed. Therefore the following :

ORDER

(i) The appeals are partly allowed.

(ii) The judgment dated 23.09.2016 of the Principal Sessions Judge, Tumakuru, in Sessions Case No. 216/2012 is modified.

(iii) The judgment relating to acquitting accused 1 to 6 for the offences punishable under sections 302, 114 and 201 of IPC is set aside.

(iv) Accused nos. 1 to 4 are convicted for the offences punishable under section 302 read with section 34 of IPC.

(v) Accused nos. 5 and 6 are convicted for the offence punishable under section 302 read with section 114 read with section 34 of IPC.

(vi) Accused nos. 1, 2 and 4 are convicted for the offence punishable under section 201 of IPC.

(vii) Judgment of Sessions Court relating to acquitting all the accused for the offences under sections 143 and 148 of IPC is confirmed.

(viii) Since all the accused are to be heard on the sentence to be imposed on

them, they shall surrender before this court on 01.12.2023.

Sd/-
JUDGE

Sd/-
JUDGE

BVV/CKL
List No.: 1 Sl No.: 1

SHKJ & GBJ

01.12.2023

ORDER ON SENTENCE

Today accused No.1 Rajeevalochana Babu, accused No.2 Yogeesha, accused No.3 Abdul Nabi @ Chand Pasha, accused No.4 Somanna @ Somashekara and accused No.5 Yadukumar have surrendered before this court. Sri Mounesh Badiger, Advocate appearing on behalf of Sri V.B.Siddaramaiah, learned counsel for accused No.6 submits that accused No.6 died some time back, and since none in the family of accused no.6 gave information about death, he could not bring it the notice of this court. Therefore, even though we pronounced judgment of conviction against accused No.6, the appeal stood abated concerning accused no.6.

Accused No.1 to 4 are convicted for the offence punishable under Section 302 read with Section 34 of IPC, accused No.5 and 6 are

convicted for the offence punishable under Section 302 read with Section 114 of IPC and accused No.1, 2 and 4 are convicted for the offence punishable under Section 201 of IPC.

At the outset we state that in the background of facts and circumstances of the case, we are of the opinion that this is not a rarest of the rare case which demands imposition of death sentence. Therefore all the accused are to be sentenced to life imprisonment for the offence punishable under Section 302 of IPC.

On the last date of hearing, we directed the SHO of Tumakuru town police station to keep PW1 Kalpana and PW5 Gangamma present before the court to ascertain their present status for the purpose of awarding compensation. PW1 Kalpana is present before the court. She is the daughter-in-law of PW5 being wife of the deceased. She

submits that PW5 Gangamma died in the year 2015.

We have questioned each of the accused No.1 to 5, who are present before the court to ascertain their present status including financial condition.

Accused No.1 Rajeevalochana Babu submits that his age is 55 years and earning livelihood being a labourer. He denies that he is doing real-estate business. He further submits that he has got 2 sons, both are studying. According to him, his monthly income is Rs.15,000/- to Rs.20,000/-. Further he submits that he is a heart patient and has undergone surgery two times already and is to be operated again. He prays for taking lenient view.

Accused No.2 Yogeesha submits that his age is 52 years. He has wife and two children. Daughter is studying in I PUC and son is studying in II PUC. He has no parents. He submits that his

monthly income is around Rs.6,000/-. He prays for taking lenient view.

Accused No.3 Abdul Nabi @ Chand Pasha submits that his age is 52 years. He has wife, two daughters and a son. All the children are studying. He has got own house and submits that his monthly income is around Rs.5,000/-. He prays for taking lenient view.

Accused No.4 Somanna @ Somashekara submits that his age is 56 years. He is earning livelihood by supplying stone slabs for construction of buildings. He has got a son aged 22 years and a mother aged 85 years. His income is said to be around Rs.5000/- to Rs.6000/- per month.

Accused No.5 Yadukumar submits that his age is 54 years. His submission is that he was not at all involved in the incident. He states that he is a street vendor of panipuri. His daily income is Rs.500/-. He has three children i.e., 2 sons and a

daughter. First son is working with his brother and second son is unemployed. Daughter is studying in 10th standard. He prays for taking lenient view. He has also addressed a letter for showing mercy. We received this letter a week ago, and the letter is kept in records.

PW1 Kalpana submits that at present she is working as Anganavadi teacher for the purpose of her livelihood. She has a son aged 14 years, and he is studying in 8th standard at Tumakuru.

Sri Hashmath Pasha, learned Senior Counsel appearing for accused No.1, 2 and 4 submits that this is not a case for imposing death penalty and the next alternative is to impose life imprisonment. But in the matter of imposing fine, his submission is that having regard to the background of the accused and their financial position, they can be subjected to minimum fine and if at all any compensation is to be granted to PW1, the District

Legal Services Authority may be directed to pay compensation. He also submits that accused No.1 is suffering from heart disease and has already undergone two surgeries. He has produced the medical documents in support of the health condition of accused No.1.

Sri Sudeep Bangera, learned counsel for PW1 relies on following decisions.

i. *(2012)3 SCC (CRI) 18 SANDEEP VS. STATE OF UP [PARA 72 TO 75]*
ii. *(2014)2 SCC (CRI) 627 DHARAM DEO YADAV V. STATE OF UP [PARA 38]*
iii. *AIR 1975 SC 76 MANGAL SINGH V. STATE OF UP [PARA 6]*
iv. *2014(1) SCC (CRI) 52 DEEPAK RAI V. STATE OF PUNJAB [HEAD NOTE.1]*
v. *2014(1) SCC (CRI) 364 GURUVAIL SINGH V. STATE OF PUNJAB [HEAD NOTE A]*
vi. *AIR 2003 SC 3915 DAYANIDHI BISOI V. STATE OF ORISSA [HEAD NOTE A]*

He submits that this case warrants imposition of death penalty because of the manner in which the

deceased was hacked to death in broad day light in front of many people. His submission is that, if this court is of the opinion that this is not a rarest of the rare case to impose death penalty, while imposing life sentence, a term may be fixed so that the accused cannot seek remission.

In reply to the submission of Sri Sudeep Bangera, Sri Hashmath Pasha, learned Senior counsel submits that in all the decisions that Sri Sudeep Bangera has relied on, the accused were subjected to death penalty and the Supreme Court arrived at a conclusion that instead of death penalty, the accused could be subjected to life imprisonment for a particular period, so that they cannot claim remission till the period was over. In this case, this court is of the opinion that death penalty cannot be imposed and therefore while imposing life imprisonment, no restrictions which

will disable the accused from claiming remission can be imposed.

We have considered the submissions. In all the decisions that Sri Sudeep Bangera has referred, the factual position was that the trial court imposed death sentence on the accused and while commuting to life imprisonment, it was directed that the convict should serve a minimum period of imprisonment. But in this case we have not come across a situation to impose death sentence. Moreover, the coordinate Bench of this court in Crl. A.471/2014 c/w Crl.A.475/2014 and 766/2014 has held that in order to fix a particular period of imprisonment to be served by the convict whenever life imprisonment is awarded, the court must come to a conclusion that the case is not a rarest of rare case, but however it falls beyond the punishment of life imprisonment. We do not find this kind of a situation in the present case to fix a

fixed term of imprisonment that the accused should undergo.

We have considered the social and economic status of the accused. Of course we are of the opinion that PW1 is to be compensated. If the financial condition of the accused is such that they cannot pay compensation, there is no meaning in subjecting them to a higher amount of fine out of which compensation can be awarded. The next course available is to direct the District Legal Services Authority to award compensation. In this background, we proceed to pass the following:

ORDER

For the offence punishable under Section 302 read with Section 34 of IPC, each of accused No.1 to 4 is subjected to life imprisonment and directed to pay fine of Rs.20,000/- and in default to pay fine, each of them shall undergo rigorous imprisonment for a period of 6 months.

For the offence punishable under Section 302 read with Section 114 of IPC, accused No.5 is subjected to life imprisonment and directed to pay fine of Rs.20,000/- and in default to pay fine, he shall undergo rigorous imprisonment for a period of 6 months.

For the offence punishable under Section 201 of IPC, each of accused No.1 2 and 4 is subjected to rigorous imprisonment for a period of 3 years and fine of Rs.10,000/- and in default to pay fine, each of them shall undergo simple imprisonment for a period of 3 months.

All the sentences shall run concurrently and they are entitled to set-off for the period they have already spent in jail.

Acting under Section 357A of Cr.P.C., we direct the Member Secretary, District Legal Services Authority, Tumakuru to award compensation under Victim Compensation Scheme to PW1 after holding enquiry.

Free copy of the judgment and order on sentence shall be provided to each of accused 1 to 5.

ORDER ON I.A.NO.1/2023

After pronouncement of sentence, Sri Hashmath Pasha, learned Senior Counsel files an application, I.A.No.1/2023 under Sections 379 and 482 of Cr.P.C., seeking suspension of sentence and release of accused 1 to 4 on bail, as they want to prefer an appeal to the Hon'ble Supreme Court. His submission is that the sentence may be suspended for a limited period to enable the accused to approach the Supreme Court and obtain an order of suspension of sentence and bail.

On this application, Sri Hashmath Pasha submits that the present application is filed under Section 482 of Cr.P.C., under inherent power of High Court and not under Section 389 of Cr.P.C. His further submission is that this court reversed the judgment of acquittal and imposed sentence,

and therefore Section 379 of Cr.P.C., confers a right on the accused to prefer an appeal to the Supreme Court. The accused were on bail all these days. For this reason if the sentence is suspended for a limited period of 30 days, that will enable them to prefer an appeal to the Supreme Court. Though Section 389(3) of Cr.P.C. is not applicable, under Section 482 of Cr.P.C. this court can exercise the jurisdiction to meet the ends of justice. He submits that the power under Section 482 of Cr.P.C., is saved in High Court to pass an order including suspension of sentence in a situation like this.

Sri Sudeep Bangera, learned counsel for PW1 vehemently opposes this application and submits that the power under Section 482 of Cr.P.C. cannot be exercised when there is a specific provision in Cr.P.C. His submission is that section 389(3) of Cr.P.C is not applicable in situation where life

sentence is imposed. He also submits that ends of justice does not mean that only the plight of the accused should be considered, it also includes larger impact on the society when accused are subjected to life imprisonment.

Sri Diwakar Maddur, learned High Court Government Pleader, opposes the application.

Though inherent power is saved in the High Court, we are of the opinion that when the accused are subjected to life imprisonment and fine, this court cannot exercise power under Section 482 of Cr.P.C. There is a specific provision in Criminal Procedure Code as to under what circumstances sentence can be suspended. Section 389(3) of Cr.P.C. is not applicable to the present case because all the accused are subjected to life imprisonment. Section 482 of Cr.P.C cannot be understood as a substitute or alternative to section 389(3) of Cr.P.C.

As the SHO of Tumakuru Town Police Station, Tumakuru is absent today, the Assistant Sub-Inspector of Police, Vidhana Soudha Police Station, Bengaluru, who is present in the Court Hall is directed to take custody of accused No.1 to 5 and commit them to Central Prison, Parappana Agrahara, Bengaluru.

Registry shall issue conviction warrant.

SD/-
JUDGE

SD/-
JUDGE

KMV
List No.: 1 Sl No.: 1