



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**

**PRESENT**

**THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY**

**AND**

**THE HON'BLE MR. JUSTICE ANIL B. KATTI**

**CRIMINAL APPEAL NO.676 OF 2017 (A)**

**BETWEEN:**

State of Karnataka,  
By Mandya Rural Police,  
Rep.by State Public Prosecutor,  
High Court Building,  
Bengaluru-1.

.. Appellant

( By Sri B.N.Jagadeesha, Addl.SPP )

**AND:**

Bhramaramba,  
W/o Late Mahadevaswamy,  
Aged about 41 years,  
Coolie Work,  
R/at Marasinganahalli Village,  
Kothathi Hobli,  
Mandya Taluk-571 401.

.. Respondent

( By Sri H.B.Chandrashekar, Advocate )

This Criminal Appeal is filed under Section 378(1) and (3) of Code of Criminal Procedure, praying to grant leave to appeal against the judgment and order of acquittal dated 18.11.2015, passed by the Court of Prl.Sessions Judge at Mandya in S.C.No.31/2014, acquitting the accused of the offence punishable under Section 302 of IPC, set aside the judgment and order of acquittal dated 18.11.2015, passed by the Court of Prl.Sessions Judge at Mandya in S.C.No.31/2014, acquitting the accused of the offence punishable under Section 302 of IPC and convict and sentence the respondent-accused for the offence

punishable under Section 302 of IPC in the interest of justice and equity.

This Criminal Appeal having been heard through Physical Hearing/Video Conference and reserved for Judgment on 05.09.2023, coming on for pronouncement this day, **Dr. H.B.PRABHAKARA SASTRY, J.**, delivered the following :

**JUDGMENT**

The State has filed this appeal under Section 378 (1) and (3) of the Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as 'the Cr.P.C. '), challenging the judgment of acquittal dated 18.11.2015, passed by the learned Prl.Sessions Judge, Mandya, (hereinafter for brevity referred to as the 'Sessions Judge's Court') in S.C.No.31/2014, acquitting the accused of the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as 'the IPC').

2. The summary of the case of the prosecution is that the accused and deceased Mahadevaswamy are the wife and husband respectively. Both of them were living in their house at Marasinganahalli Village, Mandya Taluk, within the limits of complainant-Police Station. The deceased was a drunker and always used to go to his house in a state of

intoxication. He had not leave his habit despite several advises given to him by his parents and other elders. He always used to have scuffle with his wife i.e., accused. That being the case, on the date 31.07.2013, at about 6.12 a.m. the complainant Manju (PW-12/CW-1), who is the younger brother of deceased Mahadevaswamy, received a call to his cell phone from PW-2/CW-6 Papanna informing him that Mahadevaswamy was murdered in his house. The complainant went to the house of deceased at Marasinganahalli village and found the dead body of his brother Mahadevaswamy beneath the cot in the hall in a naked position and in a pool of blood. Accused who was his sister-in-law was at home and upon her enquiry, she revealed that since the deceased had come in an inebriated condition and there was a scuffle between them and since deceased pestered her to give her money to meet his expenses of liquor, she assaulted him with chopper, which resulted in his death. She also pleaded her brother-in-law that the matter should not be taken to the police and elders in the village to decide the matter. However, since it was killing of a person, the complainant

lodged a complaint with the complainant police as per Ex.P-29. Having registered the same in their station Crime No.370/2013 against the accused for the offence punishable under Section 302 of IPC on 31.07.2013, at 10.00 a.m., the complainant-Police submitted a FIR to the Court and conducted investigation. After investigation, the complainant-Police filed the charge sheet against the accused for the offence punishable under Section 302 of IPC.

3. After perusing the materials placed before it and hearing both side, the Sessions Judge's Court framed the charge against the accused for the offence punishable under Section 302 of IPC. Since the accused pleaded not guilty, the trial was held, wherein, in order to prove the alleged guilt against the accused, the prosecution got examined in all twenty witnesses as PW-1 to PW-20, got produced and marked documents from Exs.P-1 to P-45 and got produced Material Objects from MO-1 to MO-10. From the accused's side, neither any witness was examined nor any documents were got marked as exhibits.

4. After hearing both side, the learned Sessions Judge's Court, by its judgment dated 18.11.2015, acquitted the accused of the offence punishable under Section 302 of IPC. Challenging the same, the appellant - State has preferred the present appeal.

5. The appellant -State is represented by the learned Addl.State Public Prosecutor and respondent/accused is represented by her learned counsel. The learned Addl.State Public Prosecutor and the learned counsel for the respondent (accused) are physically appearing in the Court.

6. The Sessions Judge's Court records were called for and the same are placed before this Court.

7. Heard the arguments from both side. Perused the materials placed before this Court, including the memorandum of appeal, impugned judgment and the Sessions Judge's Court records.

8. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the learned Sessions Judge's Court.

9. Learned Addl.State Public Prosecutor for the appellant/State in his argument submitted that the relationship between the parties and the nature of the death of deceased Mahadevaswamy as homicidal is an admitted fact. Mere hostility of few prosecution witnesses cannot be the sole basis of acquittal. Several of the prosecution witnesses have stated about the motive behind the alleged commission of the crime. The recovery of the weapon was made at the instance of the accused. Even though the panchas to the recovery panchanama have not supported the case of the prosecution, however, the evidence of the Investigating Officer in that regard is believable, as such the recovery stands proved. With this, he submitted that when the incident has taken place in the house of the accused while she was in the company of her husband and the weapon used for the commission of the crime was recovered at her instance, the only conclusion that can be arrived at was that the accused who alone has committed the alleged offence. However, the Sessions Judge's Court did not appreciate these aspects in their proper perspective which has resulted in it pronouncing of

the judgment of acquittal, as such the appeal deserves to be allowed.

10. Per contra, learned counsel for the respondent in his argument submitted that the relationship between the parties and the death of the deceased, which was in the house of the accused and the deceased, was homicidal are not in dispute. He submitted that, however, when entire case of the prosecution is based on circumstantial evidence, all the links in the chain of circumstances is required to be established by the prosecution. However, in the instant case, the prosecution has failed to establish the same, as such, the very last seen theory would not come to the help of the prosecution. Thus, the Sessions Judge's Court has rightly given the benefit of doubt to the accused and acquitted her of the alleged offence, which does not warrant any interference at the hands of this Court.

In support of his contention learned counsel also relied upon judgment of the Hon'ble Apex Court in ***Shivaji Chintappa Patil -vs- State of Maharashtra***, reported in ***AIR 2021 SC 1249***, which shall be referred to at the relevant stage hereinafterwards.

11. After hearing the learned counsels from both side, the points that arise for our consideration in this appeal are:

*1) Whether the prosecution has proved beyond reasonable doubt that on the date 29.07.2013 at about 11.30 p.m., in her house at Marasinganahalli village within the limits of complainant-Police Station the accused committed the murder of her husband, Mahadevaswamy by assaulting him with the chopper and inflicting injuries upon him and thereby has caused an offence punishable under Section 302 of IPC?*

*2) Whether the impugned judgment warrants interference at the hands of this Court?*

12. Before proceeding further in analysing the evidence laid in the matter, it is to be borne in mind that it is an appeal against the judgment of acquittal of the accused from the alleged offence punishable under Section 302 of IPC. Therefore, the accused has primarily the double benefit. Firstly, the presumption under law that, unless the guilt is proved, the accused has to be treated as innocent in the alleged crime. Secondly, the accused is already enjoying the benefit of judgment of acquittal



passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

(a) Our Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -vs- State of Karnataka***, reported in ***(2007) 4 Supreme Court Cases 415***, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph 42(4) and paragraph 42(5) as below:

*" 42(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.*

*42(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."*

(b) In the case of ***Sudershan Kumar -vs- State of Himachal Pradesh*** reported in **(2014) 15 Supreme Court Cases 666**, while referring to ***Chandrappa's case (supra)***, the Hon'ble Apex Court at Paragraph 31 of its Judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of ***Jafarudheen and others -vs- State of Kerala***, reported in **(2022) 8 Supreme Court Cases 440**, at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

" 25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in

*favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”*

The above principle laid down by it in its previous case was reaffirmed by the Hon'ble Apex Court, in the case of ***Ravi Sharma -vs- State (Government of NCT of Delhi) and another*** reported in ***(2022) 8 Supreme Court Cases 536.***

It is keeping in mind the above principles laid down by the Hon'ble Apex Court, we proceed to analyse the evidence placed in this matter.

13. The relationship between the deceased Mahadevaswamy with the accused Smt.Bhramaramba that they were husband and wife respectively and were residing in a house at Marasinganahalli village, Mandya Taluk, within the limits of complainant-Police Station, is not in dispute. Majority of the prosecution witnesses examined in the matter, including PW-1 (CW-5) Sri. Shivabasappa, PW-2 (CW-6) Sri.Papanna, PW-3 (CW-8) Sri.Naganna,

PW-4 (CW-9) Sri.Siddappa, PW-5 (CW-10) Smt.Pavithra, PW-6 (CW-7) Sri.Nataraju, PW-7 (CW-11) Sri.M.J. Nagaraju, PW-8 (CW-12) Sri.M.C. Puttegowda and PW-11 (CW-20) Sri.M.C. Thimmedgowda, have in their evidence stated that the said relationship between the deceased and the accused as husband and wife and they residing together in their house at Marasinganahalli village. The evidence of all these witnesses on the said point has not been denied from the accused side in their cross-examination. Hence, the relationship between the deceased and the accused that the accused is the wife of the deceased Mahadevaswamy stands established.

14. All the above witnesses who have stated about the relationship between the deceased and the accused have also stated that the said Mahadevaswamy is dead in his house. The said evidence also has remained undenied and undisputed. According to the prosecution case, deceased Mahadevaswamy died on the night of the date 29.07.2013, however, his death came to be revealed only in the morning of 31.07.2013. The evidence of PWs-1, 2, 3, 6 and 11 and more particularly, the evidence of PW-12 the

complainant, has come out to that effect, which has not been specifically denied from the accused side.

15. PW-12 - Manju, the younger brother of the deceased, in his evidence has stated that, on the date 26.07.2013, he had been to a place called Koppa to purchase cattle. Somebody telephoned to him on the date 31.07.2013, informing him that his brother Mahadevaswamy is dead in his house. Immediately he came to Marasinganahalli and visited his brother's house. He found the dead body of his brother with injuries and lying in a pool of blood. Having seen the dead body of his brother he fell unconscious. When he regained conscious, the police took his signature on the complaint, which this witness has identified as Ex.P-29. He also stated that the police took his signature on Ex.P-3, however, he is not aware as to what is written in them.

Since, according to the prosecution, the accused, who is his sister-in-law, has confessed her alleged guilt of killing her husband, before this witness and this witness did not speak anything about the same, the witness was treated as hostile. At the request of the prosecution, the

prosecution was permitted to cross examine him. However, no further support could be gathered from the evidence of this witness by the prosecution. Thus, the evidence of this witness would go to show that, for the first time, he came to know about the death of his brother Mahadevaswamy only on 31.07.2013.

16. PW-11 (CW-20) M.C.Thimmegowda, apart from stating that he has seen the dead body of the deceased Mahadevaswamy and identifying the dead body and photographs at Exs.P-21 to P-28, has also stated that the inquest panchanama at Ex.P-1 bears his signature at Ex.P-1(b). However, he has stated that he does not know the contents of the said document. Even after treating him hostile, the prosecution could not get any support from him.

17. PW-1 (CW-5) Shivabasappa, though has stated that when he had been to the house of deceased Mahadevaswamy after hearing about the death of said Mahadevaswamy, the police had visited the place and drew a mahazar, however, the witness stated that, his signature

to Ex.P-1 was obtained by the police at the time of postmortem examination of the dead body. This witness was not cross-examined from the accused side. Thus, his signature on the inquest panchanama has not been denied. However, according to the witness, he had put his signature to Ex.P-1 at the time of postmortem examination. Therefore, the evidence of this witness also would not be of greater help to prove the drawing of inquest panchanama in the matter.

18. PW-20 (CW-34) N.C.Nagegowda, the Investigating Officer, in his evidence has stated about he conducting inquest panchanama as per Ex.P-1 in the presence of panchas on the dead body of deceased Mahadevaswamy. The said statement of this witness has not been specifically denied in his cross-examination.

The said inquest panchanama at Ex.P-1 mentions that the dead body of deceased Mahadevaswamy was for the first time noticed by one Sri Nataraju, son of Basappa, the uncle of the deceased, in the house of Mahadevaswamy beneath a cot on the date 31.07.2013, at

about 5.45 a.m. Said Sri Nataraju, son of Basappa, was examined as PW-6 (CW-7). He stated that he has seen the dead body of the deceased in the house of the deceased and the dead body was naked, however, he has not stated on which day and at what time, he saw the dead body of the deceased.

The inquest panchanama at Ex.P-1 also mentions that the deceased was lastly seen at about 7.30 p.m. on 29.07.2013 by one Smt.Nanjammanni, the mother of the deceased. However, said Nanjammanni who was examined as PW-16 (CW-2) though has stated that deceased was her son, however, denied a suggestion that she had lastly seen the deceased on 29.07.2013, at 7.30 p.m.

Thus, the evidence of these witnesses, including inquest panchanama at Ex.P-1, is not able to show the exact date and time of death of the deceased. Therefore, the only source to ascertain the date and time of death of the deceased would be the postmortem examination.



19. PW-15 (CW-25) Dr.Ashwin, Asst.Professor of Forensic Medicine, MIMS, Mandya, has stated about he conducting the post-mortem examination on the dead body of deceased Mahadevaswamy on 31.07.2013. Apart from observing the condition of the dead body, including the injuries found on it, the witness has also noticed the passing of rigor mortis in lower limbs. He has opined that time since death of the deceased was between 36 hours to 40 hours prior to postmortem examination. He has identified the Postmortem Report given by him at Ex.P-33.

The said document shows that the postmortem was conducted on 31.07.2013 between 4.15 p.m. to 6.15 p.m. Thus, by virtue of the time since death as shown 36 hours to 40 hours prior to postmortem examination, the possible time of death that has to be ascertained in the matter would be between the evening of 29.07.2013 to morning of 30.07.2013. The said time matches the timing of alleged death of Mahadevaswamy as alleged in the charge sheet. As such, the death of Mahadevaswamy, the

place of his death and date and time of his death stands established.

20. The next question would be the nature of death of Mahadevaswamy as to whether it is homicidal. The complaint at Ex.P-29, which as stated by PW-12 (CW-1) Manjunath, the complainant, was signed by him after mentioning that the dead body of the deceased was found in a pool of blood beneath the cot in the house of the accused and was found sustaining multiple injuries on its head. It is further stated in the complaint that the death of the deceased was murder by inflicting injuries using a chopper (machchu). Thus, at the very first instance, the information given to the police about the death of the deceased was as a murder. Though PW-12, the complainant, in his evidence has stated that he does not know as to what was written in the complaint, however, he himself has stated that when he saw the dead body of his brother Mahadevaswamy, he also noticed that his entire house was stained with blood and dead body was found with multiple injuries.

The inquest panchanama at Ex.P-1 opines that the nature of death of the deceased was homicidal, however, it has kept open the final conclusion to the postmortem examination report.

21. PW-1 (CW-5) Shivabasappa, the uncle of the deceased, who has stated that he has seen the dead body of the deceased, has opined the death as a murder. PW-3 (CW-8) Naganna, PW-6 (CW-7) Nataraju, PW-13 (CW-16) Rajamma, PW-14 (CW-17) Gurusiddaiah, who were all the relatives of the deceased and PW-16 (CW-2) Nanjammanni, the mother of the deceased, have stated that they have seen the dead body of the deceased, however, none of them have stated the nature of death of the deceased. As already observed, both PW-1 and PW-11, panchas to the inquest panchanama, have not supported the case of the prosecution about drawing the inquest panchanama as per Ex.P-1. In the said circumstances, the only other evidence which can speak about the nature of death of the deceased is the evidence of PW-15 (CW-25) Dr.Ashwin, the doctor who conducted

the autopsy on the body of the deceased and the Post-mortem Examination Report said to have been issued by him at Ex.P-33.

22. PW-15 Dr.Ashwin, has stated that when he conducted autopsy on the dead body of the deceased Mahadevaswamy on 31.07.2013, he noticed the following external injuries

*" 1. Presence of Chop wound 6 cms x 3 cm x bone deep transversely over the right eyebrow. Margin of the wound was sharp with bruising of underlying structures.*

*2. Presence of Chop wound 7 cms x 3 cms x muscle deep obliquely over the outer and lower part of right eye. Margins of the wound was sharp with extravasation of blood.*

*3. Presence of Chop wound 6 cms x 3 cms x bone deep obliquely over the right side of forehead, margins were sharp with undermined lower edge and bruising of tissues.*

*4. Presence of Chop wound 6 cms x 3 cms x muscle deep 4 cms below injuries No.2 on right side of face, margins were sharp with bruising of underlying structures.*

5. Presence of Chop wound 7 cms x 3 cms x mandible deep transversely the chin with undermined lower border and bruised underlying structures.

6. Presence of Chop wound 7 cms x 3 cms x neck deep over the lower and lateral aspect of right side of neck transversely 6 cms below the right angle of mandible, margins of the wound were sharp with bruising of underlying structures. On dissecting the neck strap muscles of neck was cut lacerated irregularly along with jugular vein and carotid artery on right side.

7. Presence of Chop wound 6 cms x 3 cms neck deep 4 cms below injury No.6. Margins of the wound were sharp with extravasation of blood all over the neck structures with cut lacerated belly of sternocleido mastoid muscle and blood vessels.

8. Presence of Chop wound 5 cms x 3 cm x bone deep transversely over the chin, margins of wound were sharp.

9. Presence of Multiple (8) chop wounds varying in dimensions of about 8 cms x 3 cms x neck muscle deep transversely over the right side of the neck. Toe of the chop injuries are towards midline, heel of the chop wounds are positioned laterly with merged margins and criss-crossing of the injuries.

10. *Presence of Multiple chop wounds (4) in number obliquely over the posterior aspect of right ear with sharp margins and extravasation of blood.*

11. *Presence of Multiple chop injuries (6) in number obliquely one below the other over the right side of back of head measuring 7 cm x 3 cm x bone deep margins are sharp with bruising of tissues. On dissecting the injuries, vault of skull over right occipital bone shows indentation marks of the weapon.*

12. *Right ear chopped off irregularly.*

13. *Presence of Chop wound 7 cm x 3 cm x bone deep vertically over the top of head, margins were sharp with extravasation of blood.*

14. *Right shoulder joint shows a contused abrasion over an area of 12 cm x 8 cms, bright red in colour.*

15. *Presence of Chop wound 4 cm x 3 cm x subcutaneous tissue deep over nape of neck, transversely. Margins were sharp with extravasation of blood in the surrounding tissues."*

After dissecting the dead body and upon his examination, the witness has opined that the death was due to shock and haemorrhage as a result of multiple sharp wounds. However, he sent blood and viscera to

Forensic Science Laboratory for qualitative and quantitative analysis of any volatile poisons like alcohol. In this regard, he has identified the Post-mortem Examination Report issued by him at Ex.P-33. After securing the Forensic Science Laboratory Report at Ex.P-36 and going through the said report, he furnished his further opinion as per Ex.P-37, along with brief facts of the case, marked at Ex.P-38.

23. In his further opinion in Exs.P-37 and P-38, he has stated that the Forensic Science Laboratory Report has responded for the presence of alcohol in the viscera sent for its examination. He opined that the deceased was under the influence of alcohol and intoxicated with loss of co-ordination and restraint, combined with haemorrhagic shock. He was in no position to resist/fight back, thereby gives the explanation of multiple injuries on the deceased. He has opined that the cause of death being shock and haemorrhage, that is, external bleeding due to multiple chop injuries, he has opined that all those chop injuries were ante-mortem in nature.

The said opinion of the doctor regarding cause of death, which has not been seriously disputed from the accused side, would go to show that the death of deceased Mahadevaswamy was not just an unnatural death, but, it was homicidal. The analysis made above shows that the death of the deceased was homicidal in nature. Therefore, the next point to be considered is whether it was a murder and was committed by the accused and accused alone.

24. Admittedly, the case of the prosecution is based on the circumstantial evidence. As such, all the links of the circumstantial evidence making it a chain has to be proved beyond reasonable doubt by the prosecution. Learned counsel for the accused in his argument submitted that in the case of circumstantial evidence, the prosecution should comply the golden principles that are laid down by the Hon'ble Apex Court in ***Shivaji Chintappa's case (supra)***,

In the said case, our Hon'ble Apex Court referring to its previous judgment in ***Shivaji Sahabrao Bobade -vs- State of Maharashtra***, reported in ***(1973) 2 SCC 793***,



was pleased to observe that, as indicated by it, the circumstance concerned "must or should" and not "may be" established. There is not only grammatical, but, a legal distinction between "may be proved" and "must be or should be proved".

It further observed that, as held by it in the case of ***Sharad Birdhichand Sarda -vs- State of Maharashtra***, reported in ***AIR 1984 SC 1622***, the following conditions must be fulfilled before a case against an accused can be said to be fully established in a case based upon circumstantial evidence. Those conditions are :

*(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established,*

*(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

*(iii) The circumstances should be of a conclusive nature and tendency,*

*(iv) They should exclude every possible hypothesis except the one to be proved, and*

*(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

With this, it held that the above five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence. It is keeping the above principles in mind, the evidence led by the prosecution for proving the alleged guilt against the accused is to be analysed.

25. It is the case of the prosecution that it was the accused being the wife of the deceased was residing with him in their house at Marasinganahalli. Further, it was the accused and accused alone who was lastly seen in the company of the deceased. Moreover, when the dead body was found by the others for the first time, the accused was also found in their same house and upon enquiry, has revealed that, it was she who has caused the death of her husband by inflicting injuries upon him. Thus, the

prosecution mainly relies upon the last seen theory and the alleged revelation about the incident by none else than the accused before the relatives and neighbours of the deceased. It is thereafter the prosecution has relied upon the alleged recovery of the weapon which is said to be the chopper at MO-4 at the instance of the accused and her blood stained clothes.

26. The argument of the learned Addl.State Public Prosecutor was also that, since it was the accused who was lastly seen in the company of the deceased immediately prior to his murder, the burden of proving the fact leading to the death of the deceased was especially within her knowledge. As such, under Section 106 of the Indian Evidence Act, 1872, it was for the accused to explain as to how the deceased died, in what manner and at whose act.

(a) In the case of ***Rajender Alias Rajesh Alias Raju -vs- State (NCT of Delhi)*** along with the connected matter reported in ***(2019) 10 Supreme Court cases 623***, the Hon'ble Apex Court with respect to Section 106 of the Indian Evidence Act, was pleased to observe that

Section 106 of the Evidence Act 1872, provides that the burden of proof of any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. It, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with

his/her innocence, the Court can consider his/her failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.

(b) Our Hon'ble Apex Court in the case of ***Shivaji Chintappa Patil's case (supra)***, was pleased to observe that, Section 106 of the Evidence Act does not directly operate against either a husband or a wife staying under the same roof and being last person seen with the deceased. Section 106 does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a *prima facie* case, that question arises of considering the facts of which burden of proof would lie upon the accused.

(c) In ***Trimukh Maroti Kirkan -vs- State of Maharashtra, reported in (2006) 10 SCC 681***, with respect to the 'last seen theory', more particularly, with respect to an offence like murder which is committed in secrecy inside a house, the Hon'ble Apex Court in paragraph 15 of its

judgment has observed that, where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

In paragraph 21 of the very same judgment, the Hon'ble Apex Court has observed that, in a case based on circumstantial evidence where no eye witnesses' account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating

circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

Further in the very same judgment in paragraph 22, the Hon'ble Apex Court was also pleased to observe that, where the accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

(d) In the case of ***Nizam and another -vs- State of Rajasthan***, reported in ***(2016) 1 Supreme Court cases 550***, with respect to 'last seen theory', the Hon'ble Apex Court

was pleased to observe in paragraph-14 of its judgment as below:

*"14. The Courts below convicted the appellants on the evidence of PWs 1 and 2 that the deceased was last seen alive with the appellants on 23-1-2001. Undoubtedly, the "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."*

(e) Referring to several of its previous judgments on the 'last seen theory', the Hon'ble Apex Court in the case of **Jabir and others -vs- State of Uttarakhand** reported in **2023 SCC OnLine SC 32**, was pleased to observe in paragraph 28 of its judgment that, it has been repeatedly emphasised by the Court that the "last seen" doctrine has limited application, where the time lag between the time



the deceased was seen last with the accused, and the time of murder, is narrow; furthermore, the court should not convict an accused only on the basis of the "last seen" circumstance.

27. In the case on hand, even though the prosecution has examined PW-16 Nanjammanni, the mother of the deceased, as the one who has lastly seen her son Mahadevaswamy, the deceased, prior to alleged death, however, as already observed, has not supported the case of the prosecution in that regard. She has turned hostile to the case of the prosecution and was permitted to be cross-examined, however, the prosecution could not get any support from her on the point of last seen theory. Even though PW-1 (CW-5) Shivabasappa, PW-2 (CW-6) Papanna, PW-3 (CW-8) Naganna, PW-8 (CW-12) M.C.Puttegowda, PW-11 (CW-20) M.C.Thimmegowda, PW-12 (CW-1) Manju and PW-16 (CW-2) Nanjammanni, have in their evidence stated that the deceased and the accused were husband and wife and that they were residing in their house at Marasinganahalli, however, none

of those witnesses have stated that accused was lastly found in the company of the deceased prior to his death. Accordingly, these witnesses have stated that, being the husband and wife, the deceased and accused were staying together in a single house. By that itself, it cannot be concluded that, just prior to his death, the deceased was found lastly in the company of the accused.

28. No doubt, the prosecution has made an attempt to show that when PW-1, PW-3, PW-6, PW-7, PW-12, PW-13, PW-14 and PW-16 went to the house of the deceased to see the dead body, they also found the accused in the same house, however, none of these witnesses have supported the case of the prosecution that they found the accused in the house of the deceased when they went to see the deceased after knowing about his death. Even if it is assumed that when these witnesses went to the house of the deceased, they saw the accused there, but, admittedly, according to the prosecution, the alleged date of death of the deceased Mahadevaswamy was on the night of 29.07.2013, whereas, his death came to light only on 31.07.2013. Thus, even if these witnesses

had seen the accused with the dead body of Mahadevaswamy in their house on 31.07.2013, but, that would not lead to an inference that the deceased was lastly found in the company of the accused prior to his death on 29.07.2013. Therefore, the alleged last seen theory canvassed by the prosecution would not favour it in any manner.

29. It is the further case of the prosecution that the clothes of the deceased and the accused and also the chopper which is said to be the weapon used in inflicting the injuries upon the deceased were recovered at the instance of the accused.

PW-9 (CW-13) Salim, PW-10 (CW-15) Khaleel, PW-17 (CW-14) M.C.Naganna and PW-20 (CW-34) N.C.Nagegowda, the Investigating officer, were examined by the prosecution to prove the alleged recovery said to have been made at the instance of the accused.

30. PW-9 in his evidence has stated that, he knows the deceased and the accused. While police drew the panchanama as per Ex.P-10 in the house of the accused, M.C.Naganna (PW-17) and Khaleel (PW-10) were present.

The accused shown a chopper in her house. The witness stated that the covers containing MO-4, MO-5, MO-6, MO-7, MO-8 and MO-9 bears his signature. Those articles were given in the house of deceased Mahadevaswamy, however, the witness has stated that he does not know as to who gave those articles to the police. He also stated that he does not know whether those articles contain blood stains on them. He identified the photographs at Ex.P-11 to Ex.P-18 stating that he along with other two panchas, Police Inspector and accused were found in the said photograph. He specifically stated that he does not know that it was the accused who gave MO-4 to MO-9 to the police. Further stating that he has seen the spot with the blood stains and the pillow and bed with blood stains and stating that the photographs were taken at that time, the witness has identified those two photographs at Ex.P-19 and Ex.P-20.

Since this witness did not state that recovery of the alleged articles were made at the instance of the accused, he was treated as hostile and the prosecution was permitted to cross-examine him.

In his cross-examination, he specifically denied a suggestion that it was the accused who produced MO-4 to MO-9 in her house.

In his cross-examination from the accused side, he stated that he had been to the house of the deceased to see his dead body. Since the police who were there asked him to stand for a photograph, he stood for a photograph. He also stated that when he signed the mahazar, it was empty paper.

31. PW-10 (CW-15) Khaleel in his evidence has stated that the police had summoned him to the house of the deceased. After taking him inside the house, the police had taken the photographs. Stating so, the witness has identified the photographs at Ex.P-11 to Ex.P-20. Though he stated that he saw the blood stained pillow and blood stained bed in the said house, but, also stated that he does not know as to what happened to those articles. He specifically stated that he did not see MO-4 to MO-9 at that time in the house. He specifically stated that he does not know as to who gave those articles to the police.

Though he has identified his signature at Ex.P-10, he stated that he has put his signature outside the house.

He was cross-examined by the prosecution after treating him as hostile. However, in his cross-examination, he did not support the case of the prosecution and adhered to his original version. Thus, from the evidence of PW-9 and PW-10, the prosecution could not get any support.

32. PW-17 (CW-14) M.C.Naganna in his evidence has stated that police had taken him to the house of the accused, at which time, Salim (PW-9) and Khaleel (PW-10) were also present. The police took their photograph inside the house of the deceased. Stating so, the witness has identified the photographs at Exs.P-11 to P-20 as those photographs. He also stated that though he has seen the blood stained pillow and bed in the said house, however, he did not see the chopper at MO-4 and the clothes at MO-5 to MO-9. He does not know who gave those articles to the police, however, the police took their signature to some chits pasted to those articles after packing them. He also stated that police took his signature to the mahazar at Ex.P-10.

Since this witness did not speak about the alleged recovery at the instance of the accused of the weapon and the clothes, the witness was treated as hostile, however, in his cross-examination from the prosecution side, he did not support the case of the prosecution. On the other hand, he admitted a suggestion as true from the accused side that he has subscribed his signature to an empty mahazar. Thus, even from the evidence of PW-17 also, the prosecution could not get any support.

33. The last witness in the series of the alleged recovery at the instance of the accused is PW-20 (CW-34) N.C.Nagegowda, who is the Investigating Officer in this case. The said witness in his evidence has stated that after he arresting the accused, she gave her voluntary statement which he has recorded as per Ex.P-44. The accused also took them to her house in Marasinganahlli. He secured the panchas. The accused took out a chopper which was hidden in a vessel in a room in her house and produced the same before them. She took out a saree and blouse which were stained with blood from another room and produced the same before them. She also produced

the clothes worn by her husband from her house which were also stained with blood. He seized all those material objects and sealed them. The said chopper is at MO-4 and the clothes said to be of accused are at MO-5 and MO-6 and the clothes said to be of the deceased are at MO-7 to MO-9. Stating that he has prepared a panchanama in that regard, he has identified the said panchanama at Ex.P-10. He also stated that, at that time, he has taken the photographs while preparing the panchanama and he has identified them at Exs.P-11 to P-14, P-17 and P-18. After returning to the police station, he subjected those articles to the Property Form, which he has identified at Ex.P-45. Thus, it is only the Investigating Officer who speaks about the alleged recovery at the instance of the accused, but, not the evidence of any of the independent witnesses.

34. Learned Addl.State Public Prosecutor for the appellant in his argument submitting that the sole evidence of the Investigating Officer can be relied upon to believe the recovery made at the instance of the accused, has relied upon a judgment of Hon'ble Apex Court in



***Mallikarjun and others -vs- State of Karnataka***, reported in **(2019) 8 SCC 359**. In the said judgment, with respect to Section 27 of the Evidence Act, 1872, with regard to proof of recovery of incriminating evidence, even when the pancha witnesses have turned hostile, the Hon'ble Apex Court in Paragraph-23 of its judgment was pleased to observe as below :

*" 23. .... There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the investigating officer can be relied upon to prove the recovery even when the panch witnesses turned hostile. In Rameshbhai Mohanbhai Koli v. State of Gujarat, (2011) 11 SCC 111, it was held as under: (SCC pp. 121-22, paras 33-35)*

*`33. In Modan Singh v. State of Rajasthan, (1978) 4 SCC 435, it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was*

*expressed in Mohd. Aslam v. State of Maharashtra, (2001) 9 SCC 362.*

*34. In Anter Singh v. State of Rajasthan, (2004) 10 SCC 657, it was further held that: (SCC p. 661, para 10)*

*'10. .... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.'*

*35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide Modan Singh case (supra), State of U.P. v. Krishna Gopal (1988) 4 SCC 302, and Anter Singh case (supra)).' "*

35. In the instant case, as observed above, the main independent witnesses for the alleged recovery of the weapon and the blood stained clothes who are PW-9, PW-10 and PW-17, have not supported the case of the prosecution even to a smallest extent. Even PW-20 - the Investigating

Officer also except stating in his evidence that the accused gave her voluntary statement before him as per Ex.P-44, has not specifically stated the contents of the said statement or at least its summary. The portion of the alleged statement of the accused marked at Ex.P-44 is shown to be in three pieces of the last sentence of the alleged voluntary statement of the accused. In a single sentence running into three printed lines, after omitting few words intermittently, the rest of the words in three groups are marked together as Ex.P-44. It is surprising as to how come the alleged voluntary statement of the accused was further dissected and few words alone were chosen and were marked together. This has created a different sentence, which even according to the prosecution, was not stated by the accused in her original style.

36. If at all a voluntary statement, which according to the Investigating Officer, has led in recovering some incriminating articles, the same is required to be marked as an exhibit, then, the entire sentence is to be taken and understood, but, few words in the sentence alone cannot be picked up and a new sentence cannot be formed

omitting the other words or phrases which are part of the very same sentence. Therefore, the evidence of the Investigating Officer alone is also not safe to believe in the instant case to hold that there was recovery of MO-4 to MO-9 at the instance of the accused. Thus, the prosecution could not able to establish the alleged recovery said to have been made at the instance of the accused.

37. According to the prosecution, the weapon at MO-4 was found stained with the human blood. In that regard, all the relevant witnesses who are PW-9, PW-10 and PW-17 have not supported the case of the prosecution, however, PW-20 - the Investigating Officer has stated in his evidence that on 26.08.2013, he sent the material objects to Forensic Science Laboratory examination. On 01.10.2013, he handed over the case file to PW-19 due to his transfer for further investigation. But, the deposition sheet in the trial Court record does not show any witness as PW-19. However, two Police Officers, one by name Lokesh (CW-35) and another by name Anandegowda (CW-33), both are shown as examined as PW-18, still,

neither of them have stated about they taking up further investigation in this matter from PW-20 (CW-34).

38. PW-18 (CW-33) Anandegowda, then Police Sub-Inspector of complainant-Police Station is the first Police Officer who received the complaint as per Ex.P-29 and submitted FIR to the Court. After drawing of scene of offence panchanama as per Ex.P-3, he handed over further investigation to Circle Police Inspector Sri N.C.Nagegowda (PW-20/CW-34).

39. PW-18 (CW-35) Lokesh, then Circle Police Inspector of Mandya Rural Police Station, has stated that he took up further investigation in this matter from CW-33 Anandegowda and after completing investigation, has filed charge sheet in the Court. However, he too has not stated about either he taking up investigation from PW-20 (CW-34) N.C.Nagegowda or handing over further investigation to him. Thus, the evidence of PW-20 that he handed over further investigation to PW-19 remains as an unclear statement.

40. Despite some discrepancy in the evidence of PW-18 (two witnesses) and PW-20-the Investigating Officer, regarding taking up and handing over of the investigation, still, if the evidence of PW-18 (CW-35) Lokesh is looked into, the said witness has stated that on 11.11.2013, he received Forensic Science Laboratory reports as per Ex.P-36 and Ex.P-41. Ex.P-36 is the Forensic Science Laboratory report with respect to the examination of viscera. After examining the same, it has opined that the presence of ethyl alcohol was found in the stomach and its contents and portion of liver and blood. Ex.P-41 is the Forensic Science Laboratory report with respect to the other articles including, bed sheet, pillow, cement scrappings, chopper (machchu), saree, blouse, shirt, underwear and panche etc., said to have been sent for its examination. The Forensic Science Experts have opined that the alleged clothes of the deceased, accused as well the chopper were found stained with human blood of 'AB' group. However, there is no evidence about the blood group of the deceased.

41. In addition to these, the case of the prosecution was that the deceased had removed all his clothes and had slept in his house when the accused is said to have inflicted injuries upon him. If that were to be the case, then, it is not known how come the clothes of the deceased get blood stains upon them.

42. Thus, when the alleged recovery of the articles from MO-4 to MO-9 at the alleged instance of the accused itself is not proved by the prosecution, the mere Forensic Science Laboratory report noticing the presence of the blood stains on them would not take the case of the prosecution further and enable this Court to hold that it was the accused who has caused the death of her husband i.e., the deceased. Therefore, the alleged recovery said to have been made in the case and the articles alleged to have been recovered at the alleged instance of the accused also would not help the prosecution in proving the alleged guilt of the accused. In that background, the opinion of PW-15 - the Doctor, upon the weapon that injury Nos.1 to 15 mentioned in the

post-mortem report at Ex.P-33 could be caused by the chopper at MO-4, would not help the prosecution.

43. Regarding the motive behind the alleged crime, none of the prosecution witnesses have specifically stated in their evidence. Even though PW-3, the uncle of the deceased in his evidence has stated that the deceased was in the habit of consuming liquor and was subjecting his wife i.e., the accused, to cruelty and in which regard, they have advised him to mend his ways, still, the said witness has not stated as to what was the cause for the homicidal death of the deceased. Except him, no other witnesses have spoken anything about the alleged drinking habit of the deceased. Even PW-6, the uncle of the deceased, PW-12, the younger brother of the deceased and PW-16, the mother of the deceased, also have not spoken anything about the alleged motive behind the alleged crime. Several other witnesses, including PW-1, PW-2, PW-4 and PW-5 who were shown to be the neighbours of the deceased and localites, they have also not spoken anything about the drinking habit of the deceased and deceased subjecting



his wife to cruelty. Therefore, the motive canvassed by the prosecution also could not be proved by it.

44. The defence of the accused is that, as on the date of the alleged commission of the crime, she was not in her house where the deceased was found dead. In that regard, a suggestion was made to PW-12, the younger brother of the deceased in his cross-examination from the accused side suggesting that the accused was residing with her sister in her house since three months prior to the death of the deceased and it was only after the police came, the accused was summoned from her sister's house from Muguru. The witness has admitted those suggestions as true. It was also suggested to the witness that the deceased while under the influence of liquor was quarrelling with everyone and used to fight with them. He was also misbehaving with women in the village, in which regard, several villagers were complaining. The witness has admitted the said suggestion also as true.

45. PW-13, the elder sister of the accused and PW-14, the husband of PW-13, in their evidence have stated that the deceased under the influence of liquor was

frequently assaulting his wife and on all those occasions, the accused was coming to their house. Both of them have stated that due to the ill-treatment meted to her by her husband, the accused had left the company of her husband and was residing with them (PW-13 and PW-14).

Since their evidence was not in consonance with their alleged statement under Section 161 of Cr.P.C., both these witnesses were treated as hostile and the prosecution was permitted to cross-examine them. However, in their cross-examination, the prosecution could not get any support from them. Still, when the evidence of PW-13 and PW-14 is carefully perused, it is noticed that, even though these two witnesses have stated that the accused had sustained fractured injury on her arm and was staying in their house, however, no medical record in that regard has been placed by them. Further, both PW-13 and PW-14 have stated that, after hearing about the incident of death of the deceased, both of them went to the house of the deceased at Marasinganahalli. However, neither of them have stated that while going to Marasinganahalli, they had taken accused also with them. Had really the accused was

residing with them, definitely PW-13 and PW-14 would have taken her also to the house of the deceased at Marasinganahalli since the deceased was none else than the husband of the accused. Therefore, the defence of *alibi* taken by the accused does not stand proved.

46. The above analysis of the evidence leads to several of the doubts in the case of the prosecution. Even though the date, time and place of death of the deceased Mahadevaswamy stands proved by the prosecution, so also, the nature of death of Mahadevaswamy is also proved as homicidal, however, several of the doubts crept in the case of the prosecution about the involvement of the accused in the homicidal death of the deceased Mahadevaswamy had left several of the gaps in the chain of circumstances. Since the prosecution case was solely based upon circumstantial evidence, every link in the chain of circumstances ought to have been proved by the prosecution. Since all the links could not be proved by the prosecution with gaps in them and also since several doubts have arisen in the case of the prosecution, as analysed above, the benefit of doubt has to be necessarily

given to the accused. In such a circumstance, merely the alleged last seen theory itself cannot be taken as the sole criteria to hold the accused as guilty of the alleged offence.

47. Since it is analysing the evidence placed before it in its proper perspective, the Sessions Judge's Court has rightly acquitted the accused of the alleged offence, we do not find any reasons to interfere in it.

48. Accordingly, we proceed to pass the following:

**ORDER**

The Criminal Appeal stands ***dismissed*** as devoid of merits.

Registry to transmit a copy of this judgment along with Sessions Judge's Court records to the concerned Sessions Judge's Court without delay.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**