

Smt Malathi Vs. State Of Karnataka By

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Court : Karnataka

Decided On : Sep-29-2020

Judge : B.Veerappa and K.Natarajan

Appeal No. : CRL.A 767/2015

Appellant : Smt Malathi

Respondent : State Of Karnataka By

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE29H DAY OF SEPTEMBER, 2020 PRESENT THE HON' BLE MR. JUSTICE B. VEERAPPA AND THE HONBLE MR. JUSTICE K.NATARAJAN CRIMINAL APPEAL No.408/2015 C/W CRIMINAL APPEAL NO.767/2015 IN CRL.A4082015: BETWEEN:

1. SMT. MALATHI @ MALURUTHAMMA, W/O LATE MAHADEVA @ NAGAMADEGOWDA, AGED ABOUT26YEARS, C/O ANANDAMMAS HOUSE, CHINNAPPA LAYOUT, ELLARA BANDE, R.T. NAGAR, BANGALORE560032. (APPEAL AS AGAINST APPELLANT NO.1 IS DISPOSED OF AS WITHDRAWN VIDE COURT

ORDER

DATED126.2015) 2. GIRISH @ RATNAGIRI CHIKKATHAMMAIAH, R/AT No.258, DATTATREYA ROAD, 2 K.G. NAGAR, BANGALORE-560019. ... APPELLANTS

(BY SRI HANUMANTHARAYA C.H., ADVOCATE A/W SRI CHANDRASHEKAR R.P. ADVOCATE;) AND: STATE OF KARNATAKA, BY POLICE STATION, COD, BANGALORE, HIGH COURT BUILDING COMPLEX, BANGALORE-560001. (REPRESENTED BY LEARNED STATE PUBLIC PROSECUTOR) ... RESPONDENT (BY SRI S.RACHAIAH, HIGH COURT GOVERNMENT PLEADER) ***** THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE

JUDGMENT

AND

ORDER

CONVICTION AND SENTENCE DATED 24.1.2015 PASSED BY THE LI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN S.C. No.472/2008 CONVICTING THE APPELLANT/ ACCUSED NO.2 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302, 201 & 506 OF IPC. IN CRL.A7672015: BETWEEN: SMT. MALATHI, @ MALURUTHAMMA, W/O LATE MAHADEVA @ NAGAMADEGOWDA, 3 AGED ABOUT 26 YEARS, C/O ANANDAMMAS HOUSE, CHINNAPPA LAYOUT, ELLARA BANDE, R.T. NAGAR, BANGALORE 560003. ... APPELLANT (BY SRI HANUMANTHARAYA C.H., ADVOCATE A/W SRI CHANDRASHEKAR R.P. ADVOCATE) AND: STATE OF KARNATAKA, BY POLICE STATION, COD, BANGALORE, HIGH COURT BUILDING COMPLEX, BANGALORE-560001. (REPRESENTED BY LEARNED STATE PUBLIC PROSECUTOR) ... RESPONDENT (BY SRI S.RACHAIAH, HIGH COURT GOVERNMENT PLEADER) ***** THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE

JUDGMENT

AND

ORDER

OF CONVICTION AND SENTENCE DATED 24.1.2015 PASSED BY THE LI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY IN S.C. No.472/2008-CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE

OFFENCES PUNISHABLE UNDER SECTION 201 AND 506 OF IPC. THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

, COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY, B.VEERAPPA, J, DELIVERED THE FOLLOWING:

4.

JUDGMENT

Crl.A.No.408 of 2015 is filed by the accused No.2 and Crl.A.No.767 of 2015 is filed by the accused No.1 against the judgment of conviction and order of sentence dated 24.01.2015 made in S.C.No.472/2008 on the file of the LI Additional City Civil and Sessions Judge, Bengaluru City (CCH-52), sentencing the accused No.2 to undergo imprisonment for life and fine of Rs.50,000/-, in default, to undergo simple imprisonment for 2 years for the offence punishable under Section 302 of the Indian Penal Code, to undergo sentence for three years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 201 of the Indian Penal Code and to undergo sentence for one year and pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 506 of the Indian Penal Code and 5 sentencing the accused No.1 to undergo imprisonment for three years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months, for the offence punishable under Section 201 of the Indian Penal Code, to undergo imprisonment for one year and pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 506 of the Indian Penal Code.

2. The parties are referred to as per their ranking before the Trial Court. I. FACTS OF THE CASE³ It is the case of the prosecution that, accused No.2-appellant in Crl.A.No.408 of 2015 is the elder brother of accused No.1/appellant in Crl.A.No.767 of 2015 and the accused No.1 is the wife of deceased Mahadeva @

Nagamadegowda. The deceased Mahadeva was suspecting the fidelity of accused No.1 and he had not sent her to the 6 marriage of accused No.2, and the deceased used to quarrel with accused No.1, frequently. The accused No.2 who could not tolerate the behaviour of the deceased, often picking up quarrel with accused No.1 alleging that accused No.1 is having illicit relationship with one Sarvesh of Kamsagara, colluding with accused No.1, with a common intention of murdering Mahadeva, brought two others to the house of Mahadeva, picked up quarrel by saying that accused No.1 would get peace only if he (Mahadeva) dies, kicked forcibly on the external genital organ of Mahadeva. When Mahadeva fell down, accused No.2 killed him by putting cloth into his mouth. Thereafter, with an intention to destroy the evidence, both accused Nos.1 and 2 along with two other persons, hanged the dead body to the fan in the hall of the house using veil to give an impression that Mahadeva committed suicide by hanging himself and criminally intimidated the informant-P.W.10/Kum.Rashmi, by threatening that she would meet the same end, if she 7 discloses the incident to anybody. Later, the accused No.1 brought down the dead body by cutting the veil and intimated the relatives through P.W.10. Thereafter, the accused No.1 along with the relatives shifted the dead body to Kammasandra, the village of the deceased, for cremation.

4. It is further case of the prosecution that after shifting the dead body to Kammasandra in order to pay last rites, the body was taken to the mortuary. At that time, the relatives of the deceased found swelling injury on the scrotum of the deceased. Therefore, they suspected that the deceased might have died due to assault. Therefore, P.W.5-brother of the deceased went to Sathanur police and lodged the complaint which was registered in UDR No.10/2005. Then, the Sathanur police came to the spot, conducted the inquest panchanama and on the next day, the body was subjected to postmortem examination and in the postmortem examination, it was revealed that the 8 injury on the scrotum was ante mortem in nature and the ligature mark on the neck was postmortem in nature. Therefore, P.W.5 and other relatives enquired with P.W.10 who was staying with the deceased and accused No.1 in their house questioning that the postmortem revealed otherwise than the suicide. Then, P.W.10-Rashmi disclosed the fact that accused Nos.1 and 2 assaulted and committed the murder and in order to suppress the offence of murder and to cause disappearance of the evidence, they

hanged the dead body to the ceiling fan with the help of veil.

5. On the basis of the complaint lodged by Kum.Rashmi- P.W.10, eye witness, the J.P.Nagar police registered FIR No.271 of 2005 for the offences punishable under Sections 302 and 201 of the Indian Penal Code and after investigation, filed charge sheet against the accused persons. 9

6. The learned Sessions Judge framed the charges against the accused, when the charges read over and explained, both the accused pleaded not guilty and claimed to be tried.

7. In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 26 and marked documents Exs.P.1 to P.26 and material objects, M.Os.1 and 2.

8. After completion of the evidence of the prosecution witnesses, the statement of accused Nos.1 and 2 under Section 313 of the Code of Criminal Procedure was recorded and both the accused denied the incriminating evidence against them made by the prosecution and submitted their additional statement under Section 313(5) of the Code of Criminal Procedure in writing. 10

9. On behalf of the defence, D.Ws.1 to 4 were examined and documents Exs.D.1 to 3 were marked.

10. The learned Sessions Judge, based on the record and the allegations made against the accused, framed four points for consideration, and considering both oral and documentary evidence on record, recorded a finding that the prosecution has proved beyond reasonable doubt that the death of the deceased is homicidal; prosecution has proved that on 17.05.2005 at about 11.45 pm, in the house of the deceased situated at J.P.Nagar, Bengaluru, the accused No.2 kicked on the testicles of the deceased. However, there is no material to hold that accused No.1 played any role in killing the deceased and there is no material placed on record to make out that accused Nos.1 and 2 shared common intention. It is further recorded a finding that the prosecution proved that on 17.05.2005 at 11.45 pm in the house of the deceased, both accused Nos.1 and 2, with common intention of

destroying the evidence, 11 hanged the dead body of the deceased to the fan in the hall using veil to exhibit that the deceased committed suicide and thereby, accused Nos.1 and 2 committed offence punishable under Sections 201 r/w Section 34 of the Indian Penal Code. The learned Sessions Judge further recorded a finding that the prosecution proved beyond reasonable doubt that on 17.05.2005 at about 11.45 pm in the house of the deceased, both accused Nos.1 and 2 criminally intimidated the informant P.W.10-Rashmi that she would meet the same end like that of the deceased, if she discloses the incident to any one and thereby, committed an offence punishable under Section 506 r/w 34 of the Indian Penal Code.

11. Hence, the present Criminal Appeals are filed by the accused persons.

12. We have heard the learned counsel for the parties. 12 II. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE APPELLANTS - ACCUSED Nos.1 and 2 13. Sri C.H.Hanumantharaya, learned Counsel for Sri Chandrashekar.R.P. learned counsel for the accused Nos.1 and 2 contended that, admittedly, the alleged incident occurred on 17.05.2005 at about 11.45 pm. Ex.P.4-the complaint is lodged by P.W.10-Rashmi, alleged eye witness on 06.07.2005, after lapse of 51 days of the incident. Absolutely there is no explanation for the delay in filing the complaint and the said aspect has not been considered by the learned Sessions Judge. On that ground alone, the impugned Judgment and order of conviction and sentence is liable to be set-aside.

14. Learned counsel for the accused Nos.1 and 2 further contended that ordinary petty quarrel between husband and wife is common which was solved and admittedly, accused No.2-Girish was residing with the 13 family of the deceased and accused No.1-Malathi for more than 1 years and just a few days prior to his marriage, he shifted his residence to the adjoining place. He further contended that there was no need for P.W.10 to wait for 51 days to lodge the complaint as the allegation in the complaint has no reference to the future action except threatening P.W.10 for time being, that, if she raises her voice, the fate which the deceased got will be done to her. He further contended that though it is the case of the prosecution that accused Nos.1 and 2 and two others were involved in the

offence, the said two persons have not been examined. So also the paramour has not been examined. The postmortem was conducted only on 19.05.2005. Admittedly, C.W.26-Prajwal, son of the deceased and accused No.1 has not been examined.

15. Learned counsel for accused Nos.1 and 2 further contended that P.W.10-Rashmi who lodged the complaint has stated in her examination-in-chief that, accused is her 14 aunt and accused No.2 is the brother of accused No.1. The deceased Nagamadegowda is her uncle. C.W.3-mahadeva is her father, C.W-2 Shivamada is her uncle. C.W-4 K.L.Ravi is her maternal uncle. C.W-5 Mayigowda is no more. C.Ws.8 and 9 are husband and wife and they are the owners of the house where the deceased and accused No.1 were residing. C.W.-8/Sunanda is the sister of wife of accused No.2. He contended that when P.W.10 had many relatives, there was no impediment for her to lodge the complaint within reasonable time.

16. Learned counsel for the accused Nos.1 and 2 further contended that the averments made in paragraphs 4, 5 and 6 of the examination-in-chief of P.W.10 are to the effect that, when she was residing in the house of the deceased, the relationship between the deceased and accused No.1 was not good and they used quarrel frequently and accused No.1 had illicit relationship with one Sarvesha and the deceased knew the said fact. When 15 accused no.1 and Sarvesh were studying in Ambedkar High School, Hosakabbala, they were in love with each other and even after marriage, the said Sarvesh continued to love accused No.1 and he frequently visited the house of the accused No.1 and they continued illicit relationship and she had seen Sarvesh coming to the house of accused No.1 on three occasions. A month prior to the incident and 5 to 6 months prior thereto, there was quarrel between deceased and accused Nos.1 and 2 and there was no cordial relationship between accused No.2 and deceased- Nagamadegowda. But, the complaint is made after 51 days. On that ground also the impugned judgment of conviction and order of sentence is liable to be set-aside.

17. Learned counsel for the accused Nos.1 and 2 contended that the evidence of P.W.10 before the Court is all improvement and the same does not corroborate

with the evidence of any other person. The facts stated in the evidence have not been narrated in the complaint and there is omission in the complaint. Therefore, evidence of P.W.10 cannot be accepted.

18. Learned counsel for the accused Nos.1 and 2 further contended that, when P.W.10 has stated that the veils used by accused Nos.1 and 2 during the commission of the offence were burnt while doing the cremation, then how M.Os.1 and 2 were to be marked before the Court is not explained. P.W.10 has admitted in her cross-examination that, there was no impediment for her to disclose the incident to the members of the family of the deceased on an earlier date and she could not have waited to lodge the complaint till the postmortem report was received. P.W.10 participated in the funeral of the deceased, and was residing with accused No.1, even after the incident, in Bengaluru.

19. Learned counsel for accused Nos.1 and 2 further contended that the delay in filing the complaint has caused 17 due to deliberation and discussion only to falsely implicate accused Nos.1 and 2. Therefore, the evidence of P.W.10 cannot be considered for convicting accused Nos.1 and 2 as has been done by the learned Sessions Judge. On that ground also, the impugned judgment of conviction and order of sentence is liable to be set-aside.

20. He further contended that, P.W.10 has stated that both accused Nos.1 and 2 threatened her and therefore, she did not lodge the complaint. But, when the dead body was taken to the native place for funeral, she could have disclosed the fact in the midst of 100 to 150 people who had gathered for the cremation. So also, P.W.10 could have disclosed it on the next day at 8.30 am when the relatives of the deceased came to the house when admittedly she was residing for 20 days at Kamsagara, after the incident and thereafter, P.W.10 was in Bengaluru along with her aunt (mother's sister) and she has admitted that there was no impediment for her to disclose the truth 18 about the alleged incident committed by accused Nos.1 and 2. Therefore, there are inconsistent versions of P.W.10 which cannot be accepted as she has not disclosed before the police while recording statement under section 161 Code of Criminal Procedure and there is no disclosure of all these averments in the complaint. Therefore, there is improvement in the evidence

of P.W.10 and there are contradictions and omissions which cannot be believed, in view of the conduct of P.W.10 who is an educated person.

21. Learned counsel for the accused further contended that, there are two versions of P.W.10. One in the complaint before the police and another in her evidence. The prosecution has not explained 51 days delay in filing the complaint. On that ground alone, the impugned judgment of conviction and order of sentence is liable to be set-aside. The investigating officer has not explained as to how two persons mentioned in the additional charge sheet, were left out. 19

22. Learned counsel for the Accused Nos.1 and 2 contended that P.W.26-H.K.Venkataswamy, who was working as Police Inspector, J.P.Nagar Police Station as on the date of the incident, conducted a part of the investigation and at his instance Exs.P.23, 24 and 26 were marked. Though authorities who issued the said material documents were not examined, the documents were marked through the investigating officer. Mere marking of the documents does not prove the contents of the said documents. The initial burden to discharge is on the prosecution. The same has not been considered by the learned Sessions Judge. The impugned judgment of conviction and order of sentence passed by the learned Sessions Judge is based on assumption and presumption, without there being any material, solely on the basis of the evidence of P.W.10, alleged eye witness. When prosecution has not explained the inordinate delay of 51 days, the impugned judgment and order of conviction and sentence 20 cannot be sustained. Therefore, he sought to allow the Appeals.

23. In support of his contentions, learned counsel for the accused Nos.1 and 2 relied upon the following judgments. (i) Shivasharanappa and others vs. State of Karnataka reported in (2013)5 SCC705 para-18, 19 and 23. (ii) Toran Singh vs. State of M.P. reported in (2002)6 SCC494 para 7 and 8; (iii) Sunil Kundu and another vs. State of Jharkhand reported in (2013)4 SCC422 para 28 and 29. III. ARGUMENTS ADVANCED BY THE LEARNED HCGP24 Per contra, Sri Rachaiah, learned HCGP while justifying the impugned judgment and order of conviction convicting the Accused No.2 for the offences punishable under Sections 302, 201 and 506 of IPC and Accused NO.1 21 for the offences punishable under

Sections 201 and 506 of IPC, has contended that the presence of PW.10, the eye witness on the date and time of incident i.e., 17.5.2005 at 11.45 p.m. in the house of the Accused No.1 and the deceased, is not disputed by the accused persons. He would further contend that the Accused Nos.1 and 2 filed additional statement under Section 313(5) of the Code of Criminal Procedure on 5.11.2011 stating that the deceased hanged himself and it is a suicidal death and Accused Nos.1 and 2 never committed an offence as alleged. Therefore, the burden shifts on the accused persons and they have to discharge the same.

25. He further contended that Ex.P11 - postmortem examination report clearly depicts that the cause of death of the deceased is injury to both the testes. He also contended that DSP, H&B Squad, COD, Bangalore sought certain clarifications from the doctor - PW.15 as per Ex.P14 regarding postmortem report dated 19.5.2005 and doctor 22 gave his opinion as per Ex.P15 and as per the opinion of the doctor, injuries sustained by the deceased to his testes are ante-mortem in nature and it is homicidal death. He would further contend that presence of PW.10 along with Accused No.1 at the time of the incident, is not disputed by Accused Nos.1 and 2 and in view of the evidence of PW.10, who is an eye-witness, it is homicidal death at the instance of Accused Nos.1 and 2 is proved.

26. He would further contend that PW.6 lodged the complaint as per Ex.P2 on the next day of the incident i.e., on 18.5.2005 at 7 p.m. before the Sathanur Police Station. The same was registered by the Police as UDR No.10/2005 under Section 174(c) of the Code of Criminal Procedure. Subsequently, PW.21 - PSI of Sathanur Police Station, who registered UDR No.10/2005, has transferred the same to the jurisdictional Police i.e., J.P. Nagar Police on 9.6.2005. PW.23 - Jagannath, PSI from J.P. Nagar Police Station has stated that on transfer of the case to the J.P. Nagar Police 23 Station, the same was registered as UDR No.38/2005 on 9.6.2005 and he conducted part of the investigation. PW.26 - H.K. Venkataswamy, PSI, J.P. Nagar Police Station stated that from 17.5.2005 to 9.6.2005 either accused persons or relatives of the deceased have not lodged any complaint about the murder of the deceased and on 6.7.2005 the complaint was filed by PW.10.

27. He further contended that as the jurisdictional Police have not properly conducted investigation, the matter was referred to CoD for investigation. Thereby, the delay is caused on account of the Investigation Officers and not on account of PW.6, who lodged the complaint on the next day of the incident and prior to cremation. He would further contend that PW.10 in the categorical terms stated in the cross-examination that due to the constant threat from Accused Nos.1 and 2, he could not file the complaint immediately after the incident. He would further contend the evidence of PW.10, the eye witness is corroborated with 24 the evidence of PW.15 - doctor and PWs.4,6 and 17 so also the medical documents - Ex.P11 - post-mortem report and Ex.P15 - opinion of the doctor regarding homicidal death and ante-mortem injury and the learned Sessions Judge is justified in passing the impugned Judgment and Order of conviction and sought to dismiss both the appeals. IV. POINTS FOR CONSIDERATION²⁸ In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in these appeals are: i) Whether the delay in filing the complaint by PW.10 is fatal to the case of the prosecution, in the facts and circumstances of the case ?. ii) Whether the Accused No.2 has made out a case to interfere with the impugned Judgment and order of conviction and sentence in so far as convicting him for the offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.50,000/-, in default to undergo Simple 25 Imprisonment for two years, in the facts and circumstances of the case ?. iii) Whether the Accused Nos.1 and 2 have made out a case to interfere with the impugned judgment and order of conviction and sentence in so far as convicting them for the offences punishable under Sections 201 and 506 of IPC and sentencing them to undergo imprisonment for three years and to pay fine of Rs.5,000/- each for the offence punishable under Section 201 of IPC and to undergo imprisonment for one year and to pay fine of Rs.2,000/- each for the offence punishable under Section 506 of IPC, with default clauses, in the facts and circumstances of the present case ?.

29. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material including the original records carefully. V. WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION³⁰ In order to re-appreciate both the oral and documentary

evidence on record, it is relevant to consider 26 the evidence of the prosecution witnesses and the defence witnesses as well as the material documents relied upon by them.

31. PW.1 - Raju, who is the neighbour of Accused No.2 has deposed that in front of his shop, the house of Accused No.2 is situated and Accused No.2 is working as Traffic Police and he is using bullet vehicle. He further deposed that he has shown the place where the Accused No.2 used to park his bullet vehicle, to the Police. His evidence is of no consequence to the case of the prosecution.

32. PW.2 - Nagaraju, who is the relative of the deceased has deposed that he shifted the dead body of the deceased in his car, to his native village.

33. PW.3 - S. Krishnamma Raju, who is the owner of the car, has deposed that PW.2 was working under him as driver. 27

34. PW.4 - K.N. Ravi, who is the relative of the deceased, has deposed that he visited the house of the accused and the deceased on 18.5.2005 at about 7.45 a.m. When he asked about the whereabouts of the dead body of the deceased, somebody informed that the body was shifted to the native place of the deceased and when he asked how it happened, he says it was only heart attack.

35. PW.5 - Chandra @ Chandrashekar has deposed that the deceased is his cousin and the 1st accused is the wife of the deceased and 2nd accused is brother-in-law of the deceased. Out of the wedlock between the accused No.1 and the deceased, a male child (CW.26) was born. He further deposed that PW.10 informed the death of the deceased to him.

36. PW.6 - K.C. Shankar, who is the brother of deceased, has lodged the complaint to Sathanur Police on 18.5.2005 as per Ex.P2 suspecting the death of his brother 28 and the same was registered as UDR. He is also witness to Ex.P3 - spot mahazar of house of the deceased.

37. PW.7 - H.K. Krishnappa is the owner of the Bar where the deceased worked as Cashier.

38. PW.8 - Krishnappa is the colleague of the deceased, who is working under PW.7 in the Bar.
39. PW.9 - Devaraju is the relative of the deceased and he is residing in the same lay-out as that of the deceased.
40. PW.10 - Rashmi, who is an eye witness to the incident and the complainant has deposed that Accused Nos.1 and 2 along with two others killed the deceased on 17.5.2005 at about 11.45 p.m. and both Accused Nos.1 and 2 have threatened her not to lodge complaint to anybody and if she disobeys the same, she would meet the same end as that of the deceased and she has narrated the entire 29 episode of crime till lodging complaint, which was filed as per Ex.P4.
41. PW.11 - Krishna, who is the Photographer has taken the photographs on the dead body of the deceased as per Ex.P5 to Ex.P8 and Ex.P5(a) to 8(a) are its negatives.
42. PW.12 - Shivaramaraja Urs, Police Constable, has deposed that he had watched the dead body of the deceased at graveyard till the same was handed over to the relatives of the deceased.
43. PW.13 - Nanjudaswamy is the Police Constable working at Sathanur Police Station, who handed over the case records to the J.P. Nagar Police Station.
44. PW.14 - Madegowda, who is the relative of the deceased has stated good words about the deceased and deposed that he discussed about the conduct of Accused 30 No.1 with father of Accused No.1 and others prior to death of the deceased and advised Accused No.1 suitably.
45. PW.15 - Dr. Harish C.N. has deposed that he conducted the post-mortem examination on the dead body of the deceased Mahadev on the request made by PW.12 - Shivaram Raj Urs and issued Ex.P11 - post mortem report and Ex.P11(a) is his signature. He further deposed that CoD Police sought certain clarifications from him as per Ex.P14 regarding injuries mentioned in the post-mortem report and he has given reply to the same as per Ex.P15. He further deposed that on examination of the genital organs, kidneys and urinary bladder, they were intact

and empty and there was scrotum swelling present and left sided testis soft on palpation and haematoma was present and reduced in size and right side testis was also swollen and the said injury is ante-mortem in nature and ligature mark was post-mortem in nature and ultimately opined that the cause of death was injuries to both testis. 31

46. PW.16 - Sumithra is the woman Police Constable of J.P. Nagar Police Station, who apprehended Accused No.1 on 8.7.2005.

47. PW.17 - Siddaraju is the Advocate Scribe of complaint - Ex.P2, which is registered as UDR No.10/2005.

48. PW.18 - Nanjegowda is the Police Constable of J.P. Nagar Police Station, who carried the FIR to the Court.

49. PW.19 - Mahadeva is the relative of the deceased and the panch witness to the inquest panchanama - Ex.P1.

50. PW.20 - Veeregowda is the independent witness and teacher and he has deposed that both Accused Nos.1 and 2 are former students of his school.

51. PW.21 - T.S. Jagdeesh is the PSI of Sathanur Police Station who registered UDR102005.

52. PW.22 - N. Chandraiah is the Dy.SP from COD who partly conducted the investigation. 32

53. PW.23 - Jagannath is the PSI from J.P. Nagar Police Station, who conducted part of the investigation.

54. PW.24 - Mylarappa is another Dy.SP from COD, who also conducted the investigation.

55. PW.25 - Vivekananda Giryappa Tulasigere is the Investigating Officer, who conducted the investigation and filed the final report and additional charge sheet on 12.2.2009.

56. PW.26 - H.K. Venkatawamy is the Police Inspector of J.P. Nagar Police Station who conducted part of the investigation. VI. WITNESSES EXAMINED ON BEHALF OF THE DEFENCE
57 DW.1 - Sunandamma is the owner of the house where the deceased and the accused No.1 were tenants. 33

58. DW.2 - Chandru @ Chandrashekar accompanied the dead body from Bengaluru to the native place of the deceased.

59. DW.3 - Thammaiah is the friend of Accused No.2, who stated good words about Accused No.2.

60. DW.4 - Putta Madegowda, who is the relative of the deceased, has stated good words about Accused No.1. VII. FINDINGS OF THE LEARNED SESSIONS JUDGE
61 Based on the oral and documentary evidence on record, in particular, the evidence of PW.10, eye witness, which is corroborated with the evidence of PW.15 - doctor and PWs.4,6 and 17 so also Ex.P11 - post-mortem report and Ex.P15 - opinion of the doctor regarding post-mortem report, the learned Sessions Judge recorded a finding that the prosecution proved that the death of the deceased is 34 homicidal one and the deceased has died as Accused No.2 kicked on the testis of the deceased at the time of the incident, but Accused No.1 has not played any role in killing the deceased, but she has helped in causing disappearance of evidence of offence committed by hanging the body of the deceased to the fan situated in the hall of her house with the help of two veils. The learned Sessions Judge further recorded a finding that the prosecution has established that Accused Nos.1 and 2 have criminally intimidated PW.10 that she would meet the same end as that of the deceased, if she discloses about the incident to any one. Thereby, the learned Sessions Judge proceeded to convict the Accused No.2 for the offences punishable under Sections 302, 201 and 506 of IPC and Accused No.1 for the offences punishable under Sections 201 and 506 of IPC and sentenced Accused No.2 to undergo imprisonment for life and to pay fine of Rs.50,000/-, in default, to undergo simple imprisonment for two years for the offence 35 punishable under Section 302 of IPC; to undergo imprisonment for three years and fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months, for the offence punishable under Section 201 of IPC; and to undergo

imprisonment for one year and fine of Rs.2,000/-, in default, to undergo simple imprisonment for three months, for the offence punishable under Section 506 of IPC and sentenced Accused No.1 to undergo imprisonment for three years and to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for six months, for the offence punishable under Section 201 of IPC and imprisonment for one year and fine of Rs.2,000/-, in default to undergo simple imprisonment for three months, for the offence punishable under Section 506 of IPC. It is also directed that out of the fine amount imposed, Accused No.2 has to pay compensation of Rs.25,000/- to the son of the deceased i.e., CW.26. 36 VIII. CONSIDERATION62 On careful re-consideration of the entire oral and documentary evidence on record including the averments made in the complaint - Ex.P4 dated 6.7.2005 and the evidence of PW.10, who is an eye-witness, it is clear that on the fateful day i.e., on 17.5.2005 at 11.45 p.m. in the house of the deceased Mahadev @ Nagamahadeva, Accused No.1 (wife of the deceased) and Accused No.2 (elder brother of Accused No.1), who could not tolerate the deceased picking up quarrel with Accused No.1 alleging Accused No.1 is having illicit relationship with one Sarvesh of Kammasandra, picked up quarrel with the deceased and by stating that Accused No.1 would get peace if the deceased dies, Accused No.2 kicked forcibly on the genital organ of the deceased and when the deceased fell down, gagged him by putting clothes to his mouth and caused death. Thereafter with an intention to destroy evidence, both Accused Nos.1 and 2 hanged the dead body of the 37 deceased to fan in the hall of the house of the deceased with the help of veils to show that the deceased committed suicide by hanging herself and criminally intimidated PW.10 that she would meet the same end if she discloses the matter to any one else.

63. In the additional statement filed under Section 313(5) of the Code of Criminal Procedure, Accused No.1 stated that as usual on 17.5.2005, the deceased returned home from the Bar at about 11.00 or 11.30 p.m. The son of the accused No.1 and the deceased viz., Prajwal and PW.10 - Kum. Rashmi were asleep. She served the deceased dinner and went to sleep and the deceased was watching television from the hall, while eating. She did not realize when she slept and she woke up as usual at 5.30 a.m., on 18.5.2005 and when she entered the hall from the bedroom, she was shocked to see her husband hanging from the ceiling fan

and therefore, she shouted for help and collapsed at the spot itself. After she regained consciousness, she saw that the body of her husband was placed on the floor and several persons were assembled at the spot. Her son - Prajwal was sitting on her lap and Rashmi, Sunandamma and others were consoling her. It is further stated that after some time, her husband's body was lifted and taken to the native village to perform his obsequies. Later, she along with Rashmi, Prajwal and others went to the village in a car. It is further stated that PW.5 - Chandra informed the relatives through telephone and that upon reaching the spot, the relatives discussed within themselves and said that as deceased had committed suicide, it would become a police case and police would have to be informed and the family members would be put to shame, hurt and panic and further, postmortem would have to be conducted on the body.

64. It is further stated that as they wanted to perform the last rites of Kamsagara village, where their relatives were present, they started telling everyone that 39 her husband died of heart attack. Accused No.1 further stated that Accused No.2, his elder brother, who was also present at their native village, told the said persons that if they had suspected the cause of death, they should have lodged a complaint at Bangalore so that the postmortem on the dead body would have been conducted at mortuary at Bangalore and further told them that if they suspect the cause of death, the body could be taken to the general hospital at Kanakapura or to Bangalore to confirm their doubts. She further stated that all persons present along with her, at the cremation ground, the entire night. She further stated that on the next day, certain Police Officers along with the doctor came near the spot and after a few minutes, the body was given back to them for cremation and the cremation formalities were conducted as per law. Accused No.1 further stated the said persons that she has not committed any wrong and she would not succumb to the threats administered by them and told them to do 40 whatever they want. After performing the customary rites and rituals subsequent to the cremation of the dead body, she came to her husband's house, where she was refused to let her in and told to go to another place and thereafter, she learnt that the relatives of her husband had filed a false case against her and her elder brother alleging that they had committed murder with the aid and assistance of some other persons and offences under Sections 302, 201 and 506 of IPC were alleged to have been

committed by them. She further stated that her elder brother- Accused No.2 was nowhere concerned in the matter and he was not residing with them on the date of death of her husband and he has been made scapegoat in the matter due to enmity and hatred by the relatives of her husband. Therefore, she sought to acquit her for the alleged offences.

65. On the same lines, Accused No.2 also filed additional statement under Section 313(5) of the Code of Criminal Procedure, wherein it is stated that on 17.5.2005, 41 as he had completed one month of marriage, his wife's sister who was residing at Bangalore had invited him for dinner to her place. After completing the office hours, went for dinner to her house and was present at her house till about 10.30 to 11.00 p.m. and thereafter, they went to the home and switched off the wireless instrument after the working hours and switched it on at 8.30 a.m. on 18.5.2005. When he received a message from the Police control room informing him about the death of his brother-in-law, after obtaining permission from his superior officer, he along with Thammaiah proceeded towards native place at Kamsagara, where he was told that the last rites and obsequies were to be performed. When he reached the native place, the dead body of his brother-in-law was already there. When the relatives enquired with him about the cause of death, he told that he had no idea and that the moment he received intimation of the death, he had rushed to the village. He further stated that at the 42 time of bathing the body, the relatives of his brother-in-law suspected cause of death and told that they could have lodged a complaint at Bangalore itself. After about 45 days, he came to know that his sister was arrested in connection with the death of his brother-in-law for an offence of murder and he was also arrayed as Accused No.1 in the said case. He further stated that there was cordial relationship between his sister (Accused No.1) and brother-in-law (deceased) and he was residing at a different place before and at the time of his death. He learnt about the death of the deceased only after receiving the message from the Police Control room on the next day. He never committed the offence as alleged. Therefore, he sought to acquit him for the alleged offences.

66. At this juncture, it is relevant and appropriate to go through the evidence of PW.10, the eye witness to the incident. A careful reading of the evidence of

PW.10, who is the eye witness to the incident and who was residing 43 alongwith Accused No.1 and the deceased clearly depicts that the relationship between Accused No.1 and the deceased was not good and they used to quarrel often as Accused No.1 having illicit relationship with one Sarvesh. She has deposed that a month prior to the death of the deceased so also 5-6 months prior thereto, there were quarrels between the accused No.1 and the deceased. She also deposed that on 17.5.2005, she was watching the film Aptamitra by putting a CD to the TV and at about 11.45 p.m. the deceased came home and at that time, herself, Accused No.1 and Mr. Prajwal (son of Accused No.1) were there in the house and infact Mr. Prajwal was sleeping. She further deposed that after changing clothes, the deceased was wearing only banian and underwear and asked Accused No.1 to serve food, for which Accused No.1 has refused and started quarelling and at that time Accused No.2 came home, abused the deceased that his sister (Accused No.1) would be happy if he dies as he (the 44 deceased) has not allowed his sister to live in peace even a single day after the marriage and thereafter Accused No.2 kicked on the testicles of the deceased, who fell down. She further deposed that she kept quite as she was afraid of and thereafter both the accused warned her not to disclose the same to anyone and if she discloses the same, she would meet the same end as that of the deceased. She further deposed that by taking two veils, the accused hanged the dead body of the deceased to a ceiling fan as if the deceased has committed suicide and thereafter Accused No.2 went away. She further deposed that Accused No.1 by cutting the veil, got down the dead body of the deceased and made it lie on a mat. She further deposed that she was pretending as if sleeping and by 6.00 a.m. Accused No.1 asked her to inform to others that the deceased has committed suicide and if somebody enquires her, she should say that herself and Accused No.1 got down the dead body. Thereafter, the dead body was taken to 45 Kamsagara for funeral. She also deposed that when dead body was taken for bathing, P.W.4 and one Chikkatayamma found mark on the neck and salt being tied to testicles and suspected that the deceased was killed. She further deposed that thereafter P.W. 6 went to the police station and lodged a complaint. She also deposed that when P.Ws.4 and 6 forced her to reveal the truth, one month 20 days after the death of the deceased, as P.M. Report has disclosed something else, she agreed to

disclose the truth, though she has not disclosed the truth to her parents, who have asked her about the incident as she was afraid of the accused persons.

67. PW.10 was cross-examined at length. In the cross-examination, nothing is elicited to disbelieve her testimony that she was the eye-witness to the incident and her presence on the day of the incident in the house of the deceased is not at all disputed. In the cross-examination, PW.10 has made admission to the effect that she has not 46 intimated the owner of the building i.e. DW.1 - Sundaramma as she was in tension and infact there is no impediment to reveal the truth to the owner. She also admitted that in the morning, neighbours and friends of the deceased were there and there was no impediment to disclose the death of the deceased to them. She further admitted in the cross-examination that on the next day morning at about 8.30 a.m., the relatives of the deceased who were there in Bengaluru, also came to the spot and there was no impediment to intimate the death of the deceased to her. She also admitted that when they reached his village, there were about 250 members near the house for funeral and there were about 100 to 150 when she suspected that it is homicidal death and not suicidal. There was no impediment to disclose in the midst of so many people with regard to murder committed by Accused Nos.1 and 2, but she was under surveillance by the Accused Nos.1 and 2 and there was a threat to her life. In 47 the further cross-examination though she admitted certain suggestions made by the defence and stated that there was no impediment to reveal the truth when she was in Wilson Garden or when she was in the village for about 20 days, she specifically stated that she was terrified by Accused Nos.1 and 2.

68. Though a contention was taken by the defence that the complainant - PW.10 being an educated, there was no impediment for her to disclose the death to the relatives and villagers on the next day morning when the body was shifted to their native place for funeral, but still a complaint was made 51 days after the incident, the fact remains that on the next day i.e., on 18.5.2005 when the body was shifted to the native place of the deceased, brother of the deceased PW.6 - K.C. Shankar lodged the complaint as per Ex.P2 before the Sathanur Police and the same was registered as UDR No.10/2005. Later, the case was transferred to J.P. Nagar Police Station, Bengaluru. The 48 fact remains that the delay in lodging the

complaint by PW.10, eye-witness was due to the constant threat from Accused Nos.1 and 2.

69. A contention was taken by the defence that on the date of the incident, PW.10 though was in the house, she was sleeping and there was no possibility of she having witnessed the incident. But, PW.10 has categorically deposed before the Court that she was sitting near the door of bed room and she saw the incident by peeping through the door. Sketch of scene of offence marked and testimony of other witnesses regarding topography of the house corroborates the evidence of PW.10. Therefore, the evidence of PW.10 is trustworthy, credible and reliable.

70. It is not elicited from the prosecution witnesses including the evidence of PW.10 that due to rivalry between PW.10 and the Accused Nos.1 and 2, she is deposing falsely. To the suggestion made to her, PW.10 49 has answered that the relationship between her and Accused No.1 was good and Accused No.1 was looking after her well though Accused No.1 was not looking after well, the other relatives of the deceased, who used to come to the house of the deceased.

71. A further contention was raised by the learned counsel for the appellants about the conduct of PW.10 waiting for more than 51 days and after due deliberations with the relatives of the deceased including PW.6, the complaint came to be filed only to falsely implicate the Accused Nos.1 and 2 and thereby the alleged incident stated by PW-10 creates doubt. A careful perusal of Ex.P4 - complaint made before the Police by PW.10 depicts that she was threatened that she would be killed if she discloses the incident to anyone and therefore, she did not disclose the fact to anyone till her family members forced to disclose after receipt of the post-mortem report, which revealed the 50 homicidal death. Therefore, PW.10 forced to disclose the said fact before the Police.

72. The evidence of PW.10, eye witness corroborates with the evidence of doctor - PW.15, who stated on oath that on 19.5.2005 at the request of PW.12 - Shivaramaraja Urs, he conducted post-mortem examination on the dead body of the deceased from 10.30 a.m. to 12.45 p.m. On examination of the body, he found that it was a male aged about 36 years, well built and well nourished, height of 5.3 inch, body and hairs were black in colour and there was ligature mark below the

hyoid bone, running back symmetrically on both sides till medial border of sternocleidomastoid muscle and there was scrotum swelling. Ultimately he opined that cause of death is injury to both testicles and accordingly, he issued PM report as per Ex.P11 and Ex.P11(a) is his signature. Ex.P11(b) is Central Post Mortem Register and Ex.P11 is extract of Ex.P11(b). 51

73. PW.15 - Doctor further deposed that DSP, H&B Squad, COD, Bangalore, sought clarification as per Ex.P14 regarding post-mortem report dated 19.5.2005, on the following points:

1. Whether the injury sustained to the testis are anti mortem or post mortem?.
2. Whether the ligature mark found around the neck of the deceased Mahadev is anti mortem or post mortem?.
3. What could be the reason for causing Haematoma, the left side of the testis?. Whether that Haematoma is anti mortem or post mortem?.
4. Whether the ligature mark found around the neck is homicidal or suicidal ligature mark?.
5. Whether Rigor mortis was present when you examined the dead body on 19.05.2005?.
6. What is the time since death?.
7. Whether Hyoid bone is fractured or intact?.
- 52 8. Whether the tongue was swelling and protruded in between the tooth?.
9. Whether saliva was found?.
10. Whether the injury caused to the testis is sufficient to cause the death of a person in an ordinary course of nature?.

74. The doctor - PW.15 has given his opinion on the above points as per Ex.P15 as under:

1. Antemortem injury to the testes.

- 2) Post mortem ligature mark.
- 3) Injury to the testis, Antemortem.
- 4) Homicidal,
- 5) Yes.
- 6) Around 24 to 28 hours.
- 7) Intact.
- 8) No.9) Not found.
- 10) Cannot be explained, depends on extent of injury.

75. By careful reading of the evidence of the eye witness - PW.10, evidence of the doctor - PW.15, Ex.P11 - 53 PM report and Ex.P15 - clarification, the prosecution established that the death of deceased was homicidal death, but not suicide and the learned counsel for the appellants based on the oral and documentary evidence, not able to show that it is suicidal death.

76. The material on record clearly depicts that eventhough Accused Nos.1 and 2 filed statement under section 313(5) of the Code of Criminal Procedure, have not disputed the presence of PW.10 on the date of the incident in the house of deceased. The defence taken by the accused in his statement and evidence adduced by them through DWs.1 to 4 not able to show that the deceased committed suicide.

77. Admittedly in the present case, there is no dispute with regard to relationship of deceased and Accused No.1 as husband and wife and Accused No.2 is brother-in-law of the deceased and he was residing along with Accused 54 No.1 and the deceased more than 1 years and only few months prior to the incident, he married and got separated. It is the case of the prosecution that Accused No.1 had illicit relationship with one Sarvesh, however the said Sarvesh has not been examined. Though the statements of the accused have been recorded under the provisions of Section 313 of the Code of Criminal Procedure, they have neither taken any

defence nor have specifically set up any case. All the questions put to the accused with regard to the incriminating circumstances against them have been totally denied. Though the accused persons filed additional statement under section 313(5) of the Code of Criminal Procedure that it is suicide by the deceased, they have not placed any probable evidence as to why the deceased hanged himself and not produced any documents and not explained about the death of the deceased in the proper perspective. Accused No.1 being the wife of the deceased and Accused No.2 being the brother-in-law of the deceased 55 and working in the Police Department, not lodged any complaint to the Police, before they shifting the dead body to his native place. The conduct of Accused Nos.1 and 2 in shifting the dead body and hurriedly cremating the body by suppressing the offence and the totality of the facts and circumstances of the case clearly establish that the death of the deceased Mahadev @ Nagamahadeva, was homicidal.

78. Though a specific contention was taken by the learned counsel for the appellants that there was delay of more than 51 days in filing the FIR and same was not explained by the prosecution and it is fatal to the prosecution case, the same cannot be accepted for the simple reason that PW.10, who is an eye witness to the incident could not disclose the truth to anybody including to the relatives, Police and her parents, due to the constant threat by Accused Nos.1 and 2 and since she was with Accused No.1 after the incident and her movements were 56 under surveillance by Accused Nos.1 and 2. Moreover, no material brought to our notice by the defence that the delay in filing the FIR was with an intention of false implication. The explanation made by PW.10 and PW.21 and in view of the complaint lodged by PW.6 on the next day of the incident i.e., on 18.5.2005, the delay in filing the FIR is not fatal to the case of the prosecution.

79. PW.10 explained as to why she did not disclose before the villagers and the reasons for delay in giving her statement, before the Police. PW.10 has categorically deposed that she was criminally intimidated by the accused that she would be killed if she discloses about the incident before others and the same is the reason for delay in not disclosing the role of accused in the death of the deceased soon after the incident. The testimony of PW.10 is inspiring confidence and it is trustworthy, credible and reliable and nothing is elicited to disbelieve the

same, as the prosecution established that Accused Nos.1 and 2 have 57 criminally intimidated PW.10 as alleged. In view of the oral and documentary evidence, in particular, the evidence of PW.10, which is corroborated with the evidence of PW.15 - doctor and PWs.4,6 and 17, it is amply clear that the death of the deceased is homicidal and the deceased has died as Accused No.2 kicked on the testicles of the deceased at the time of the incident.

80. It is also not in dispute that earlier, on the complaint of P.W.5-brother of the deceased, the Sathanur police registered UDR case No.10/2005 on 18.05.2005 itself. Later, P.W.21-PSI after getting postmortem examination, he found injury on the scrotum of the deceased. Then, after taking the photographs, he has intimated to the Doctor and later the Doctor visited the graveyard where the body of the deceased was kept and conducted the postmortem examination and the postmortem report was given to the Sathanur police only after a month. Thereafter, P.W.21 on the point of 58 jurisdiction, transferred the case on 09.06.2005 to J.P.Nagar Police Station, Bengaluru, wherein, another UDR Case No.38/2005 was registered and as per the evidence of P.W.26, he has waited for lodging the complaint by somebody. But, nobody visited the police station for lodging the complaint. He also tried to record the statement by going to the house of the deceased. But it was kept locked. Therefore, he came back. Then, on 06.07.2005, P.W.10 filed complaint as per Ex.P.4. Then, case in Crime No.271/2005 under Sections 302 and 201 IPC is registered. Hence, the question is whether Crime No.271/2005 is a second FIR being registered for the same offences vitiating the proceedings. It is well settled that there has to be FIR about an incident which constitute a cognizable offence and there cannot be two FIRs registered for the same offence. Whereas, in the case on hand, two earlier crimes viz., Crime No.10/2005 and Crime No.38/2005 were registered for unnatural deaths and no 59 cognizable offences alleged and only in Crime No.271/2005, FIR for the offences punishable under sections 302 and 201 IPC came to be registered and therefore, it cannot be said that two FIRs are registered for the same offence.

81. Our view is fortified by the judgment of the Honble Supreme Court in the case of Anju Chaudhary - vs- State of U.P. reported in 2013 AIR SCW245 wherein the Honble Supreme Court at paragraph-28 held as under:

28. Even the offences which are stated to have been committed, and for which the two FIRs were registered in these respective cases were different and distinct. In the complaint filed by Parvez Parwaz, which was registered as a FIR, names of the persons were mentioned and a general investigation was called for, while FIR No.145 of 2007 registered by Hazrat, was against unknown persons for damage of his property, which was for a specific offence, without any other complaint or allegation of any communal instigation or riot. In other words, these were two different FIRs relatable to different occurrences, investigation of one was in no way dependent upon the other and they are neither interlinked nor interdependent. They were lodged by different persons in relation to occurrences which are alleged to have occurred at different points of time against different people and for different offences. Requirement of proof in both cases was completely distinct and different. Thus, there was no similarity and the test of similarity would not be satisfied in the present case. Thus, we have no hesitation in coming to the conclusion that lodging of the subsequent FIR was not a second FIR for the same occurrence as stated in FIR No.145 of 2007, and thus, could be treated as a first information report for all purposes including investigation in terms of the provisions of the Code. It was not in the form of a statement under Section 162 of the Code.

82. Based on the oral and documentary evidence on record, in particular the evidence of PWs.21, 23 and 24, it is clear that PW.10 was under constant threat from Accused Nos.1 and 2 and she was at the mercy of Accused NO.1 as she was residing with the Accused No.1 and the delay in filing the complaint has been satisfactorily explained by the 61 prosecution. Even as per evidence of PWs.21 and 23, it cannot be said that there is any delay in lodging complaint as the preliminary enquiry started on 18.5.2005 from the crematorium itself.

83. Our view is fortified by the dictum of the Honble Supreme Court (three Judges Bench) in the case of P. Rajagopal and others -vs- State of Tamil Nadu reported in (2019)5 SCC403 wherein at paragraphs 12, 13, 14 and 18, it is held as under:

12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily

explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See 62 Apren Joseph v. State of Kerala, (1973) 3 SCC114:

1973. SCC (Cri) 195 and Mukesh v. State (NCT of Delhi), (2017) 6 SCC1: (2017) 2 SCC (Cri) 673]. .].

13. In the matter on hand, the entire family of PW1 was at the mercy of Accused 1, who was very rich and influential. Accused 1 acted as a benefactor to the family and had helped them financially and otherwise on multiple occasions. Under such circumstances, PW1 might have been reluctant to lodge a complaint immediately after the occurrence of the said incident, especially when Accused 1 had employed his henchmen to keep the house and movements of PW1 and her family under surveillance. Moreover, no material has been brought to our notice by the defence to prove that the delay in filing the FIR was with the intention of false implication. Thus, the explanation given by PW1 for the delay remains untainted.

14. In our considered opinion, looking at the totality of the facts and circumstances, the trial court and the High Court were justified in condoning the delay and in concluding that the said delay was not vital to the case of the prosecution. 63

18. PW1 further deposed in detail about how Santhakumar was confined and assaulted by Accused 1 and the other accused, and also about the threats by Accused 1 that he would kill Santhakumar in case he did not leave PW1. She also explained the delay in lodging the complaint by stating that since she and her husband were being continuously watched by Accused 1's henchmen, they could not lodge the complaint on time and ultimately, under the pretext of attending a felicitation function, they managed to go to the office of the City Commissioner of Police, Chennai, and lodged the said complaint. Though PW1 was cross-examined at length by the defence, the same did not yield any positive result in favour of the defence in respect of the incident of abduction in question.

84. Our view is also fortified by another judgment of the Honble Supreme Court in the case of Mallikarjun -vs- State of Karnataka reported in (2019)8 SCC359 wherein at paragraphs 5,6, 11, 21 and 22, it is held as under:

64. 5. To prove the guilt of the accused before the trial court, prosecution examined PWs 1 to 17 and marked number of documents and also marked material objects. The trial court rejected the defence plea of alibi put forth by Accused 4 who has been working as a teacher at Balichakra Village. Upon consideration of oral and documentary evidence, the trial court found that the delay in registration of FIR is not fatal to the prosecution case. Relying upon the evidence of PW5 mother of the deceased corroborated by the medical evidence and considering other evidence, the trial court held that the prosecution has established the guilt of the accused beyond reasonable doubt and convicted Accused 1, 2 and 4 (appellants herein) and also Accused 3 (absconding) under Section 448 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for six months each. They were also convicted under Section 302 IPC read with Section 34 IPC and sentenced each of them to undergo life imprisonment. In appeal, the High Court confirmed the conviction of the appellants (Accused 1, 2 and

4) and Co-accused 3 and also the sentence of imprisonment imposed upon them.

6. Ms Kiran Suri, learned Senior Counsel appearing for the appellants submitted that the incident was at 65 9.00 a.m. whereas the complaint was lodged only at 1.15 p.m. and the FIR was received by the Magistrate only at 8.00 p.m. and there is an inordinate delay in receipt of the FIR by the Magistrate and no explanation is given for the delay in registration of the FIR. It was submitted that the unexplained delay in registration of FIR and delay in receipt of the FIR in the court raises serious doubts about the prosecution case and there is every likelihood of false implication of the accused and this aspect has not been properly considered by the trial court and the High Court. It was further submitted that the evidence of PW5 Kamalamma, mother of the deceased suffers from discrepancies which vitally affect the credibility of PW5 and the evidence of PW5 cannot form the basis for conviction. The learned Senior Counsel assailed the alleged recovery of dagger

(MO1 from Accused 1 and other material objects from the scene of occurrence and submitted that without proper appreciation of evidence, the courts below erred in convicting the appellants.

11. Evidence of PW5 is assailed on the ground that her evidence suffers from discrepancies and contradictions as to how and when her statement was recorded and when PW7 came back to the house. In her evidence, PW5 stated that Saidapur 66 Police came to the scene of occurrence and her statement was recorded. PW5 further stated that the police took her to the police station and recorded her statement in the police station. In her cross-examination, PW5 stated at one time that at about 10.00 a.m. Village Dalapathi informed the police and police came at 11.00 a.m. and recorded her statement and obtained her left thumb impression.. In another version, PW5 stated that she was at home till her husband (PW6) came home from Village Kaulur and thereafter she went to the police station along with PW6. The learned Senior Counsel submitted that PW5 could not have been an eyewitness as her evidence suffers from various discrepancies. The learned Senior Counsel for the appellants submitted that the contradictory versions of PW5 as to how and when her statement was recorded by the police becomes relevant in the light of delay in registering FIR and delay in sending the FIR to JMFC and this only strengthens the defence plea of false implication of the accused.

21. The learned Senior Counsel for the appellants then contended that the occurrence was at 9.00 a.m. whereas the FIR was registered only at 1.15 p.m. and nearly after a delay of four hours, case was registered and the Magistrate received the FIR at 67 8.00 p.m. The learned Senior Counsel for the accused contended that there is animosity between the parties and the delay in registration of the FIR and the delay in receipt of the FIR in the court raise serious doubts that the accused had been falsely implicated in the case. There is, of course, delay in registration of the FIR and the receipt of the same in the court. There may be cases where the delay in FIR gives rise to the suspicion as to the false implication; but when the delay is satisfactorily explained, delay in registration of the FIR or receipt of the same in the court would not affect the prosecution case. PW6 husband of PW5 and father of the deceased was away from the house and

naturally, it would have taken some time for PW5 and her son PW7 to lodge the complaint about the occurrence. The effect on the mind of PW5 on seeing the death of her son, cannot be measured. Being grief-stricken because of death of her son, it might have taken some time for PW5 and PW7 to lodge the complaint.

22. FIR in Crime No.44 of 2002 was registered at 1.15 p.m. and the same was received by the Magistrate at 8.00 p.m. nearly after six hours. There is, of course, some delay in receipt of the FIR in the court. In his evidence, PW10 Constable 68 Kalyanamma then attached to Saidapur Police Station has stated that the distance between Saidapur and Yadgir is 40 km. PW10 constable has stated that at the relevant time, there was no train from Saidapur to Yadgir. PW10 constable further stated that though eight buses were plying to Yadgir, at the relevant time, there were no buses enabling him to reach Yadgir at an earlier time. In our view, there was no inordinate delay in the receipt of FIR in the court. The findings of the trial court and the High Court that the delay in lodging the complaint and receipt of FIR in the court have been properly explained, do not suffer from infirmity and we do not find any reason to take a different view.

85. Therefore, the contention of the learned counsel for the appellants that there was delay in filing the FIR, cannot be accepted and the delay has been satisfactorily explained by the prosecution.

86. Learned counsel for the appellants contended that there was no reference to the future acts of PW.10 and if really she wants to lodge complaint, ought to have made 69 within time and the averments made in the complaint, the statement made before the Police under Section 161 of the Code of Criminal Procedure and the admissions made in the cross-examination are improvements. There may be minor omissions and contradictions in the evidence as the incident occurred on 17.5.2005 and the evidence adduced before the Court on 21.01.2010 i.e., nearly after five years. It may be due to passage of time, witnesses do deviate from the police statements as their memory fades to some extent and there may be some minor discrepancies, which cannot be a ground to ignore the evidence made by PW.10, an eye witness, who in categorical terms stated that accused No.1 picked up quarrel with the deceased and Accused No.2 saying that Accused No.1 would

get peace if the deceased dies, forcibly kicked the deceased on his testis and thereafter, with an intention to destroy the evidence, both accused Nos.1 and 2 along with two other persons, hanged the dead body to the fan in the hall of the house 70 using veil to give an impression that the deceased committed suicide by hanging himself. The presence of PW.10 in the house of deceased and Accused No.1 at the time of the incident, is not disputed by the accused persons though they made additional statement before the Court. On that ground also the contention of the learned counsel for the appellants cannot be sustained.

87. Though there are some contradictions in the testimony of PW.10 regarding presence of two more persons at the place of incident, service of food to the deceased by Accused No.1, use of veil and how Accused No.1 got down the dead body of the deceased, which was hanged, marginal variations in statements of witnesses cannot be doubted as minor contradictions and inconsistencies of trivial matters do not erode credibility of witnesses though diversions in material particulars affect core of prosecution case and discredit testimony of witnesses. 71

88. Our view is fortified by the Judgment of the Honble Supreme Court in the case of A. Shankar -vs- State of Karnataka reported in AIR 2011 SC2302 wherein at paragraph-17 it is held as under:

17. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when 72 the entire

evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. The omissions which amount to contradictions in material particulars i.e. materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. [Vide State represented by Inspector of police v. Saravanan & Anr., AIR 2009 SC152 (2008 AIR SCW7060; Arumugam v. State, AIR 2009 SC331 (2008 AIR SCW7354); Mahendra Pratap Singh v. State of U.P. (2009) 11 SCC334: (2009) AIR SCW2849; Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT (2010) 12 SC287: (2010 AIR SCW7049; Vijay alias Chineer v. State of M.P. (2010) 8 SCC191:(2010 AIR SCW5510, State of U.P. v. Naresh & Ors., (2011) AIR SCW1877; and Brahm Swaroop & Anr. v. State of U.P. : AIR 2011 SC280 (2010 AIR SCW6704. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh, (2009) 11 SCC106: (AIR 1998 SC2554.

89. Learned counsel for the appellants contended that the Investigating Officer has not explained as to how two persons have left out and stated he will file additional charge sheet in respect of those persons, who were not traced. As can be seen from the additional charge sheet filed, the Investigating Officer stated that he has not traced them. Learned counsel for the accused persons has contended that though Ex.P23 - report of Polygraph Test, Ex.P24 - Narco Analysis report and Ex.P26 - Polygraph report are marked through the Investigating Officer, the concerned authorities have not been examined. Mere marking of the documents does not prove its contents, in view of the provisions of Section 294 of the Code of Criminal Procedure. The learned Sessions Judge proceeded to impose conviction mainly on the basis of the evidence of PW.10, the eye witness and the evidence of PW.15 - doctor and medical documents - Ex.P11 and Ex.P15. From the material documents, the prosecution proved that it is homicidal death and therefore, the burden shifts on the Accused Nos.1 and 2 to show how the

deceased met with an unnatural homicidal death. But, they have not discharged the burden to disprove the prosecution case of the homicidal death and have taken specific contention in the additional statement with regard to self hanging by the deceased.

90. Another contention was taken by the learned counsel for the appellants that the family members of PW.10 asked Accused No.1 to transfer all the properties of the deceased in favour of PW.10 and as Accused No.1 refused for the same, a false complaint is lodged against the accused through PW.10. The said fact has been denied by PWs.4 and 6 (brother and friend of the deceased), who 75 were examined before the Court and even PW.10 denied the said suggestion. Nothing has been elicited from the mouth of the prosecution witnesses to that effect. Moreover it is not in dispute that Accused No.1 is having son, aged about 8 years as on the date of the incident. Such being the case, the very contention taken by the accused themselves appears to be not probable and they have not made any case to accept the contention of the defence.

91. As already stated supra, PW.10 who is an eye witness has categorically stated on oath that it is Accused No.2, who kicked the deceased on his testes and because of which, he died and to destroy the evidence, Accused Nos.1 and 2 hanged the dead body of the deceased to fan in the hall of the house of the deceased with the help of veils to show that the deceased committed suicide by hanging himself and Accused No.1 got down the dead body of the deceased after Accused No.2 left the place. 76

92. The material also discloses that when the body was shifted to the village for the funeral, though PWs.2,4, 6 and others suspected cause of death and suggested filing of the complaint, Accused No.2 pressurized to burn the body and non-initiation of any criminal proceedings by Accused Nos.1 and 2 though Accused No.2 was working in the Police Department and other oral and documentary evidence on record clearly establishes that it was homicidal death at the instance of Accused No.2. Therefore, the contention of the learned counsel for the appellants cannot be accepted.

93. On careful perusal of the material on record, the prosecution clearly established that Accused Nos.1 and 2 and PW.10, the eye witness were residing together more than 1 year and only 2 months prior to the incident, when Accused No.2 married, he shifted and residing separately. On the date of the incident, the presence of the accused and the deceased as well as presence of PW.10 77 and son of Accused No.1, aged about 7 years in the house, is not in dispute. It is also not in dispute that as per the statement made by PW.10, the deceased Mahadev used to suspect the fidelity of his wife alleging that she had illicit relationship with one Sarvesh and she had seen Sarvesh coming to the house of the accused on 3-4 occasions. However, Sarvesh has not been examined in the present case. But, the fact remains that on the fateful day i.e., on 17.5.2005 at 11.45 p.m., there was verbal altercation between the accused No.1 and the deceased and thereafter accused No.2 came to the house and in the spur of the moment without any premeditation, he kicked the deceased on his testicles stating that he has not left his sister (Accused No.1) to live happily and in peace even one day after the marriage. In view of the relationship of the deceased with the Accused No.1 as husband and wife and Accused No.2 being brother-in-law of the deceased, there could not have been any intention to kill his own brother-in- 78 law with knowledge that death was likely to cause and his sister becomes widow.

94. At this stage, it is appropriate to refer to Exception 4 of Section 300 of IPC, which reads as under: 300. Murder: xxxxx Exception 1: xxxxxx Exception 2: xxxxxx Exception 3: xxxxxx Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

95. To invoke the provisions of Exception 4 to Section 300, four requirements must be satisfied: i) It must be a sudden fight; ii) There should be no premeditation; 79 iii) The act must be done in a heat of passion; and iv) The assailant should not have taken any undue advantage or acted in a cruel manner.

96. In the present case, the offence is culpable homicide not amounting to murder as it was committed by Accused No.2 without any premeditation in a sudden fight

in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. It clearly indicates that offence falls under Section 304 of IPC, for which the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but 80 without any intention to cause death, or to cause such bodily injury as is likely to cause death.

97. Admittedly, in the present case, there was a quarrel between the deceased and the Accused No.1 (husband and wife) as the deceased was suspecting the fidelity of his wife. On the request made by Accused No.1, Accused No.2 (brother of Accused No.1 and brother-in-law of the deceased) could have entered to solve the problem, but in altercation, he was suddenly provoked and in the heat of passion, he kicked on the testicles of the deceased without any premeditation and it was on the spur of the moment. In view of the above, case does not fall under Section 302 of IPC but falls under Exception 4 of Section 300 of IPC since the accused inflicted injuries on the testicles of the deceased without any intention to cause death and the act of the accused is punishable under Section 304 Part II of IPC. 81

98. Taking into consideration the deceased and Accused No.1 are husband and wife and Accused Nos.1 and 2 are sister and brother (i.e., wife and brother-in-law of the deceased) and having noticed, Accused No.1 is having son, aged about 7 years and the alleged unfortunate offence undoubtedly has taken place at the spur of the moment without any premeditation, it cannot be said that the Accused No.2 had intention to kill his own brother-in-law with knowledge that the death was likely to cause and his sister becomes widow. The Accused Nos.1 and 2 only intended to vent their ire against the deceased and there was no occasion for them to kill the deceased, who is the brother-in-law of Accused No.2 and husband of Accused No.1.

99. In view of the above and considering Accused No.1 is aged about 29 years and Accused No.2 is aged about 35 years as on the date of the additional statement filed by them under Section 313(5) of Cr.Pc and taking into 82 consideration the oral and documentary evidence on record and mitigating circumstances that it is a quarrel between the wife and the husband and the deceased succumbed to the injuries on the testicles, the conviction of Accused No.2 has to be converted into one under Section 304 Part II of IPC.

100. Our view is fortified by the dictum of the Honble Supreme Court in the case of Ahmed Shah and Another -vs- State of Rajasthan reported in (2015) 3 SCC93 wherein at paragraph 21 it is held as under: 21. As elaborated earlier, the complainant party went to the field and Sabbir Shah was armed with gun. In the sudden fight, there was a scuffle. During the course of scuffle, the appellants inflicted injuries on the deceased Sabbir Shah. The accused tried to grapple the gun from Sabbir Shah. There was no premeditation and that the incident was the result of sudden fight. In the scuffle, the other accused inflicted injuries on Rakhu Shah and PW8Rakhia. Considering the facts and circumstances of 83 the case, in our view, the present case cannot be said to be a case punishable under Section 302 IPC but a case falling under Exception 4 to Section 300 IPC. Since the appellants inflicted injuries on the neck and scalp of Sabbir Shah with the intention of causing death, the act of the appellant-accused is punishable under Section 304 Part I IPC.

101. While considering the provisions of Section 304 of IPC in the case of State of Madhya Pradesh -vs- Suresh reported in (2019) 14 SCC151 the Honble Supreme Court has laid down the principles for sentencing, proportionality and balancing of aggravating and mitigating circumstances and at paragraphs 13 and 14 it has held as under: 13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed 84 objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind

while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of. 85 102. On careful re-consideration of the entire oral and documentary evidence on record including the averments made in the complaint - Ex.P4 dated 6.7.2005 and the evidence of PW.10, who is an eye-witness, which is corroborated with the evidence of PW-15 - Doctor and PWs.4,6 and 17, it is amply clear that on the fateful day i.e., on 17.5.2005 at 11.45 p.m. in the house of the deceased Mahadev @ Nagamahadeva, Accused No.1 (wife of the deceased) and Accused No.2 (elder brother of Accused No.1), who could not tolerate the deceased picking up quarrel with Accused No.1 alleging Accused No.1 is having illicit relationship with one Sarvesh of Kammasandra, picked up quarrel with the deceased and by saying that Accused No.1 would get peace if the deceased dies, Accused No.2 kicked forcibly on the testes of the deceased and when the deceased fell down, gagged him by putting clothes to his mouth and caused death. Thereafter with an intention to destroy evidence, both Accused Nos.1 86 and 2 hanged the dead body of the deceased to fan in the hall of the house of the deceased with the help of veils to show that the deceased committed suicide by hanging himself and criminally intimidated PW.10 that she would meet the same end if she discloses the matter to any one else, thereby the prosecution proved beyond reasonable doubt that the deceased has died as Accused No.2 kicked on his testes and caused the homicidal death of the deceased and Accused Nos.1 and 2 committed the offences punishable under Sections 201 and 506 of IPC. Learned counsel for the appellants has not made out any case to interfere with the

sentence imposed by the learned Sessions Judge for the offences punishable under Sections 201 and 506 of IPC in respect of Accused Nos.1 and 2.

103. Learned counsel for the appellants relied upon the dictum of the Honble Supreme Court in the case of Toran Singh -vs- State of M.P. reported in (2002)6 SCC494 wherein the Honble Supreme Court while considering 87 the scope of the appellate Court under Sections 374 and 386 of the Code of Criminal Procedure to interfere with the punishment imposed under Section 302 of IPC, held that prosecutions case should rest on its own strength, not on absence of explanation or plausible defence by the accused. There is no dispute with regard to the law laid down by the Honble Supreme Court in the above case. Admittedly in the present case, the prosecution proved its case beyond reasonable doubt, which rests on its own strength on the basis of the evidence of PW.10, eye-witness and the evidence of the doctor - PW.15 coupled with the evidence of PWs.4,6 and 17. Therefore, the said judgment has no application to the facts and circumstances of the present case.

104. In the another judgment relied upon by the learned counsel for the appellants in the case of Sunil Kundu -vs- State of Jharkhand reported in (2013)4 SCC422 with regard to defective or illegal investigation, the 88 Honble Supreme Court held that though acquitting accused merely on ground of lapses or irregularities in investigation of a case would amount to putting premium on depreciable conduct of incompetent investigating agency at the cost of the victims, which may lead to encouraging perpetrators of crimes, where evidence of eye witnesses did not inspire confidence and a grave suspicion is created about the involvement of the accused in the offence of murder, benefit of doubt must go to the accused. The above judgment relied upon by the learned counsel for the appellants is of no assistance. In the present case, though there is a lapse on the part of the investigation authority in registering the case as Police authorities have registered 2 UDRs though the complaint was filed immediately on the next day, the material on record clearly proved beyond reasonable doubt that Accused No.2 caused homicidal death of the deceased and Accused Nos.1 and 2 tried to destroy the evidence of homicidal death and intimidated 89 PW.10, thereby attract the provisions Sections 302, 201 and 506 of IPC and this Court has taken lenient view

in respect of Accused No.1 converting the offence under Section 302 of IPC into one under Section 304 Part II of IPC.

105. In the another judgment relied upon by the learned counsel for the appellants in the case of Shivasharanappa -vs- State of Karnataka reported in (2013)5 SCC705 with regard to the conduct/reaction/behaviour of witnesses, the Honble Supreme Court held that if behaviour of witness is unnatural, the testimony of such witness may not deserve credence and acceptable and held that it is unsafe to convict the accused on the basis of such testimony. In the present case, PW.10 was under constant threat by Accused Nos.1 and 2 and she was with the Accused No.1 after the incident and her movements were under surveillance by Accused Nos.1 and 2. The complaint made before the 90 Police by PW.10 depicts that she was threatened that she would be killed if she discloses the incident to anyone and therefore, she did not disclose the fact to anyone till her family members forced to disclose after receipt of the post- mortem report. PW.10 has even stated in the cross- examination that out of fear and threat, there was delay in lodging the complaint. Admittedly, her presence is not disputed by Accused Nos.1 and 2. Therefore, her evidence is trustworthy, credible and reliable. In the circumstances, based on the oral and documentary evidence on record and in the light of the principles enunciated in the judgments of the Honble Supreme Court in the case of Mallikarjun -vs- State of Karnataka {(2019)8 SCC359 AND P. Rajagopal and others -vs- State of Tamil Nadu {(2019)5 SCC403, we are of the opinion that PW.10 has satisfactorily explained the delay in filing the complaint. In view of the above, the judgment in the case of 91 Shivasharanappa stated supra has no application to the facts and circumstances of this case. IX. CONCLUSION¹⁰⁶ For the reasons stated above, the 1st point raised in these criminal appeals is answered in the negative holding that the delay in filing the complaint by PW.10 is not fatal to the case of the prosecution and the delay has been satisfactorily explained by the prosecution, in the facts and circumstances of the case.

107. The 2nd point raised in these criminal appeals is answered in the affirmative holding that the Accused No.2 has made out a case to interfere with the impugned Judgment and order of conviction and sentence in so far as convicting Accused No.2 for the offence punishable under Section 302 of IPC and sentencing him to

undergo imprisonment for life and to pay fine of Rs.50,000/-, in default to undergo Simple Imprisonment for two years. 92 Accordingly, the impugned judgment convicting the Accused No.2 for the offence punishable under Section 302 of IPC is liable to be modified and converted into one under Section 304 Part II of IPC.

108. The 3rd point raised in these criminal appeals is answered in the negative holding that the Accused Nos.1 and 2 have not made out a case to interfere with the impugned judgment and order of conviction in so far as convicting Accused Nos.1 and 2 for the offences punishable under Sections 201 and 506 of IPC and sentencing them to undergo imprisonment for three years and to pay fine of Rs.5,000/- each for the offence punishable under Section 201 of IPC and to undergo imprisonment for one year and to pay fine of Rs.2,000/- each for the offence punishable under Section 506 of IPC, with default clauses, in the facts and circumstances of the case. 93 X. R E S U L T 109 For the reasons stated above, we pass the following order: i) Criminal Appeal No.408/2015 filed by Accused No.2 is allowed in part. ii) Criminal Appeal No.767/2015 filed by Accused No.1 is dismissed. iii) The impugned Judgment and Order of conviction and sentence in so far as convicting Accused No.2 for the offence punishable under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.50,000/-, in default to undergo Simple Imprisonment for two years, is hereby modified and Accused No.2 is convicted for the offence punishable under Section 304 Part II of IPC and sentenced to undergo imprisonment for NINE YEARS and to pay fine of Rs.25,000/- (Rupees twenty-five 94 thousand only), in default to undergo Simple Imprisonment for one year. iv) The impugned Judgment and order of conviction and sentence in so far as convicting Accused Nos.1 and 2 for the offences punishable under Sections 201 and 506 of IPC and sentencing them to undergo imprisonment for three years and to pay fine of Rs.5,000/- each for the offence punishable under Section 201 of IPC and to undergo imprisonment for one year and to pay fine of Rs.2,000/- each, for the offence punishable under Section 506 IPC with default clauses, is hereby confirmed. v) All the sentences shall run concurrently. vi) Accused Nos.1 and 2 are entitled to the benefit of set off as contemplated under Section 428 of the Code of Criminal Procedure. vii) The fine amount imposed on Accused No.2 has to be paid as compensation to the son of 95 the deceased under Section 357(3) of the Code of Criminal Procedure. viii) The

Registry is directed to send back the Records to the trial Court along with copy of this Judgment. Sd/- JUDGE Sd/- JUDGE Pages 1 to 19 .. kcm 20 to end .. gss

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