

Mahadeva @ Papi Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-15-2018

Judge : K.N.Phaneendra and K.Somashekar

Appeal No. : CRL.A 548/2014

Appellant : Mahadeva @ Papi

Respondent : State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS
THE15H DAY OF NOVEMBER, 2018

PRESENT

THE HONBLE MR. JUSTICE K.N. PHANEENDRA AND THE HONBLE MR.
JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.548 OF2014S/O
BASAVIAIAH, AGED ABOUT32YEARS, MANTIHADI VILLAGE, H.D.KOTE
TALUK68 BETWEEN1 MAHADEVA @ PAPI, 2. RAGHU @ MAHADEVA @
BHEEMANAHALLI GOWDAIAH, S/O LATE MARAIAH, AGED ABOUT34YEARS,
HANAGATTIHADI VILLAGE, PRESENTLY R/AT MUSHKARE &
CHANNEGOWDANAHUNDI VILLAGE, H.D.KOTE TALUK68 (In view of death of
Accused No.2 Raghu @ Mahadeva, appeal against him stands abated) (NOW A1
IN JUDICIAL CUSTODY, CENTRAL PRISON, MYSORE) (BY SRI. HASHMATH
PASHA, ADVOCATE)

... APPELLANT

S2AND STATE OF KARNATAKA BY H.D.KOTE POLICE, MYSORE DISTRICT561068. (REPRESENTED BY LEAREND STATE PUBLIC PROSECUTOR) (BY SRI. VIJAY KUMAR MAJAGE, ADDITIONAL SPP)

... RESPONDENT

THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT DATED1012.2013 AND SENTENCE DATED1212.2013 PASSED BY THE III ADDL. SESSIONS JUDGE, MYSORE IN S.C.No.50/2012 CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION302R/W34OF THE APPELLANTS/ACCUSED ARE SENTENCED TO UNDERGO IMPRISONMENT FOR LIFE AND ALSO PAY FINE OF RS. 25,000/- EACH, IN DEFAULT TO PAY FINE, THEY SHALL UNDERGO SIMPLE IMPRISONMENT FOR A FURTHER PERIOD OF1YEAR FOR THE OFFENCE PUNISHABLE UNDER SECTION302R/W34THE APPELLANTS/ACCUSED PRAY THAT THEY BE ACQUITTED. IPC. IF IPC. THIS CRIMINAL APPEAL COMING ON FOR HEARING, THIS DAY, K. SOMASHEKAR, J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal filed by the appellants/accused-1 & 2 is directed against the judgment of conviction and order of sentence dated 10.12.2013 by the III Additional 3 Sessions Judge at Mysuru in SC No.50/2012 convicting the appellants/accused for the offence punishable under section 302 r/w. 34 of IPC and sentencing them to under go life imprisonment and also to pay fine of Rs.25,000/- each for the offence punishable under section 302 of IPC and in default of payment of fine, the accused- 1 & 2 shall undergo simple imprisonment for a further period of one year. Further, out of fine amount of Rs.25,000/-, the trial Court had ordered to pay an amount of Rs.20,000/- to PW.2-Nooralamma (the complainant), the wife of the deceased as compensation.

2. The brief factual matrix of this case is that,- Accused No.1 is the son-in-law of the deceased Chikka & Chikkaiah (for short, referred to as Chikkaiah) and the complainant; that Susheela, the first daughter of complainant and Chikkaiah was given in marriage to Accused No.1 about 2 years prior to the death of Chikkaiah, Accused No.1 and Susheela were residing 4 with deceased and the complainant in their house; that for six months, they led happy life and thereafter, Accused No.1 left to Channegowdanahundi Village on the ground that his mother is not having good health and thereafter he was not attending the home of the deceased regularly; that since then, he started to reside separately and he used to quarrel with the deceased alleging that the deceased was keeping his daughter in his house and asked him to send his daughter, ie., wife of Accused No.1; As the mother of the deceased by name Javaramma was residing in Channegowdanahundi Village in the house of her brother was not carrying good health, on 11.02.2010, deceased Chikkaiah had been to Channegowdanahundi Village in order to meet his mother; that at that time, accused were also there and the deceased left the house and at about 6.30 p.m. on the ridge of the land in Sy. No.23 belonging to one Putte Gowda, son of Javare Gowda of Yarahalli Village; at that time, the accused in 5 furtherance of their common intention, in order to commit the murder of deceased Chikkaiah picked up quarrel with him and Accused No.1 assaulted the deceased by a Club on his head while Accused No.2 fisted him and also kicked on his private part and caused fatal injuries to the deceased; Hearing the noise of screaming, when the neighbours rushed to the spot, the accused ran away and some people gathered there, had shifted the injured Chikkaiah to H.D.Kote Government Hospital and from there he was shifted to K.R. Hospital, Mysore, for better treatment. But inspite of best efforts, the said Chikkaiah succumbed to injuries in the hospital on 12.02.2010 at 1.00 p.m. and therefore, in this regard, the complainant has lodged the complaint against the accused.

3. Pursuant to the said complaint, the Investigating Officer registered a case and got conducted inquest on the dead body and post mortem was done by 6 the Doctor PW11, and he visited the scene of offence, and drawn a mahazar relating to dead body of deceased Chikkaiah as per Ex.P1 in the presence of PW.1, which is said to be conducted by PW.19. Ex.P4 is the seizure mahazar said to be

conducted by the IO in the presence of PWs. 5 & 7 and obtained their signatures and recovered MO.1. EX.P8 is the Post-Mortem Report said to be issued by PW.11-Dr.Y.Udayashankar after conducting autopsy on the dead body of deceased Chikkaiah. Ex.P16 is the FIR said to have recorded on the basis of complaint lodged by the complaint relating to the murder of the deceased Chikkaiah by the accused and recorded the statement of witnesses. Based on the said complaint filed by PW.2-Nooralamma, who is none other than the wife of the deceased, the Police registered a case in Crime No.54/2010 for the offences punishable under Sections 302, 201 r/w 34 of IPC. After completion of investigation in the said case, the Investigating Officer has laid the charge sheet against 7 the accused for the aforesaid offences before the committal Court and thereafter it was numbered as SC.No.50/2012.

4. Before the trial Court, the prosecution in order to prove the guilt of the accused, has examined in all 21 witnesses and so also got marked as many as 28 documents and 4 material objects and also recorded the statement of the accused under Section 313 of Cr.P.C. They denied all the incriminating evidence made against them. Nobody is examined as defence witness and no document was produced on the defence side.

5. Subsequently, the trial Court heard the arguments advanced by the prosecution and also the defence side and it has appreciated the oral and documentary evidence placed by the prosecution, particularly the documents Exs.P1-Inquest Panchanama, Ex.P2-Spot Mahazar, Ex.P3-complaint, Ex.P4-seizure panchanama, Ex.P8-Post-Mortem Report, 8 Ex.P9 Opinion of the Medical Officer, Ex.P10-Copy of MLC Register, Ex.P11-Wound Certificate, EX.P12- Discharge Summary, Ex.P15-Passport, Ex.P16-FIR, EX.P17-Sketch, Exs.P18 to 23- Photos and Ex.P28- Death Memo. In this case, MO.1- Club is alleged to have been used for assault and MOs. 2 to 4, the Clothes found on the dead body of the deceased were seized under Ex.P4 and the signature of the witnesses are at Ex.P(a) to (c) and Ex.P8 to Ex.P12 and Exs.P15 to P.28, and ultimately, the trial Court has come to the conclusion that the prosecution has proved the guilt of the accused under Section 302 of IPC and convicted them for the aforesaid offences and sentenced them to under the offences as noted above.

6. It is an undisputed fact that Accused No.1 is the son-in-law of the deceased Chikkaiah. The relationship between the parties is not in dispute. Further, it is also an undisputed fact that, Susheela 9 (PW-4), the daughter of deceased Chikkaiah, was given in marriage to Accused No.1. It is also an admitted fact that, the relationship between the deceased as well as Accused No.1 was not cordial and accordingly the relationship between the daughter of deceased Susheela and Accused No.1 was also strained. Further, it is an admitted fact that, they are residing separately.

7. According to the prosecution, the main and important witness is PW.18- Mahesh, as he is the only eyewitness to the incident. In his evidence he specifically deposed that, both the deceased and Accused No.1 are also his relatives and Susheela- daughter of deceased was given in marriage to Accused No.1 and their relationship was not cordial and it was strained. He has also deposed that, Accused No.1 used to quarrel with the deceased in respect of his wife (Susheela); On the date of incident of assault, PW.18 and his wife along with their child were proceeding 10 towards Hand Post and Chikkaiah was following him and at that time, accused assaulted the deceased by Club and ran away and he chased them, but he could not trace them; He secured the Ambulance and shifted the injured to the H.D.Kote Government Hospital.

8. The trial Court has also gone through the evidence of PW.2-Nooralamma, the wife of the deceased, PW.8-Bellaiah, PW.10-Dr.Mallaraju, PW.11- Dr.Udayashankar; PW.12-Dr.Latha S. and PW.13- Dr.S.R.Ananathakumar relating to Ex.P7 - the MLC register, Ex.P8-Post-Mortem Report regarding the injuries sustained by the deceased and also Ex.P9- the opinion of the doctor relating to the death of the deceased. Ex.P10 is the Xerox copy of the MLC Register which is maintained by the hospital, relating to the injuries sustained by the Chikkaiah.

9. PW.2 - Nooralamma admittedly is not an eyewitness. She has deposed before the court that, 11 Accused No.1 is her son-in-law and after marriage, initially for about one year, he was staying with them and subsequently he used to quarrel with them and used to ill-treat her daughter Susheela and was residing separately along with his mother; Accused No.1 used to quarrel with deceased regularly

asking him to send his daughter (Susheela) with him. As could be seen from the evidence of PW.2, she has specifically stated that, the deceased Chikkaiah is her husband and she had two daughters Susheela and Putti and her first daughter was given in marriage to one Mahadeva @ Papi (A1) and another daughter Putti was also given in marriage to Chikkamahadevaiah; Her first daughter- Susheela and Mahadeva @ Papi (A1) were staying in their house as they had no male issues. After their marriage, for first six months, their relationship was cordial and thereafter, he started quarrelling with them and he left his wife Susheela in her parents house and went to his mothers house and thereafter, he started 12 quarrelling with the deceased frequently on the matter of his wife Susheela staying with them in their house and started asking to send his wife Susheela (daughter of the deceased and the complainant) with him and threatening the deceased that if he would not send Susheela with him, he would kill him; On the above said fateful day, the deceased had been to Channegodanahundi Village to see his ailing mother- Javaramma; On that day, at about 6.00 p.m., PW.2 received a telephone information from P.W.8 Bellaiah and Javaraiah that the accused -1 & 2 have assaulted the deceased and the deceased was admitted to H.D.Kote Hospital; Immediately, PW.2 along with her daughter-Susheela-P.W.4 went to the H.D.Kote Hospital at around 7.00 p.m. and at that time the victim Chikkaiah was in unconscious condition and he was not in a position to talk and they saw the victim Chikkaiah sustaining injuries on his head and scrotum, and from there, the deceased was shifted to 13 K.R.Hospital at Mysuru for better treatment and inspite of that, the deceased died on the next day at 1.00 p.m. in the said hospital. The death of the deceased was informed to the Police and thereafter a case was registered by the Police against the accused for the aforesaid offences. It is noticed that, in the evidence of PW.2, she has stated that Accused No.1 Mahadeva @ Papi was doing coolie work and he was going to coolie work in the morning at 8.00 am and returning to house around 5.00 p.m. In her cross-examination, the motive for assault or murder of the deceased was not impeached. PW.2 further deposed that, Bellaiah and Javaraiah, the residents of Devalapur, who had informed PW.2 about the accused assaulting the deceased are the relatives of the accused Mahadeva @ Papi and when she got the information of assault on the deceased, she was in her house and the said two

persons viz, Bellaiah and Javaraiah have not informed her about who assaulted her husband. The evidence of 14 the PW.4-Susheela, the daughter of the complainant and PW.2 (complainant) are corroborative to each other as contended by the prosecution.

10. It is noticed that, PW.18-Mahesh is an eyewitness to the incident and in his evidence he has stated that Accused Nos.1 & 2 had followed the deceased Chikkaiah on the fateful day near hand post and the accused committed murder of the deceased Chikkaiah, whereas Accused No.1 Mahadeva @ Papi who said to have assaulted the deceased with MO.1- Club by choosing the vital part of the deceased ie., head and Accused No.2 kicked on the private parts of the deceased and as a result of that, the deceased sustained fatal injuries, to which he succumbed.

11. Learned counsel for the appellants has taken us through the evidence adduced by the prosecution witnesses. He contends that the impugned judgment of conviction and order of sentences passed by the court 15 below are contrary to law, facts, circumstances and probabilities of the case. He contends that the court below committed an error in recording the conviction against the accused as there is no reliable evidence adduced by the prosecution to prove the guilt of the accused. 11.1. Further he contends that, the police got the report (Ex.P26) of assault on the deceased on 11.2.2010 at about 7.12 p.m. from the Government Hospital, HD Kote, and his death memo (Ex.P28) dated 12.02.2010 was received by the Police on 12.02.2010 and the FIR was registered on 11.2.2010 for the offences punishable under Sections 302 and 201 r/w. 34 of IPC, even before the death note was received by them. He contends that the complaint Ex.P3 is concocted and after due deliberation, the names of these accused were implicated, as the police did not record statement/complaint of PW.2 Nooralamma, the wife of 16 the deceased and PW.4, the daughter of the deceased, and the complaint was not lodged at the earliest, it requires to be considered in this appeal, wherein it was not appreciated by the trial Court. 11.2. Learned counsel further contended that, none of the alleged eye witnesses have set the law into motion; There was no reason as to why the complaint was not lodged at the earliest; Prosecution has mainly relied on the evidence of PW.3, PW.6, PW.8,

PW.9, PW.15 and PW.18, who are eye witnesses to the incident. But whereas as per the earliest information received by PW.2 and PW.4 nobody had seen as to who assaulted the deceased and nobody was there at the scene of occurrence, when they reached the spot and shifted the deceased to hospital. Because of the said reason, FIR was registered for the offences under Section 302, 201 r/w 34 of IPC, merely a complaint was filed by PW.2 as per Exhibit P.3. 17 11.3. He further contends that, if really the alleged eye witnesses were present at the scene of crime, what was their conduct and why they did not attend the deceased and took him to the hospital for treatment and lodge complaint to police at the earliest. It indicates that, nobody has seen the accused causing assault on the deceased. Since PW.2 and PW.4 have also do not know definitely as to who assaulted the deceased, they did not lodge complaint till the death and even after death till 5.45 p.m. Thereafter, the police after due deliberation prepared Ex.P3, hence, it cannot be treated as an FIR to register the crime against the accused. 11.4. Further, he contends that, it is because of these reasons, during trial, PW.3, PW.6, PW.8, PW.9, PW.10 have not supported the prosecution theory as eye witness to the incident and they were really not eye witnesses to the incident and hence, the Court below should have discredited their evidence. It is further submitted that PW.18 - Mahesh who is the only witness has supported the case of prosecution as he was a relative of deceased. It is stated that PW.18 being relative of deceased was proceeding with his wife and child towards his village and witnessed the incident. If it is so, his natural conduct would have been to attend to the deceased and take him to hospital and then to lodge complaint to police against the assailant. Having not done so, his presence at the time of incident seems to be doubtful and as such, his evidence is totally unreliable. Therefore, the trial Court has committed serious error in relying on his testimony against the accused without any cogent evidence for conviction. 11.5. He further contends that, the trial Court committed error in relying on Ex.P.7 copy of MLC register, Ex.P11 - the wound certificate, and Ex.P.12 discharge summary in which the history of assault the names of both the accused are mentioned and in some 19 of the said documents, only the name of first appellant is mentioned. The deceased was unconscious at the scene of crime and till death. No significance could be attached to history mentioned in these documents because of inadmissibility. The accused

no.1 being the son-in-law and only because of differences with the deceased, he has been suspected and falsely implicated, whereas on record there is no legally admissible evidence to convict him, as well as accused No.2.

12. On all these grounds urged, the learned Counsel for the appellants prays for re-evaluation of the impugned judgment of conviction and sentence by re-appreciating the entire evidence in a proper perspective, since the Trial Court has committed an error in arriving at the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt. Hence, he prays that the impugned judgment of 20 conviction and sentence passed by the Trial Court in S.C.No.50/2012 be set aside by allowing this appeal.

13. Counter to the arguments advanced by the learned counsel for the appellants, learned Addl.SPP for the State has taken us through the impugned judgment of conviction and sentence passed by the Trial Court. He submits that the oral as well as documentary evidence produced by the prosecution clearly establish that, the accused persons have assaulted the deceased with MO.1 club on his vital parts causing his death because of internal bleeding and thereby the accused have committed offence punishable under Section 302 read with Section 34 of IPC. The evidence clearly discloses that the accused had a motive, as the relationship were strained and accused no.2 is admittedly a close associate and relative of accused no.1. 21 13.1. He further contends that the evidence of PW.2, PW.3, PW.4, PW.14 and PW.18 establish that the relationship between deceased and accused No.1 as well his wife Susheela (PW.4) were strained. It is evident that it is a homicidal death and the evidence of PW.18 is consistent in this regard. The history referred in Ex.P7, Ex.P10, Ex.P11 and Ex.P12 is consistent regarding the assault made by the accused. The conduct of the accused clearly discloses the motive to assault the deceased and the evidence of PW.18 coupled with the evidence of PW.3 and other circumstantial evidence clearly establish that the accused persons have assaulted the deceased with a club (MO.1) on his head and vital parts of the body and caused his death. Hence both the accused persons have committed the offence by hatching a plan and the oral and documentary evidence led by the prosecution clearly establish the guilt of the accused persons beyond all reasonable doubt. Hence, on these grounds, the learned Addl.

SPP22sought to justify the judgment of the Trial Court and submits that the said judgment of conviction and sentence needs no interference.

14. On perusal of the impugned judgment and hearing the arguments on either sides, what we have noticed that,- 14.1. PW.4, Susheela, who is said to be the daughter of the complainant and deceased Chikkaiah has stated in her evidence that, accused no.1 Mahadev @ Papi is her husband. Accused No.2 Gowdaiah is also known to her. P.W.3, Javaraiah is her uncle being the relative of her husband. P.W.2 Nooralamma is her mother and C.W.19, Putti is her sister; Her marriage was performed with the accused No.1 Mahadev @ Papi about six years back. Subsequent to her marriage, she was residing along with Accused No.1, he being the illatom (son-in-law), with her parents, as her parents had no male issues. 23 Accused no.1 looked after her very well for one year and after she conceived, accused No.1 after consuming alcohol used to assault her. After that accused no.1 left P.W.4 in her maternal house and started to reside in his mothers house. Frequently accused no.1 used to come to her parents house i.e., deceased Chikkaiah and asked him to send his daughter with him. For that reason also there was altercation took in between the accused Mahadev @ Papi with the deceased Chikkaiah. But no complaint was filed in this regard. The same has been deposed in the cross-examination of P.W.2 and so also P.W.4. However, P.W.2 and P.W.4 have been thoroughly cross-examined wherein it was elicited that there was no dispute about the altercations took in between the accused Mahadev @ Papi and the deceased Chikkaiah. This witness has specifically stated in her cross-examination that accused while going to the work used to proceed before her parents house. While accused No.1 was passing, this witness was not 24 speaking with him. But accused No.1 was trying to speak with this witness but she was not inclined to speak with him. She has denied the suggestion that accused No.1 did not have any altercation prior to the incident. 14.2. P.W.7, Siddaraju was a panch witness relating to Ex.P.4 panchanama, said to have drawn by the IO in his presence for having seized the clothes of deceased Chikkaiah. Whereas in his cross-examination he has stated that no notice was given to him to act as a panch witness relating to Ex.P.4 for having seized the clothes such as shirt, nicker and dhoti belonging to the deceased. Therefore, it is said that whether the said panchanama was conducted in his presence appears to be clouds of doubts, as

we opined that relating to the fulcrum of the facts. 14.3. P.W.8, Bellaiah who is the relative of the deceased Chikkaiah has deposed that P.W.4, Susheela 25 is daughter of deceased Chikkaiah, accused no.1 Mahadev @ Papi is husband of P.W.4; He does not know accused no.2 and he has not seen him and he also does not know the relationship between Susheela and accused No.2; He did not reside in Channegowdanahundi Village. The murder of deceased Chikkaiah took place about two years back near H.D.Kote Hand Post; On the day of murder he was in Devalapura. He does not know who committed murder of deceased Chikkaiah. But however this witness did not withstood his statement relating to Ex.P.5, which has been recorded by the IO during the course of investigation. This witness has been thoroughly cross- examined after he being treated as hostile. Nothing worthwhile has been elicited from him. He has deposed that after six months of marriage accused no.1 used to assault P.W.4 Susheela, who is the daughter of deceased Chikkaiah and it is not known to him that, for that reason the deceased had taken her daughter to his 26 house. He did not see the alleged incident said to have committed by the accused. Therefore, their evidence are not consistent to each other. 14.4. P.W.10, Dr. Mallaraju S. has stated in his evidence that, on 11.12.2010 in the night at about 7.15 p.m. when one Javaraiah had brought the deceased to the hospital with the history of assault, the deceased was unconscious. On examination, he noticed injury on the right side of forehead measuring 2 x 1 cm and there was bleeding from nose and mouth and he referred him to higher centre for greater treatment. 14.5. P.W.11, Dr. Udayashankar is the Medical Officer who had done autopsy over the dead body of deceased Chikkaiah. He has specifically deposed in his evidence that, when he examined the dead body of the deceased, he found an abrasion measuring 3 x 3 cm on the outer aspect of the right elbow. He further deposed that, on dissection of the head of the scalp, he noticed 27 extravassion over the right mastoid and occipital region and skull showed sutural fracture involving the whole length of lambold suture. He has further deposed that, he noticed intra cerebral hemorrhage in the substance of right hemisphere and surrounding tissue was softened and necrosed and the injury found on the deceased was sufficient to cause death. In the cross-examination he has specifically stated that such injury can be caused by hang over by accidental fall. He further claims that such injury can be caused only if a

person falls from 12 to 15 feet. To a suggestion made, he deposed that if a person falls from the top of a tree and his head comes in contact with a stone or any hard substance, the injury shown in Ex.P8 can be caused. Therefore, we are of the view that this medical evidence has not been substantiated with any other independent evidence for the prosecution. 28 14.6. PW.12 Dr.Latha has deposed regarding admitting the deceased at 11.55 p.m. on 11.02.2010 with a history of assault by both the accused on 11.02.2010 at 6.00 p.m. She further deposed that the patient was unconscious and not responding to any painful stimuli and his condition was bad. Then the patient was referred to H.D.Kote by Vivekananda Memorial Hospital and from there, patient was brought to their hospital. On examination she noticed bleeding through right nose and mouth, right black eye, abrasion over right cheek 3x4 cm covered with blood clots and swelling on the right side of the forehead 3 cms in diameter. After examination she made an entry in MLC register. 14.7. PW.13 Dr.S.R.Ananthkumar has deposed in his evidence that, he was working as a RMO in Vivekananda Memorial Hospital. On 11.02.2010 deceased Chikkaiah was brought by his daughter to the 29 hospital in an unconscious stage with history of assault by Accused No.1 Mahadeva. There was a blunt injury in the scalp and he was referred to higher centre and wound certificate and the discharge summary are marked as Ex.P11 and P12 and the signature of the witness is marked as Ex.P11(a) and 12(a). In the cross-examination he has specifically stated that, some people had accompanied the patients daughter, but he did not know who are they and the patient was unconscious and he could not walk and he was carried to the OPD and he do not know how he was brought to the hospital. The patient was brought around 6.00 p.m. and he examined the patient at hospital for nearly 15 minutes and was referred to higher centre and he did not notice any bleeding from the scalp. He has given opinion that probable intra cranial haemmorrhage and he do not know whether hospital had sent any intimation of MLC to police. Therefore, we are of the opinion that these medical evidence for the prosecution runs contrary to 30 the evidence of PW.2 and PW.4, as they are the material witnesses. 14.8. PW.14 Javaramma mother of deceased Chikkaiah. She has deposed that Accused no.1 Mahadeva is the husband of PW.4 Susheela. After their marriage accused no.1 left Susheela and went to his mothers house and Susheela was residing with her

father. As she was ill, deceased used to come to see her and also Accused No.1 and 2 also had come near her house and deceased went away and Accused No.1 and 2 followed him. She has turned hostile to the case of the prosecution and her evidence is of no avail for the prosecution to any extent. 14.9. PW.16, is a constable who has deposed regarding issuing FIR and PW.17 Rangaswamy has deposed regarding preparing Inquest and cloth seizure panchanama, but his evidence was not challenged. 31 14.10. PW.18 Mahesh is the eye witness to the incident of assault by Accused no.1 and 2. In his evidence he has specifically deposed that, the deceased was his relative and accused no.1 is also his relative and Susheela daughter of deceased was given in marriage to accused No.1 and their relationship are strained. Further, accused No.1 used to stay in Mantehadi Village along with his mother and he used to quarrel with deceased in the respect of his wife Susheela. He has further deposed that on the date of assault, he and his wife along with their child were proceeding towards Hand post and deceased Chikkaiah was following him and at that time, accused assaulted the deceased by club and ran away and he chased them, but he could not trace them. Then he called Ambulance and shifted the injured to the hospital. In the cross-examination when a suggestion was made to him that since there were number of villagers, it is not possible to identify and he denied the same. He denied 32 the suggestion that after the incident, he went to the spot. 14.11. PW.19 Mallik was the Circle Inspector, HD Kote Circle and on 13.2.2010 he tookup further investigation and conducted inquest as per Ex.P1 and arrested the accused and filed charge sheet before the Committal Court. PW.20 Vishakanta is the Head Constable of HD Kote Police Station. On 11.2.2010 while he was an SHO, he received telephone call from Vivekananda Memorial Hospital informing the treatment of Chikkaiah and he went to hospital and gave requisition Ex.P.25 to record the statement. But the doctor gave endorsement as per Ex.P11 that deceased was not in a position to speak. PW.21 Shivanna was the PSI in HD Kote Police Station. On 12.2.2010 he received telephone information about the admission of deceased in KR Hospital and on the same day evening he received death memo. At 5.45 pm he received 33 complaint at Ex.P3 and registered an FIR as per Ex.P16 under Sections 302, 201 IPC.

15. In the circumstances, it is relevant to note here that the presence of PW.18 Mahesha nearby the scene of crime is doubtful relating to the map of scene of crime. At a distance from the hand post near the bund of the land belonging to Javarayya the incident took place. By the side there was sugarcane field but the sketch which had been prepared by PW.19 and there is some camouflage relating to the prosecution evidence to prove the guilt of the accused beyond reasonable doubt. Therefore, we are of the view that it requires re-appreciation and re-evaluation of the entire evidence on record, as the trial Court has not properly appreciated the evidence in a proper perspective in so far as the evidence of PW.10 Dr.Mallaraju, PW.11 Dr.Udayshankar and PW.12 Dr.Latha relating to Ex.P7, P8 and Ex.P10, as these documents on the part 34 of the prosecution are vital in nature, it has to be appreciated along with other evidence of PW2, PW4 and PW18.

16. Whereas in this appeal it is required to be stated as to whether the accused had committed the murder of the deceased Chikka @ Chikkaiah with M.O.1 (Club) by assaulting on the vital parts ie., his head and accused no.2 kicked him on his private part with an intention to cause his death.

17. There is no dispute with regard to the death of deceased Chikka @ Chikkaiah. But there is a dispute whether the accused Mahadeva @ Papi said to have assaulted his own father-in-law with MO.1 (Club) on vital parts of his head and so also given a kick to the vital part of scrotum by accused No.2. has to be appreciated with medical evidence to held conviction by the trial Court. 35 18. Ex.P1 is the inquest mahazar, Ex.P2 is the spot panchanama, Ex.P3 is the complaint, Ex.P4 is the seizure mahazar, Ex.P8 is the P.M.report, Ex.P11 is the wound certificate, Ex.P12 is the discharge summary, Ex.P16 is the FIR, Ex.P17 is the sketch, Ex.P18 to P23 are the photographs and Ex.P28 is the death memo. In totality of evidence of the witnesses relating to these exhibits are concerned, the case which is projected by the prosecution is appears to be camouflage. This contention is taken by the learned counsel for the appellants for re-evaluation of the said documentary as well as oral evidence.

19. MO.1 is the club, which is said to have been used by accused no.1 Mahadeva @ Papi for assaulting on the vital parts of the of the deceased Chikka @ Chikkaiah and causing such fatal injuries, which caused his death. PW.12 Dr.Latha has stated in her evidence that, on 11.2.2010 with a history of assault, 36 the deceased was admitted in HD Kote Hospital, then Vivekananda Memorial Hospital and then K.R.Hospital, Mysore. PW.13 has specifically stated in his evidence that deceased was brought to Vivekananda Memorial Hospital with a history of assault by accused no.1 and after giving first aid, the deceased was referred to higher treatment. Accordingly the deceased was taken to K.R.Hospital wherein during the treatment he lost his breath, but there is no positive evidence placed by the prosecution relating to the said history of incident.

20. However, to prove its case, the prosecution in all has examined 21 witnesses. In the instant case, the evidence of PW.2, PW.3, PW.4, PW.14 and PW.18 establish that the relationship between deceased Chikka @ Chikkaiah and accused no.1 Mahadeva @ Papi and his wife PW.4 Susheela are strained. The evidence further discloses that, when the deceased visited the house of his mother on 11.02.2010, the accused were 37 present there and certain verbal exchange has taken place. The evidence of the witnesses is that immediately when the deceased went out of the house, the accused followed him. The trial Court noticed that this portion of the evidence was not at all challenged but opined that it was a homicidal death without any cogent evidence. Even after noticing that though the evidence of PW.3 was inconsistent and though PW.3 has turned hostile and further there was delay in lodging the complaint was fatal to the case of the prosecution and after noticing the latches on the part of the police and the witnesses, the trial Court erred in convicting the accused for the aforesaid offences.

21. The trial Court even failed to consider the contentions of the accused during the course of arguments that, the injuries caused on the body of deceased may be because of attack by wild animals or accident, but there is no specific evidence to consider 38 the said aspect. However, it came to a wrong conclusion that the conduct of the accused clearly discloses the motive and under the circumstances, relying on the evidence of PW.18 coupled with the hostile evidence of PW.3 and

other circumstantial evidence, it held that the accused have assaulted the deceased and caused his death, without any specific evidence to prove the guilt.

22. During the course of investigation for having seized the belongings of the deceased, PW.5 Sanjeevaiah, who was a Panchwitness for seizure of clothes, had turned hostile. Even PW.6 Somaiah who was a circumstantial witness also turned hostile. PW.8 Bellaiah, PW.9 Boregowda and PW.15- Soma, who were said to be the eye witnesses to the incident, also turned hostile. The case of the prosecution mainly revolves on the evidence of PW.18 Mahesh, who is none other than relative of the deceased as well as accused No.1 Mahadeva @ Papi. PW.4 Susheela is 39 the wife of accused no.1 and daughter of the deceased. She has specifically deposed regarding strained relationship between herself and accused no.1. PW.14 Javaramma who is the mother of the deceased has partially supported the case of the prosecution and partially turned hostile. She did not spell out in her evidence with regard to accused no.1 assaulting the deceased Chikka @ Chikkaiah with means of MO.1 club said to be used by him. At a cursory glance of evidence, it appears that there are inconsistencies and contradictions in the evidence of each and every witnesses. Though PW.3 who has turned hostile and not supported the prosecution case, she did not deny to her evidence that accused no.1 followed the deceased. The court below has failed to appreciate that, PW.2 Nooralamma who is the wife of the deceased is not an eye witness to the incident and she is the hear-say witness. In the cross-examination a suggestion was made about the presence of the accused near the spot 40 wherein it is claimed that they were working as Coolie near the Hand- Post. Even the Court below has failed to appreciate that PW.3 Javaraiah who is a relative of the deceased as well as accused initially supported the case of the prosecution but after that in the cross- examination he has deposed that the deceased Chikka @ Chikkaiah was lying on the ground sustaining head injury and from the persons who gathered there, he got knowledge that accused ran away. He again deposes that by the time he rushed to the spot, the accused were not present there and injured was lying on the ground. The trial Court having noticed that to this extent this witness was treated as hostile, could not have convicted the accused for the above said offences. On a cursory glance of the entire evidence of these material witnesses there is camouflage in the evidence adduced on behalf of the

prosecution in order to prove the guilt of the accused. It appears there are inconsistencies and contradictions to the averments made in the complaint 41 Ex.P3 and the accused no.1 assaulting the deceased Chikka @ Chikkaiah with MO.1 club on the vital part of head which is a fatal injury. Under these circumstances, the oral and documentary evidence projected by the prosecution in order to establish the guilt of the accused is very much required to be re-appreciated in a proper perspective.

23. The evidence adduced by PW.5, PW.6, PW.8, PW.9, PW.14, PW.15 did not withstood the contents of Ex.P12, P13 and Ex.P14. Their evidence runs contrary to the averments at Ex.P3 and further contrary to the other witnesses. At a cursory glance of the evidence of these witnesses it indicates that there is inconsistencies and contradictions to each other. Otherwise to say that there is some camouflage in the evidence placed by the prosecution in order to prove the guilt of the accused. Therefore, in this appeal we have to re-appreciate the entire evidence on record, as the trial Court was 42 misdirected itself as well as misread the entire evidence of these witnesses in order to come to right conclusion that the prosecution has established the guilt of the accused No.1 Mahadeva @ Papi. Therefore, in the above terms we are of the opinion that the prosecution is not able to place positive, corroborative and acceptable evidence to probabalise that accused No.1 along with accused No.2 said to have committed the murder of the deceased Chikka @ Chikkaiah by assaulting with MO.1 (Club) who succumbed to the fatal injuries. Therefore, for the aforesaid reasons we proceed to pass the following: ORDER The appeal is allowed. Consequently, the judgment of Conviction and Order of Sentence dated 10/12.12.2013 passed by the III Addl. Sessions Judge, Mysore in S.C.No.50/2012, is hereby set aside. Accused No.1 Mahadeva @ Papi, is hereby acquitted of the charges levelled against him for the 43 offences punishable under Section 302 r/w Section 34 of IPC. Accused No.1 Mahadeva @ Papi is ordered to be released from the custody forthwith, if he is not required in any other case. Registry is hereby directed to intimate the concerned Jail Authority to release Accused No.1- Mahadeva @ Papi from custody forthwith. If the accused has already deposited any fine amount, the same is ordered to be refunded to him on proper identification and acknowledgement. Sd/- JUDGE Sd/- JUDGE KGR/DKB

