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Shivanna Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-23-2018

Judge : Ravi Malimath and K.Somashekar

Appeal No. : CRL.A 1331/2012

Appellant : Shivanna

Respondent : State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF FEBRUARY, 2018 PRESENT THE HONBLE MR.JUSTICE RAVI MALIMATH AND THE HONBLE MR.JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.1331 of 2012 BETWEEN: SHIVANNA S/O EREGOWDA, AGED ABOUT32YEARS, R/AT CHIKKAANAMANAHALLI VILLAGE, KANAKAPURA TALUK, RAMANAGARA DISTRICT. (BY SRI. A.H. BHAGAVAN, ADVOCATE AND SRI. A.N. RADHAKRISHNA, ADVOCATE) ... APPELLANT AND: STATE OF KARNATAKA, BY KANAKAPURA RURAL POLICE, REPRESENTED BY THE STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BENGALURU. (BY SRI. VIJAYA KUMAR MAJAGE, ADDITIONAL SPP) ... RESPONDENT --- 2 FAST PRESIDING OFFICER, THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE

ORDER

DATED1711.2012 PASSED BY THE TRACK COURT (SESSIONS), KANAKAPURA, RAMANAGARA DISTRICT IN S.C.No.25 OF2010- CONVICTING THE APPELLANT- ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION302OF IPC. AND THE APPELLANT-ACCUSED IS SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE AND FINE OF RS. 35,000-00 AND IN DEFAULT TO PAY FINE, HE HAS TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF1YEAR. THE DEFAULT SENTENCE SHALL RUN SEPARATELY AFTER THE EXPIRY OF MAIN SENTENCE. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT
ON0902.2018 COMING ON FOR PRONOUNCEMENT THIS DAY, K. SOMASHEKAR J., DELIVERED THE FOLLOWING:

JUDGMENT
This appeal is directed against the impugned judgment of conviction and order of sentence passed by the Presiding Officer, Fast Track Court (Sessions), Kanakapura, Ramanagara District in S.C. No.25 of 2010 dated 17.11.2012 convicting the appellant and sentencing him to undergo imprisonment for life and to pay a fine of Rs.35,000/- for the offences under Section 302 IPC and in 3 default to pay fine amount, to undergo simple imprisonment for a period of one year.

2. The brief facts of the prosecution case are as under: On 16.08.2009 at about 6.00 p.m., one Krishna had been to Guttalahunase village to bring his sister and her two daughters to his village. Since his sister was preoccupied with some work, she had sent her two daughters along with Krishna. Hence, Krishna, Sampritha aged 8 years and Rakshitha aged 6 years had taken a town bus from Guttalahunase village and had alighted at Haanamanahalli village at about 6.30 p.m. When the three of them were proceeding to their house which was a mile away, they had seen one Shivanna sitting in front of Byrammas courtyard. Suddenly the accused Shivanna is said to have started chasing Krishna at the instigation of Accused No.2 and assaulted him with an iron chopper on the left side of his neck, shoulder and so also on other parts of his body and caused grievous

injury and thereby 4 committed the murder of Krishna. It is alleged that the accused carried a previous enmity with the deceased Krishna in connection with he having caused grievous injury to Shivanna's mother Honnamma, while committing theft in the house of his mother about a year back.

3. In pursuance of the act of the accused, on filing of a complaint by the complainant, the crime came to be registered for the offences under Sections 302 and 114 of IPC. The Investigating Officer who had taken up the case for investigation, laid the charge sheet against the accused before the committal Court. The Trial Court had framed charges against the first accused under Section 302 of IPC and charges under Section 114 IPC had been framed against accused no.2 where the accused had pleaded not guilty but claimed to be tried. Subsequently, in order to substantiate the case of the accused, the prosecution in all examined witnesses P.W.1 to P.W.17 and got marked several documents as Exhibits P.1 to P.11 apart from marking material objects MO-1 to MO-11. Subsequently, 5 the incriminating statement under Section 313 Cr.P.C. was recorded by the Trial Court where the accused had denied the truth of the prosecution evidence adduced so far and did not come forward to adduce any defence evidence as contemplated under law. The Trial Court on hearing the arguments advanced by the prosecution and the learned counsel for the accused and on evaluating the entire evidence placed by the prosecution, had opined that the prosecution had proved the guilt of the first accused beyond all reasonable doubt and convicted accused No.1 for offences under Section 302 IPC and acquitted Accused No.2 for offences under Section 114 read with Section 302 IPC. Hence, the accused No.1 - appellant has filed the present appeal challenging the judgment of the Trial Court, urging various grounds.

4. Heard the learned counsel for the appellant and the learned Additional State Public Prosecutor for the State. 6 5. In view of these, the points that arise for consideration in this appeal are, i. Whether the judgment of conviction and sentence held against the accused Shivanna for offences under Section 302 IPC is justifiable in law?. ii. Has Shivanna murdered the deceased Krishna by assaulting him with an iron chopper?.

6. Learned counsel for the appellant has taken us through the evidence placed by the prosecution in order to prove the guilt of the accused that he has committed the murder of Krishna. The learned counsel submits that the Trial Court had erred in convicting the accused placing reliance on the evidence of P.W.1 Gavigowda and P.W.2 Smt. Shivamma, who are parents of the deceased Krishna, they being just the hearsay witnesses and not eye- witnesses to the occurrence. The complaint Exhibit P-1 had been lodged by PW-1 Gavigowda as per the say of PW-7 Sampritha, whereas he did not have any personal knowledge of the incident. Moreover, they being the 7 parents of the deceased, they are highly interested witnesses, whose evidence ought not to have been relied upon by the prosecution to convict the accused. It is the further contention of the learned counsel that the evidence regarding the motive of the crime put forth in the charge and in the evidence of PW-1 Gavigowda are quite contra with each other. In that, according to the charge, the case put forth is that one year prior to the incident, the deceased committed theft in the house of Shivanna and was caught and in that regard the deceased had assaulted the appellant's mother Honnamma. Whereas according to the evidence of PW-1, the motive put forth is that previously, there was a quarrel between the mother of the accused and the deceased regarding rearing of oxen as a result of which the accused was waiting for an opportunity to take vengeance on Krishna, and had utilized the said opportunity.

7. The further contention is that though PW-1 Gavigowda had filed the complaint, the same was not 8 written by Gavigowda since he was an illiterate and it was his brother-in-law Sivaraju who had drafted the complaint for him. Since the complaint was not written by PW-1, it is very difficult to believe that his averments were only drafted in the complaint by the said Sivaraju. Hence, it was necessary for the court to have examined Sivaraju as a witness in order to prove its authentication. However, the same has not been done. This is clearly a flaw committed by the prosecution. It is further contended that the first statement given by PW-7 - Sampritha, the child witness revealed that when herself, her sister Rakshita and her maternal uncle Krishna came near Byramma's house, after seeing them, the accused had abused them and threw a sickle towards them but Krishna escaped from the same. As soon as the said incident happened, the two children ran to their grandparents PW-1 and PW-2 and had informed about this incident. When

the first statement of Sampritha is to the above effect, PW-1 had filed the complaint on the contrary 9 saying that the children had told him that the accused assaulted the deceased in the irrigated land situated by the side of the road. Though the incident had occurred on 16.08.2009, the further statement of PW-7 to the extent that if she were an eye-witness to the occurrence, has been belatedly recorded on 7.11.2009. The incident occurred when she was 8 years of age and when she gave evidence before court in the year 2011, she was aged 10 years. The court below has convicted the accused only based upon her ocular evidence and the entire case is based upon this child witness. When there was no other evidence to support the said child evidence, the court below committed a serious error in convicting the accused wholly based on her evidence which was clearly tutored evidence, particularly when the appellant had no motive or intention to murder the deceased. On 16.08.2009 at about 6.30 p.m. the accused is said to have chased deceased Krishna and assaulted him 10 by means of a chopper in the irrigated land which is the scene of crime. The prosecution has placed reliance on interested witnesses to substantiate the case against the accused. It is based upon the evidence of these interested witnesses that the Trial Court has held conviction without appreciating the evidence in a proper perspective. Therefore, the entire evidence on record needs to be re- appreciated, as the prosecution did not establish the guilt of the accused or his motive or intention to cause the death of the deceased. On all these grounds urged by the learned counsel for the appellant, he seeks for allowing the appeal by setting aside the impugned judgment of conviction and sentence held against the accused in S.C. No.25 of 2010 dated 17.11.2010.

8. Per contra, the learned Additional State Public Prosecutor has taken us through the evidence of the prosecution adduced so far in order to prove the guilt of the accused. The prosecution has mainly relied on the evidence of P.W.7, the child witness who had accompanied 11 her maternal uncle at the time of the incident. P.W.7 has stated in detail in her evidence that she was accompanied by her sister Rakshitha and both of them had gone along with their maternal uncle Krishna on 16.08.2009 at about 6.00 p.m. When the accused was sitting at Byranna's front yard, all three of them were allegedly alighting from the bus. After alighting from the bus, herself, Rakshitha and her maternal uncle Krishna had proceeded by

walk. Suddenly the said Shivanna had started chasing their maternal uncle Krishna, who started running towards the irrigated land. The said Shivanna was chasing Krishna carrying an iron chopper (betta kudlu). At a point Krishna is said to have fallen down, after which the accused Shivanna is said to have assaulted him on the back of his neck and even on the right ear and shoulder. P.W-7 - Sampritha and her sister Rakshitha had run away from there to the house of their grand parents, to inform about the same to them. P.W-7 had then told her grandfather that Shivanna had assaulted her maternal uncle by chasing him. P.W-7 Sampritha who is aged about 10 years being a 12 child witness, was secured to the Court. She has stated in her evidence in conformity with the complaint at Exhibit P- 1. Though she had been subjected to cross-examination, nothing worthwhile has been elicited by the defence counsel for the accused. In her evidence she has told that just before the death of her maternal uncle Krishna, herself and her younger sister Rakshitha had accompanied their maternal uncle and had alighted from a bus and were proceeding by walk, when Shivanna started chasing her uncle. The evidence of P.W-7 is corroborated with the evidence of P.W-1 and PW-2 and so also the allegations made in the complaint as per Ex.P.1. Therefore, her evidence clearly reveals that accused No.1 Shivanna is said to have committed the murder of the deceased Krishna by assaulting him by means of M.O-1 iron chopper. P.W-15 being the doctor, who conducted autopsy over the dead body and issued post-mortem report as per Ex.P-9 has indicated injuries which were inflicted over the person of the deceased, such as cut injury extending from 13 left ear pinna to occipital region measuring 12 cms length, 5 cms depth and 4 cms in width. and the bone was fractured. The doctor has opined that the cause of death could be due to intracranical hemorrahage spinal card injury as a result of head injury. Nothing has been elicited in the cross-examination totally to disbelieve the evidence of P.W.15 and as well as to ignore the contents mentioned in Ex.P.9. P.W-5, the panch witness who has been examined by the defence counsel has also deposed regarding the wounds found on the deceased which corroborates with Exhibit P-9. Therefore, the evidence for the prosecution is corroborative with each other in order to substantiate the case against the accused. P.W-7 has stated in her evidence that the injury inflicted to the deceased is on the right ear which is only a minor discrepancy which cannot go in the way of

the root of the prosecution, in view of the clear medical evidence relating to the injuries inflicted over the person of the deceased in respect of which the doctor has issued post mortem report as per Ex.P-9. 14 P.W-17 is the Investigating Officer who has investigated the case and laid the charge sheet against the accused. During the course of investigation, he has recorded the voluntary statement of the accused as per Ex.P-11. It is based upon his voluntary statement that M.O-1 iron chopper has been seized by conducting a mahazar. The said M.O-1 iron chopper has been sent to Forensic Science Laboratory and has been subjected to examination and an FSL report is secured. The said M.O-1 is said to have been hidden by the accused in a bamboo bush in the house of one Thimmamma, from where it was recovered. Ex.P.7 is the map of scene of crime. It bears the signature of P.W.11 and the signature of P.W.17. The map of scene of crime indicates the description where the dead body was lying. The learned Additional SPP submits that the Trial Judge has appreciated the evidence on record in a proper perspective and he has rightly come to the conclusion that the prosecution has proved the guilt of the accused beyond 15 all reasonable doubt. The evidence of P.W.7 being a child witness has been corroborated with the evidence of P.W.1 and P.W.2 and also the motive is said to be that there was an enmity between the accused and the deceased. Therefore, the accused with an object of eliminating the deceased, is said to have assaulted him by means of an iron chopper and caused his death. It is very much clear on the part of the prosecution that the accused had an intention to murder the deceased Krishna. Hence, the Trial Court has rightly held conviction against the accused and the impugned judgment of conviction and sentence passed by the Trial Court for the offence punishable under Section 302 IPC, does not call for any interference by this court. Consequently, the learned Additional State Public Prosecutor for the State seeks for dismissal of the appeal by confirming the impugned judgment of conviction and sentence held against the accused.

9. On hearing the learned counsel for the appellant as well as the learned Additional SPP for the State, it is 16 relevant to state that the evidence of P.W-7 being a child witness, is the vital evidence for the prosecution in order to substantiate the case against the accused. PW-7 has stated that on 16.08.2009 at about 6.30 p.m., her maternal uncle namely Krishna had brought herself and

Rakshitha from Guttalahunase village to Haanamanahalli village, where they had alighted the bus. At that time, the accused was sitting on the front yard of one Byramma. While the three of them were proceeding to their house which was a mile away, by the time on seeing her maternal uncle Krishna, the accused Shivanna started chasing him. Krishna who was running, had suddenly fallen on the irrigated land. By the time the accused is said to have assaulted him with means of M.O-1 iron chopper on the back of his neck and on the right ear as well as on his shoulder. Subsequent to the assault over the person of the deceased, Shivanna had sped away from that place. Subsequently, Sampritha and Rakshitha had run towards the house of their grandparents and informed their grandfather that the accused Shivanna had assaulted 17 their maternal uncle Krishna. By the time they reached the scene of crime that her maternal uncle had died. In the cross-examination of PW-7, it is elicited that she had been brought by her grandfather to the Court in order to give evidence. But she has denied the suggestion made to her that at the instance of her grandfather she has given false evidence. And also denied that she has not seen the incident directly. The house of Byramma is surrounded by many houses. At the time of the incident, namely around 6.30 p.m., that there was movement of people and also people were present in front of their houses. But she could not say who were present and who were not present. She had stated that about half an hour was required to reach the house of her grandfather from the scene of crime, but however, she could not specifically say the neighbouring houses which were situated nearby the house of her grandfather. It is further revealed that it had not become dark and many people were standing in front of their houses when both children were running to tell their grandparents. But she did not give information to 18 any of them regarding the murder of her maternal uncle by the accused Shivanna or she did not scream which had attracted the attention of any of the people surrounding the area. Her maternal uncle is said to have been holding her hand and lifting her sister Rakshitha when the accused started chasing him. But however the said Sampritha did not proceed towards her maternal uncle but had run away towards the house of her grandfather to inform the same. P.W.1 - Gavigowda who being the father of the deceased and also the author of the complaint has stated in his evidence that the accused also had a house opposite to him. Two years prior to the incident

there was an altercation relating to tethering of cattle between the mother of the accused Honnamma and Krishna, wherein deceased Krishna is said to have assaulted her. Therefore, there was an enmity which had developed between the accused Shivanna and the deceased, as a result of which they were not in good terms. His daughter was given in marriage to a person of Guttalahunesi village and his son 19 Krishna had proceeded to that village in order to bring his sister and also her daughters to Haanamanahalli village. Though his daughter did not come along with Krishna but however she had sent her two daughters namely Sampritha and Rakshitha along with him. When three of them alighted from the bus at about 6.30 or 7.00 p.m., Shivanna on seeing Krishna had started to chase Krishna and when Krishna fell down, the said Shivanna had assaulted him with an iron chopper (Betta kudlu). By the time his grand daughters had started running towards his house to inform him about the murder and both of them had come home screaming. On receipt of information from them, that himself and his wife had rushed to the place. By the time they reached the place his son Krishna was already dead. They saw that there were injuries inflicted on the neck portion of Krishna, nearby the ear, on his hands. Seeing him dead, they went screaming to Kanakapura police station and gave a complaint as per Exhibit P.1. 20 In the cross-examination of PW-1, it is elicited that his son Krishna picked up a quarrel with the mother of the first accused Honnamma, regarding tethering of cattle and also fielding of the cattle. His daughter namely, Savitha had been given in marriage to a person of Guttalahunase Village and was residing with her husband and children in the said place. His son Krishna along with his two grand daughters namely Sampritha and Rakshitha had alighted from the bus. While they were returning to their house by walk, Shivanna had seen them. The said fact has been told by his grand daughters. But PW-1 had not seen Shivanna personally. He did not say this content in his complaint. He did not remember whether he saw the accused Shivanna coming to his house in a motor bike carrying an iron chopper. The dead body of his son Krishna was lying on the irrigated land. Though there were many people nearby, nobody had witnessed the said incident nor had they heard any screaming sound as per the complaint filed before the police. On receipt of the complaint, the police had come to the scene of crime at 21 about 9.00 p.m. While he was in the police station for two hours, his brother-in-law had come to the

station on receiving information. He has denied the suggestion that though the accused did not commit any offence the complainant had filed falsely a complaint against the accused as there was criminal case which was registered against them in order to suit the purpose. P.W-2 Shivamma, who being the mother of Krishna has stated that the accused is said to have committed the murder of Krishna by means of an iron chopper and there were injuries sustained on the neck, head and ear as well as on the hands and that when they reached to the scene of crime, his son was lying dead. Further, that her grand daughters had come and informed about the death of their maternal uncle at around 6.30 p.m. On receipt of the information that herself and her husband had rushed to the scene of crime by reaching there within 10 minutes. By the time people had gathered around Krishnas dead body. Initially, about 20 people had gathered and thereafter around hundred. But she did not know the 22 names of the persons who were present there. The dead body was lying at the scene of crime in the irrigated land. She had denied the suggestion which had been made that the accused had not caused the death of her son Krishna. P.W.3 Prabhakar has stated in his evidence that deceased Krishna being his brother-in-law, his sister was given in marriage about one year back, that on a telephonic message from his sister-in-law he came to know about the murder of Krishna by Shivanna. On receiving information he went there and saw the dead body and noticed that there were injuries on the ear near by the mandible region and the dead body was lying on the irrigated land. He has given statement during the course of inquest held over the dead body. It is elicited in the cross-examination that he did not know to whom the land belonged and that the police had come to the scene of crime around 8.30 to 9.00 p.m. On the allegation that PW-3 was the cause for the death of the brother of the second accused, there was a criminal case filed against him also, but no charge sheet 23 has been laid against him. But the case has been proceeded against P.W.1 and P.W.2 being the in-laws of him. The injuries which were inflicted over the person of the deceased Krishna are cut injuries and not injuries of abrasion. There were injuries found in five to six places of the body. He did not know the panch witnesses who had been secured to conduct inquest over the dead body and he did not know the contents which were got written in the inquest mahazar. He had denied the suggestion that he was not present when the mahazar was recorded.

Further, he has denied that due to a previous enmity that in view of a case pending against PW-1 and PW-2, the said PW-1 had proceeded to file a false complaint against Shivanna, to suit the purpose. P.W.15 being the doctor, he has stated in his evidence that he held post-mortem over the dead body of Krishna and issued post-mortem report as per Exhibit P-9, which bears his signature. He had noticed the injuries which were inflicted over Krishna. On examining M.O-1 iron chopper, he had opined that if a person assaulted with 24 means of that chopper, then the injuries stated in Exhibit P-9 could be possible. PW-17 was the Investigating Officer who had investigated the case and laid a charge-sheet against the accused. During investigation, he recorded the voluntary statement of the accused as per Exhibit P-11 and conducted seizure mahazar as per Exhibit P-8 and under that mahazar, he had seized MO-1 Iron Chopper and secured post-mortem report Exhibit P-9 and also secured the map of scene of crime drawn as per Exhibit P-7. Subsequent to the completion of the entire investigation done by him, he had laid the charge sheet against the accused.

11. PW-7 Sampritha being the material witness for the prosecution and also being the child witness, initially she had given statement that Shivanna threw a sickle on her maternal uncle Krishna. But he escaped from being hurt and after that, her maternal uncle Krishna had been chased by accused Shivanna. Soon after that chase made by the accused, she had rushed to the house of her 25 grandfather PW-1 Gavigowda along with her sister Rakshitha. Therefore, the prosecution has cited her as an eye-witness and her evidence as ocular evidence. But actually, she has not seen the accused directly assaulting the deceased Krishna by means of MO-1 Iron chopper. But she has stated that her maternal uncle Krishna had been chased by the accused. The same has been briefed to her grandfather. At the time of the incident, Sampritha was aged about 8 years. However, when she gave evidence before court, she was 10 years. As she being of tender age, therefore, she was accompanied to the court by her grandfather. While giving evidence before court, she had stated that the accused who was sitting in the front yard of Byrammas house had started chasing them when they had alighted from the bus. At a point, that Krishna fell down. After Krishna fell down, Shivanna had assaulted his right ear, back of the neck and shoulder with an iron chopper. Then the said Shivanna had fled from the place. On seeing the 26 same, Sampritha and her

sister Rakshitha had run to their grandparents house and informed the incident to them.

12. From the above discussion, it is clearly evident that the said Rakshitha P-7, had been tutored by her grandparents to give the said evidence before court. Previously, she had stated that as soon as Shivanna started chasing Krishna, both Sampritha and Rakshitha had run to their grandparents house and had informed them about the incident. But while giving evidence before court, she had stated that she saw Shivanna assaulting deceased Krishna with an iron chopper and after he had finished assaulting and fled from the place, both the children had run to their grandparents house to inform the said incident. This is clearly an irregularity which goes to the root of the matter, which the Trial Court has lost sight of. When PW-7 is the only eye-witness on whom the prosecution case is based upon, the same ought to have been taken up and proved without any flaw. When there is inconsistency in the evidence who is treated to be the 27 main witness in the case itself, conviction ought not to have been held by the court below on probabilities. Further, the circumstance that there is a case filed by the second accused regarding the death of his brother against P.W-1 and P.W-2, should have been taken into consideration by the Trial Court. Naturally there would have been enmity between PW-1 and PW-2 with the accused. This fact has also been lost sight of by the court below. P.W-2 Shivamma is said to be the mother of the deceased had stated in her evidence that about 7.00 p.m. her grand daughter Rakshitha had come and informed her that Shivanna assaulted her son Krishna with means of a sickle (betta kudlu). Whereas P.W.1 Gavigowda had deposed that P.W.7 Sampritha, his grand daughter had rushed to the house and told about the incident regarding the assault made to her maternal uncle Krishna by a person namely Shivanna. Therefore, the evidence of P.W.1 insofar as the averments at Ex.P.1 and so also the evidence P.W.2 said to be the mother of deceased Krishna 28 and so also the evidence of P.W.7 Sampritha being the child witness for the prosecution, have discrepancies relating to briefing the information about the incident either by Sampritha or by Rakshitha. But both had accompanied their maternal uncle namely Krishna. But the facts required to have been elicited by the prosecution by placing corroborative evidence that P.W.7 Sampritha had directly witnessed the incident, namely, the assault made by accused by means of M.O-1

iron chopper or she has witnessed only the accused Shivanna chasing her maternal uncle deceased Krishna. Further, P.W.8 and P.W.9 namely Byramma and Siddaraju have been examined for the prosecution. But they have not seen the incident i.e., the murder of the deceased Krishna by the accused Shivanna by assaulting with means of M.O.1 iron chopper. These witnesses have turned hostile to the versions of their statements said to be recorded by the Investigating Officer during the course of investigation. 29 Though there were many people present in front of their houses in the village on either side of the road, it is strange that the little girl who had witnessed the assault made by an iron chopper on her maternal uncle, had not screamed or had not told anybody present on the way about the incident. It was a small village and there would have been many acquainted people, the children being frequent visitors to their grandparents house. But however, Sampritha had told that though there were many people standing in front of their houses when they were running to their grandparents house, she did not tell any of them about her uncle having been assaulted and lying on the irrigated land. These are facts which give rise to suspicion in the mind of this court. As already stated, the evidence of P.W.7 being a child witness it ought to have been appreciated by the Trial Court with greater care and caution, which has not been done. Though several witnesses have been examined for the prosecution, all of them have turned hostile in totality 30 with the witness of their statements. Therefore, no credence can be given to their statements. However, the evidence of all the witnesses runs contrary to the evidence of P.W.7 Sampritha as well as the evidence of P.W.1 and P.W.2, her grand parents.

13. Due to several discrepancies noted above, we are of the view that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. When the doubt has occurred in the evidence of the prosecution, the benefit of doubt is always to be extended to the accused. Therefore, we are of the opinion that the prosecution has not proved the guilt of the accused by putting forth cogent, corroborative and positive evidence to probablise that the accused has committed the murder of the deceased by assaulting the deceased with means of M.O.1 iron chopper. In fact the co-accused namely, accused No.2 who is said to have instigated this accused was acquitted for the offences under Section 114 read with Section 302 IPC. Therefore, for the aforesaid reasons, we are of the

view that the judgment of conviction and 31 sentence passed by the Trial Court for the offence under Section 302 IPC needs to be interfered with.

14. Accordingly, both the points framed by this Court are answered in the negative and the appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure is hereby allowed. Consequently, the judgment of conviction and sentence passed by the Fast Track Court (Sessions), Kanakapura in S.C.No.25 of 2010 dated 17.11.2012 for the offences punishable under Section 302 of the IPC is hereby set-aside. The appellant - accused is hereby acquitted of the charges levelled against him. He shall be set at liberty by the jail authorities, if he is not required in any other case. Sd/- JUDGE KS Sd/- JUDGE

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