

The State Of Karnataka Vs. Babu S/o. Mutteppa Akale

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Court : Karnataka Dharwad

Decided On : Dec-19-2023

Judge : Sreenivas Harish Kumar and Ramachandra D. Huddar

Appeal No. : CRL.RC 100001/2022

Appellant : The State Of Karnataka

Respondent : Babu S/o. Mutteppa Akale

Judgement :

- 1 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 R IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE19H DAY OF DECEMBER, 2023 PRESENT THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR AND THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR CRIMINAL APPEAL No.100365 OF2022C/W CRIMINAL REFERRED CASE No.100001 OF2022 In CrI.A.No.100365/2022 Between:

1. Babu S/o. Mutteppa Akale Age:

32. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305.

2. Nagappa S/o. Mutteppa Akale Age:

29. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305.

3. Mutteppa S/o. Bhimappa Akale Age:

28. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305. Appellants (By Sri Yug Mohith Chaudhry, Advocate a/w Smt. Payoshi Roy, Sri. Siddhartha, Smt. Ragini Ahuja for Sri.Girish M. Patil, Advocates) - 2 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 And: The State of Karnataka Through Chikkodi Police Station Represented by State Public Prosecutor High Court of Karnataka Dharwad Bench Dharwad - 580011. Respondent (By Sri M.B.Gundwade, Addl. SPP) This Criminal Appeal is filed u/s 374(2) of Cr.P.C. praying to set aside the judgment and order of conviction dated 14.06.2022 and order of sentence dated 15.06.2022 passed by the VII Additional Sessions Judge, Belagavi sitting at Chikkodi bearing S.C.No.114/2014 for the offences punishable u/s 302, 307, 506 r/w 34 of IPC and acquit the appellants/accused No.1 to 3. In Crl.RC. No.100001/2022 Between: The State of Karnataka By State Public Prosecutor, High Court of Karnataka, Dharwad, R/by Circle Inspector of Police, Chikkodi Circle, Chikkodi. Appellant (By Sri. M.B.Gundwade, Addl. SPP) And:

1. Babu S/o. Mutteppa Akale Age:

24. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305.-. 3 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 2. Nagappa S/o. Mutteppa Akale Age:

21. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305.

3. Mutteppa S/o. Bhimappa Akale Age:

20. years, Occ: Agriculture R/o. Mamadapur, K.K Village, Tq: Chikkodi, Dist: Belagavi-591305. Respondents (By Sri. Yug Mohith Chaudhry, Advocate a/w Smt. Payoshi Roy, Sri. Siddhartha, Smt. Ragini Ahuja for Sri.Girish M. Patil, Advocates) This Criminal Referred Case is registered as required under section 366 of Cr.P.C. for confirmation of death sentence awarded to accused

1) Babu S/o. Mutteppa Akale, Age 24 years, Occ. Agriculture, R/o. Mamadapur K.K. Village, Tq. Chikodi, Dist. Belagavi.

2) Nagappa S/o. Mutteppa Akale, Age 21 years, Occ. Agriculture, R/o. Mamadapur K.K. Village, Tq. Chikodi, Dist. Belagavi.

3) Mutteppa S/o. Bhimappa Akale, Age 20 years, Occ. Agriculture, R/o. Mamadapur K.K. Village, Tq. Chikodi, Dist. Belagavi, by the VII Additional District and Sessions Court, Belagavi, sitting at Chikkodi, vide judgment of conviction dated 14.06.2022 and sentence to death dated 15.06.2022 in S.C. No.114/2014. These Criminal Appeal and Criminal Referred Case pertaining to Dharwad Bench, having been heard and reserved on 25.11.2023, and coming on for pronouncement through video conferencing this day, Sreenivas Harish Kumar J., sitting at Principal Bench, Bengaluru, pronounced the following: - 4 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022

JUDGMENT

Reference under Section 366 of Code of Criminal Procedure is made to this court consequent to imposition of death sentence on accused nos.1 to 3 for the offence punishable under Section 302 of Indian Penal Code. Accused nos.1 to 3 (for short the accused) have also filed an appeal challenging their conviction.

2. The prosecution case relates to an incident dated 22.10.2013 of killing two persons, a male by name Basavaraj and a female by name Sangeeta as they were found to be having illicit relationship. Accused no.1 is the husband of Sangeeta. Accused no.2 is the brother and accused nos.3 and 4 are the cousins of the first accused. The 4th accused was a juvenile and he was tried separately.

The incident, as projected by the prosecution, occurred like this:

3. All the four accused gathered in front of the house of Basavaraj around 10.30 p.m. on 22.10.2013, and shouted at Basavaraj loudly asking him to come out of his - 5 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 house. As he came out, they dragged him and tied to a Jali tree situated in a nearby agricultural land. Thereafter Sangeeta was dragged to the same place from her house and tied to the same tree by accused nos.1 and 2. As loud voice of calling out Basavaraj attracted the attention of neighbours, many people gathered. When PW2 and some others interfered to question the accused about what they were doing, second accused showed a mobile phone and asked them to listen to a conversation recorded therein and said that they should watch as to how Basavaraj and Sangeeta would be slain. By that time accused no.1 brought three sickles from his house, gave one sickle to accused no.2, the other to accused no.3 and held one with him. They hacked Basavaraj and Sangeeta with the sickles inflicting injuries all over their bodies. When PW2 somehow showed courage and rushed to their rescue, all the accused brandished the sickles at them and threatened to kill all those who would interfere. PW2 sustained an injury to his left hand while avoiding a blow on him. Basavaraj and Sangeeta met instantaneous death.-. 6 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 4. This incident was reported to police by PW2 at 8o clock on 23.10.2013. Ex.P.2 is the report of incident given by PW2 to the police. He narrated the incident and also stated that the accused had used a charging battery as a source of light at the time when they were committing crime.

5. PWs.2, 10, 11, 12, 17, 18, 19 and 22 were the eyewitnesses. PW17, 18 and 19 did not support the prosecution during trial, only PWs. 2, 10, 11, 12 and 22 supported the prosecution establishing the incident of killing Basavaraj and Sangeeta. Placing reliance on the testimonies of these witnesses, the trial court recorded a finding that the prosecution was able to prove its case beyond reasonable doubt and finding the incident as the rarest of rare, imposed death

sentence on accused nos.1 to 3 besides imposing sentence for the offences under sections 307 and 506 read with 34 IPC as the charge sheet was also filed for those offences.

6. We heard the arguments of Sri Vishwanath S.-. 7 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Bichagatti, learned counsel for accused nos.1 to 3 and Sri M.B. Gundwade, learned Additional State Public Prosecutor. Arguments were over on 14.09.2023 and the cases were reserved for judgment. But on 09.10.2023 we passed an order calling for reports from the jail authority, the probation officer and the psychiatrist in view of the judgment of the Honble Supreme Court in Manoj and Others vs State of M.P1. We also directed the jail authority to produce the prisoners i.e., accused 1 to 3 before the court on 12.10.2023. When they were produced on 12.10.2023, they submitted an application with a request to permit them to engage a senior counsel for further arguments. To meet the ends of justice, we permitted them and fixed the date of hearing on 04.11.2023. On that day, learned counsel, Sri Yug Mohith Chaudhry appeared on behalf of accused 1 to 3, and prayed for time to argue. We fixed the next date of hearing on 25.11.2023. We heard the argument of Sri Yug Mohith Chaudhry, who has also filed his synopsis of 1(2023) 2 SCC353-8 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 argument. We also heard the reply of Sri M.B.Gundwade, learned Additional State Public Prosecutor.

7. Sri. Yug Mohith Chaudhry argued about delay in registration of FIR. His argument was this: PW2 claims to be an eye witness to the incident that occurred in between 10.30 p.m. and 11.30 p.m. on 22.10.2013; he and other eye witnesses went home immediately after the incident; PW2 did not think it necessary to make a report of the incident to the police immediately after the incident and he would go to police station at 8 O'clock on the next day. No witness has given any explanation for the delay. PW2 has admitted that he had a mobile phone and the family of deceased had four to five phones. They had motorcycles also. PW10, an eye witness claims to have made a call to his uncle, Ashok and contacted several

persons in the village. It is inexplicable as to why none of them did not call the police or a doctor when they were calling other persons. Referring to evidence given by PW12, he argued that according to PW2, PW12 wrote the report, but PW12 - 9 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 has given entirely a different version by stating that they informed the police about the incident only after they came to spot the next morning. He also argued that PW13, the father of Sangeeta, was informed of the incident in the midnight around 1 O'clock. When PW13 came to spot and enquired how the offence had taken place, he was told that they did not know of it, and therefore the evidence of PW13 would undermine the version proffered by PW2 in FIR. He then argued that in Ex.P2, the report made by PW2, it is clearly written that they had discussion in the house during that night, and it shows that FIR was as a result of deliberation, and therefore what is written in Ex.P2 is not the truth. In this regard he has referred to some decided cases.

8. Sri Vishwanath Bichagatti argued that conviction recorded by the trial court for the offences under section 307 and 506 IPC is wrong in as much as the accused did not have any intention to kill PW2, what the evidence discloses is that when he interfered, he sustained an - 10 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 injury; it does not disclose that the accused had an intention to make an attempt on the life of PW2. The accused might have threatened those who tried to interfere, but it would not amount to causing intimidation within the meaning of Section 506 of IPC and hence the conviction of the accused for these two offences should be set aside. 8.1. In regard to the offence under section 302 of IPC, his argument was in this way: Though the testimonies of the eye witnesses namely PWs.2, 10, 11, 12 and 22 is believable in spite of hostile evidence given by PWs.17, 18 and 19, the prosecution case cannot be brought within the purview of offence punishable under section 302 IPC. His argument was that if the trial court had listened to the conversation between the two deceased which was recorded in a memory card marked as M.O.29, it was possible for taking a different view in the

sense that punishment under part II of section 304 could have been imposed. Elaborating, Sri Bichagatti submitted that it was - 11 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 a known fact that both the deceased had illicit relationship and they continued their relationship in spite of advice by the elders of both the families. As the relationship continued, it was quite natural for accused no.1 being the husband of Sangeeta to get enraged especially after listening to the conversation recorded in M.O.29. Though it is true that accused no.1 did not react immediately after coming to know of the illicit relationship of his wife with Basavaraj, the materials brought on record indicate that all the accused found the illicit relation to be an infringement of the reputation of their family and that frustration persisted in them for a long time. The line of argument of Sri Vishwanath Bichagatti was that though it was within the knowledge of accused no.1 that his wife had relationship with Basavaraj, he did not react immediately and he expected reformation in his wife. The knowledge of illicit relationship which he tolerated for many days ultimately led to provocation. The evidence discloses all these aspects and if the resultant act was killing, it was on account of sustained provocation which could be brought - 12 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 within the scope of Exception no.1 to Section 300 of IPC. In this view, he argued that the accused could only be punished under part II of Section 304 of IPC and since they have been in jail since 30.10.2013, the date of their arrest, this period could be set off and they be released. In support of his argument he placed reliance on many decided cases to which we refer later on.

9. But Sri. Yug Mohith Chaudhry put forward his argument some what differently. The unnatural conduct of PW2, 10, 11, 12 and 22 at the time of occurrence and their parroting the prosecution version are sufficient enough to disbelieve their testimonies as eye witnesses. One of the eye witnesses was mother of Basavaraj, the deceased, and the others were his first cousins. When Basavaraj was being dragged they did not protest and question the accused why they were doing so. They also did not untie Basavaraj from the tree when the accused went to bring

Sangeeta. When both the deceased were being assaulted, they did not rush to their rescue. After the incident was - 13 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 over, none of them went near the tree to untie the deceased and check whether they were still alive or not. No efforts were made by them to take Basavaraj to hospital immediately. The eye witnesses have not given any explanation for not calling the police or going to police station. The explanation given by the eye witnesses that they did not attempt to rescue since they were threatened does not stand up to scrutiny. All these notable features in their evidence demonstrate their unnatural conduct not expected of close relatives. All the witnesses have given evidence in orchestrated chorus; their evidence appears like parroted versions of events. 9.1. Referring to evidence of PW2 in particular, Sri. Yug Mohith Chaudhry argued that the evidence of PW2 is unbelievable for yet another reason that he has stated about an attempt made by accused no.1 to kill him. The medical evidence shows that PW2 suffered a simple miniscule abrasion caused by a hard and blunt object. The medical evidence completely improbabilises the evidence - 14 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 of eye witnesses and therefore explanation sought to be offered by the eye witnesses about threat posed to them by the accused is another falsehood. This unnatural conduct of the witnesses makes it explicit that they are interested witnesses, for only such witnesses have the tendency to give false evidence. When independent eye witnesses turn hostile, the evidence of related witnesses requires corroboration. In the absence of corroboration, their evidence cannot be believed. Thus argued Sri. Yug Mohith Chaudhry. 9.2. Continuing the argument Sri. Yug Mohith Chaudhry also focused on provocation sustained by the accused on account of illicit relationship between the two deceased to emphasize that this case is not fit for recording conviction under section 302 IPC. His argument was that spousal infidelity is the gravest kind of provocation that law has recognized; it cuts to quick and inflicts deep wounds. There is no recorded judgment that has held that spousal infidelity is not a grave form of - 15 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 provocation. In this case, the accused and the family of the deceased had been advising the deceased not to continue their relationship. The deeply intimate and familiar conversation between the two lovers would certainly provoke the accused who are young men from a rural and patriarchal society. The test of suddenness is not merely a mechanical question of proximity of time or the quantum of time intervening between provocation and assault; the real and substantial question is whether there was time and opportunity for the accused to cool down and break free from provocation. Premeditated acts of murder are normally accompanied either by an attempt to kill secretly, or an attempt by the accused to shield themselves and to conceal the offence. These elements are missing in the present case, instead the evidence discloses that, the accused did not go to the house of Basavaraj with weapons, that they did not bring Sangeeta with them to the house of Basavaraj. Each of the deceased suffered over ten chopped wounds on different parts of their bodies. The wounds were not inflicted to kill - 16 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the deceased, but to vent anger. The large number of injuries reflects the state of mind of the accused. It was not a mind that had calculatedly decided to kill someone but an enraged state of mind driven wild with pain and anger, and completely deprived of self control. In the charge sheet it is clearly mentioned that the accused resorted to killing Basavaraj and Sangeeta enraged by their illicit relationship. Since it is mentioned in the charge itself that the act was consequent to enragement, the accused cannot be punished for the offence under section 302 IPC, and if at all they have to be held guilty, they can be convicted for the offence under section 304 IPC. 9.3. His another line of argument was that if for any reason an offence under section 302 IPC can be said to have been proved, there is no case for imposing capital punishment. The trial court, he argued, has missed to notice mitigating circumstances overwhelmed by the brutality of the offence. There are critical mitigating circumstances; the accused were in prime youth; they had - 17 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 no criminal antecedents; the crime was as a result of extreme emotional disturbance; and provocation and brutal manner of commission of crime by itself is not enough to give death sentence. The accused have shown inclination to reform themselves. Therefore there is also a case of commutation of sentence to life imprisonment. 9.4. In regard to role attributed to accused no.2, he argued that the FIR does not indicate his overt act, and none of the witnesses states that he assaulted both the deceased with a chopper. The statement of accused no.2 under section 313 Cr.P.C. is that he was not residing with his parents, but he was living in his wifes house in a different village and this is admitted by PW22. It is well established in law that explanation given by the accused need not be proved beyond reasonable doubt. As long as the explanation given by the accused is probable, it should be accepted as true. It is evident that accused no.2 might have been roped in because of family feuds.-. 18 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 9.5. The last point Sri. Yug Mohith Chaudhry argued was that, totally three weapons were used by accused for committing crime. But only two weapons were marked during trial and they are MO8 and MO9. The prosecution has no explanation for not producing the third one. That apart, accused no.1 himself surrendered in the police station the very next day, but the police did not seek his custody with them and instead made an application for transferring him to judicial custody. This was unheard of in a murder case. Another aspect is that FIR indicated the names of A2 to A4, but till 29.10.2013, the investigating officer did not give instructions for their arrest. This only shows that the investigating officer himself did not believe the narrative given by PW2 in regard to role played by accused nos.2 to 4. With these points Sri. Yug Mohith Chaudhry concluded his argument.

10. Sri Gundwade, refuting the theory of sustained provocation as projected by Sri Vishwanath Bichagatti and Sri Yug Mohith Chaudhry, argued that in order to apply the - 19 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 first Exception to Section 300 IPC, the provocation must be sudden and grave which renders a person lose his self control and drives him to doing an act resulting in the death of another. In the present case this kind of a situation is not forthcoming. The relationship between both the deceased was known to the accused for quite a long time. The tenor of cross examination indicates that both the deceased had been advised to discontinue their relationship. They defied the advice of all. The conversation which had been recorded in the memory card inserted to the mobile phone did not trigger the accused pounce on the deceased immediately after listening it for the first time. The very fact that they asked the eyewitnesses who rushed to the rescue of the deceased to hear the recorded conversation indicated that the accused had heard that conversation long back. There was left with them sufficient time gap to think about next course of action which they implemented on the night of 22.10.2013. Therefore the accused premeditated and then put their plan into action. For this reason Exception 1 to - 20 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Section 300 of IPC cannot be applied. In support of his argument he referred to a paragraph from judgment of the Supreme Court in the case of Dauvaram Nirmalkar Vs. State of Chattisgarh² which judgment was referred by Sri Vishwanath Bichagatti and Sri Yug Mohith Chaudhry. His argument was that the way both the accused were killed shows the brutal and cruel attitude of the accused. The act of killing demonstrated cruelty of the highest degree and therefore any punishment less than death is no punishment at all to a situation like this. He submitted that the principles laid down by the Supreme Court in the cases of Bachan Singh Vs State of Punjab ³ and Machhi Singh and Others⁴ are very much applicable. Hence death sentence is to be confirmed. 10.1. Adverting to the argument of Sri. Yug Mohith Chaudhry, Sri.M.B.Gundawade replied that the eye witnesses were not chance witnesses. Considering the 2 (2022 SCC Online

955) 3 AIR 1980 SC8984 (1983) 3 SCC470- 21 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 time when the incident occurred, it was highly impossible to expect a chance witness to be present at that time. The witnesses were from the same village and neighbours of the deceased and the accused. They might be related, but their evidence does not disclose any exaggeration of events; they have not made any attempt to falsely implicate the accused. Their evidence is consistent which cannot be characterized as parroting. The evidence in fact discloses attempt made by all the witnesses to rescue the deceased. Though the accused were four in number, anybody would not dare beyond a limit to risk ones own life. In fact injury sustained by PW2 shows his attempt to interfere for the protection of the deceased. It is not as though a sharp edged weapon does not cause an abrasion, it depends on intensity and angle of blow. Therefore looked from any angle the evidence of PW2, PW10, PW11, PW12 and PW22 cannot be ignored.

11. From the above arguments, we need to answer the following questions : - 22 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 (i) Was there delay in registration of FIR?. (ii) Has the trial court erred in relying on the evidence of PWs2, 10, 11, 12 and 22?. (iii) Is the theory of sustained provocation applicable to the facts of the present case to scale down the offence from Section 302 to Section 304 IPC?. (iv) Whether the finding of the trial court that this is the rarest of the rare case correct and consequently death punishment is to be confirmed?. (v) Are accused rightly convicted for the offences under sections 307 and 506 IPC?.

12. Before answering point No.(i), we may briefly refer to the contents of Ex.P2 lodged by PW2 with the police on 23.10.2013. The accused suspected illicit relationship between Basavaraj and Sangeeta and this had given rise to enmity against Basavaraj and his family. At about 10.30 p.m. on 22.10.2013, PW2 went to bed and at that time he heard shouting voice in front of the house of - 23 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Basavaraj which was situated near his house. The shouting voices were that of accused nos.1 to 4 who asked Basavaraj to come out of his house. Hearing the

shouts, PW2 and others from the neighbourhood came out and heard all the accused scolding Basavaraj and dragging him to some other place. PW2 and others followed the accused and requested them to release Basavaraj. The accused took Basavaraj to their agricultural field and tied Basavaraj to a jali tree with a rope. Then accused nos.1 and 2 forcibly brought Sangeeta to the same place from the house and tied her also to that tree. When PW2 and others questioned them as to what they were doing, accused no.2 showed a mobile phone and asked them to listen to a conversation between Basavaraj and Sangeeta, and by that time the first accused brought from his house three sickles used for cutting sugarcane. He gave one sickle to accused no.2, another to accused no.3 and held one in his hand. Showing the sickles to PW2 and others and saying that since Basavaraj and Sangeeta were having illicit relationship they should see how both of them would be - 24 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 hacked, the accused nos.1 to 3 started assaulting both Basavaraj and Sangeeta with sickles indiscriminately and when PW2 went forward to protect both of them, all the accused brandished the sickles at them giving a threat that if anybody would come forward, he would be killed. Accused no.1 rushed to assault PW2 at that time and when the latter tried to escape, he sustained injury on his left hand. Therefore PW2 and others ran away from that place in fright. It is stated in Ex.P.2 that the accused had brought a charging battery for the purpose of obtaining light during the time of attack on Basavaraj and Sangeeta. Point No.(i) 13. On this point of argument, it may be stated thus: Its true that PW2 was the first informant and Ex.P2 is the report in writing given by him to police for registration of FIR. The scribe of Ex.P2 is Ravi M. Burj, who adduced oral evidence as PW12. FIR was registered at 8.00 a.m. on 23.10.2013.-. 25 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 14. Registration of FIR at the earliest point of time enhances credibility in it. Unexplained delay may lead to suspicion in the contents of FIR. But delay always does not matter and assume significance especially when a ghastly crime takes place. If the first informant is an injured or an eye witness and if his oral testimony is trustworthy, even if there is delay by a few hours, it cannot be given prominence.

In this case, we may state firstly that the aspect of delay appears to have not been raised in the trial court; this point has been raised for the first time before us. Be that as it may. It is true that PW2 has stated that there were mobile phones and motor cycles. But his one answer in the cross examination indicates a meaning that he was not using the motorcycle at that relevant time. His clear answer is, Now only I am using motor cycle (FU iv mg P GAiVwz). Although nothing prevented him from lodging FIR that night itself or informing the police at least over the phone, his not doing so cannot be considered to - 26 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 hold that Ex.P2 was outcome of deliberation and bereft of truth. There is ample evidence which we are going to discuss to show that he was an eye witness, and what is written in Ex.P2 is what he had seen. If in Ex.P2, it is written that they all returned home and consulted each other before lodging the report of incident, it cannot be understood in such a way as they held discussions to foist a false case against the accused. The meaning of the entire sentence is, being scared they all returned home, consulted each other about the next course of action to be taken and since it was late night, they went to the police station in the morning. In Ex.P24, the FIR, the distance between Mamadapur, the village where the incident occurred and the police station is mentioned as 35 kms. PW2 and PW12 might have reached the police station before 8 O clock, which indicates that they should have left home at least at 7 Oclock in the morning to cover the distance on the motor cycle. If they thought to stay back home during dark, there is nothing unnatural in it. There is explanation for this delay, if it is considered as delay.-. 27 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 15. Then about PW10 contacting his uncle by name Ashok and several others, it has to be stated that he was not the first informant to the police, but he too accompanied PW2 to the police station. He has clearly stated in cross examination that totally four persons went to police station in the morning on two motor cycles. Certainly he too could have telephoned the police to inform about the incident; if he did not, contents of Ex.P2 cannot be disbelieved. He too was an eye witness.

16. Its true that PW12 has stated in examination-in- chief that he told before the Circle Inspector of Police about the incident when the latter visited his house. This answer was pointed out by Sri. Yug Mohith Chaudhry to argue that PW12 had not been to the police station and therefore he was not the scribe which in turn leads to disbelieving Ex.P2. Here we find a mistake committed by the Public Prosecutor. It was the duty of the Public Prosecutor to elicit from him whether he scribed Ex.P2 or not, and draw his attention to his signature found on - 28 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Ex.P2. Anyway this does not matter, in as much as what PW12 has stated is that he revealed about the incident to CPI, who was not the police officer before whom the FIR was laid. PW24 was the sub-inspector of police who received Ex.P2 from PW2. PW24 has stated that he went to spot after registering FIR and untied the dead bodies from the tree, and then conducted inquest. By that time CPI came to spot, and then PW24 handed over investigation to CPI who, as PW25 has also stated to have taken over investigation from PW24. That means, PW12 might have once again revealed the entire incident to PW25. It is there in the evidence of PW25 that he recorded the statement of PW12(CW15). For this reason, Ex.P2 cannot be said to be a manipulated version.

17. No inference as to falsity in Ex.P2 can be drawn because PW13 has stated that nobody gave any information to him when he came to spot. The actual evidence of PW13 who is the father of Sangeeta in examination-in-chief is that CW1, i.e., PW2 told him that - 29 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the accused caused the death of his daughter suspecting her illicit relationship. And in the cross examination he stated that nobody told him as to how the incident occurred when he came to the spot. This answer does not mean that PW2 did not tell him about the incident; the meaning of his answer in the cross examination is that no villager, other than PW2, who might have come to the spot at 9.30 a.m. when PW13 also went there, might have told him like that. Those people probably, might not be eye witnesses to the incident. Therefore all the circumstances figured out by learned counsel to disbelieve FIR based on Ex.P2 do

not stand to reason. Now two decisions cited by Sri. Yug Mohith Choudhry may be referred. In Ganesh Bhavan Patel and Another Vs. State of Maharashtra,⁵ it was found that S.I. was found to be highly interested. One circumstance indicated that FIR did not appear to have been recorded before 3.00 a.m. on 30th November. PSI tried to give an impression that FIR was registered at 8.30 p.m. on 29th November. But one Ravji testified that 5 (1978) 4 SCC371- 30 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 his statement was recorded in the police station at 12 midnight or 1.00 a.m. after completion of panchanama of the scene occurrence. Ravji also stated that he might have signed his statement around 3.00 a.m. If the trial court held that statement of Ravji might have been recorded between 12 midnight and 1 a.m., the High Court held that PSI might have recorded the statement around 8.30 p.m. on 29th November. Moreover the investigating officer preferred recording statements of other witnesses to the eye witnesses, which was found to be unnatural. Ravji, probably was not an eye witness. In this backdrop delay in registration of FIR was noticed to be prominent.

18. Rajeevan and Another Vs. State of Kerala⁶ involves the facts that the incident occurred around 7.00 p.m. on 28.12.1987. SI reached the place of occurrence within half an hour and then returning to police station, he made a brief note about the incident in the general diary of the police station. PW1 lodged FIR on 29.12.1987 at 7.40 6 (2003) 3 SCC355- 31 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 a.m., but FIR was sent to the court at 5.40 p.m. on 30.12.1987. Firstly, a doubt arose as to why the PSI did not register FIR on the basis of information collected by him, and more than that, in the counterfoil of the FIR, between the entries relating to Crime nos.5 and 7, certain blank sheets were found. The court found this circumstance for false implication of appellants due to political bitterness. Therefore FIR was not believed. Delay in dispatch of FIR to the Magistrate was given prominence.

19. The case on hand does not indicate the existence of the circumstances found in cited decisions. In our opinion, there was no delay; even if there was delay, it

has been explained. Point no.(i) is answered in negative. Point No.(ii) 20. We have perused the evidence of PW2, PW10, PW11, PW12 and PW22. In the examination in chief PW2 has given a full account of the incident almost on lines with his first report to the police i.e., Ex.P2. Since we have already culled out the contents of Ex.P2, we do not think it - 32 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 necessary to narrate here what he has stated in examination in chief. PW10, PW11, PW12 and PW22 have spoken in tandem with PW2. None of these witnesses appears to have been discredited in the cross examination. The suggestions given to them in the cross examination indicate that the illicit relationship between the two deceased was a known fact to everybody in the village, that they used to meet in the jawar fields, that they had been advised to refrain from continuing the relationship, but they did not stop meeting. In regard to the incident, none of them has been discredited in the cross examination. The testimonies of these witnesses is sought to be impeached for two reasons that they are interested being related to Basavaraj and their unnatural conduct in not attempting to protect the deceased.

21. There is no rule that evidence of a related witness must be discarded, the established principle is that the oral testimony of a related witness must be subjected to scrutiny with a greater circumspection. If the testimony - 33 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 appears to be untainted without any attempt to falsely implicate a person, such kind of evidence can be definitely acted upon. Sri. Yug Mohith Chaudhry has relied on two judgments of the Honble Supreme Court in State of Orissa Vs. Brahmananda Nanda⁷ and Amar Singh Vs. State (NCT of Delhi).⁸ In Brahmananda, the conduct noticed was that PW6 who claimed to be an eye witness did not disclose the name of assailant till morning of June 15, 1969 though the incident had taken place on June 13, 1969. The explanation given was PW6 was afraid of the assailant. This explanation was disbelieved because the assailant was not a gangster or a confirmed criminal to be afraid of him and more than that the police arrived at the scene very soon, and the ASI, who came to the

village on June 14 in connection with the case, was the nephew of PW6.

22. In Amar Singh also, the facts are that the prosecution projected PW1 and PW11 as eye witnesses. 7 (1976) 4 SCC2888(2020) 19 SCC165- 34 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 PW1 gave an explanation that all the three accused threatened to kill him and PW11 when they attempted to rescue the deceased. But PW11, who was treated hostile, never stated about the efforts made by them to save the deceased. The evidence of PW11 was that he could not run because of an injury to his spine. He also denied in the cross examination that he had given statement before the police about identification of the culprits and their overt acts. PW1 and PW11 were the brothers of the deceased. After the incident also, PW1 and PW11 did not take the injured to a doctor whose clinic was just near by the place of incident. This was the unnatural conduct noticed to doubt the presence of PW1 and PW11.

23. But in the case on hand, there is no scope for disbelieving PW2, PW10, PW11, PW12 and PW22 to be eye witnesses. The reasons are many. PW11 is the mother and others are the cousins of Basavaraj. PW11 was inside the house when Basavaraj was asked by the accused to come out of the house. The houses of other witnesses are - 35 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 situate near by. All of them have stated that they heard the shouting voices of the accused which made them come near the house of Basavaraj. They all followed the accused when they were dragging Basavaraj. It is not the case of prosecution that the witnesses were not in their respective houses, the suggestion given to PW13 is that the accused did not drag Basavaraj, which she denied. One answer elicited from PW12 in the cross examination shows that four houses were there in the neighbourhood and about 10 to 15 people were living in those houses. (C 4 U E, CU 10 jAz 15 d Egv Cz d). This being the situation, the presence of the eye witnesses cannot be doubted not only at the time when the accused first went near the house of Basavaraj but also at the tree where the actual incident of killing took place.

24. Three unnatural circumstances pointed out are that the witnesses did not make any attempt to rescue the deceased, that they did not untie the deceased and see whether they were alive or not, and that they did not call - 36 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the police. The evidence actually shows that an attempt was made by all the witnesses to question the accused and their rushing for the rescue of the deceased. PW2 has stated that the accused threatened them by brandishing the weapons they had with them. Although it may be stated that the witnesses could have been more sentient than what the evidence discloses how they conducted themselves for rescuing the deceased, one thing should not be forgotten. It is quite natural that one does not run the risk to one's life, and thus seen, the attempt made by the people who were present there could not be expected to extend beyond the risk to their lives. The evidence discloses that PW2 suffered an injury to his left hand when he went forward to stop the accused. The other witnesses have also spoken about injury sustained by PW2 at that time. PW14 was the doctor who examined PW2 at 9 a.m on 23.10.2013 and noticed the presence of an abrasion type wound measuring 3x0.1cm on the left fore arm. Ex.P15 is the wound certificate and the opinion of PW14 is that the injury that he noticed was possible to occur due to - 37 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 assault by blunt and hard object. The weapons produced are not hard and blunt objects. It is for this reason Sri. Yug Mohith Chaudhry argued that the weapon said to have been used for infliction of injury should have been shown to the doctor to obtain his opinion. In the absence of opinion of the doctor, prosecution case cannot be said to have been established. He has placed reliance on the judgment of the Supreme Court in the case of Amar Singh Vs. State of Punjab 9.

25. The public prosecutor could have drawn the attention of PW14 to any of the weapons produced and marked during trial for his opinion. This was again a folly of the public prosecutor; but by that itself no inference can be drawn to state that the injury PW2 sustained was not on account of infliction caused by one of the

accused persons. Though PW14 has stated that hard or blunt object would cause such an injury, it can also be stated that, if the tip of the weapon comes in contact with skin 9 1987 1 SCC679- 38 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 without much force or intensity in the assault, there is likelihood that injury like abrasion occurs. PW14 could have been cross examined if the defence was so sure that PW2 was not present at the time of incident and he sustained an injury elsewhere. No such attempt was made. In fact what PW2 has stated is that he sustained injury on his left fore arm while escaping the blow which situation would clearly establish occurrence of abrasion on the forearm.

26. In Amar Singh and Others vs State of Punjab medical evidence was found to be inconsistent with versions of eyewitnesses about the injuries sustained by the deceased. PW5-Smt. Veero, the mother was the eyewitness. In the court, she gave a full account of how her son was assaulted by the accused. She stated that after her son fell down, all the accused assaulted with weapons that each of them was holding. She stated specifically that many blows fell on the ribs and abdomen of the deceased, but the medical report did not indicate - 39 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 any injury on the ribs and abdomen. Another eyewitness i.e., PW6 admitted in the cross-examination that he did not see the deceased Piara Singh receiving any injury at the hands of accused. But in this case, PW2 stated about injury sustained by him while making an attempt to protect the deceased. The doctor might have given a different opinion about the type of weapon, but the presence of PW2 at the time of incident cannot be doubted in the wake of minor inconsistency that Sri Yug Mohith Chaudhry pointed out.

27. About the deceased being not untied from the tree and Basavaraj not taken to hospital, the witnesses have stated that the deceased met death due to assault with weapons by the accused. It is a common place that nobody would go forward to touch the dead body especially when the incident would be going to be a police case. There is nothing unusual in it. An inference is possible to be drawn this way.- . 40 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 28. About not calling police immediately is already discussed, there is no need to delve on it again. So what we find is there was nothing unnatural in the conduct of eye witnesses. In a criminal case, a conduct which appears to be unnatural in one case may appear to be natural in the other case, evidence cannot be appreciated applying Ecliyod formula. Attending circumstances play a vital role.

29. About the argument regarding parroting versions of the eye witnesses, what we find is cogency and consistency in their evidence. They have not given orchestrated evidence; there are natural deviations, but there is no distraction while narrating the incident. Consistency in evidence cannot be termed as parroting. In the decision of the Honble Supreme Court in the case of Rambilas and Others Vs. State of MP¹⁰, the witnesses admitted in the cross examination that they did not see the actual assault as they were prevented from going to 10 (1997) SCC (Criminal) 1222 - 41 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the place of occurrence by the appellants, but in the examination in chief, they narrated the entire incident, and even the omissions, contradictions and improvements were found to be identical. Therefore the Honble Supreme Court held that the testimonies of those witnesses to be like parrot telling and unbelievable. Such kind of evidence is not found in this case.

30. Dharam Singh and Others Vs State of Punjab¹¹ is cited in the context that the verbatim accounts given by eyewitnesses is not safe to be relied upon. In this case, the facts show that there was enmity between the deceased, namely Kaka Singh and the accused. There was also enmity between PW22 and the family of the accused because of civil disputes. In the incident that occurred on December 2, 1978 Kaka Singh was killed. PWs 18, 19 and 20 were projected as eyewitnesses. Considering the nature of evidence given by the witnesses, it was found that their testimonies were 11 1993 Supp (3) SCC532- 42 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 unbelievable. What mattered most was a fracture sustained by the deceased to his left leg. The doctor who treated the deceased and the doctor who conducted

post mortem examination did not indicate in their respective reports as to how the fracture occurred and all that they indicated was that injuries 1 to 4 were caused by sharp edged weapons. Very strangely in the FIR it was mentioned that the leg of the deceased was twisted in such a way as to cause fracture. In this circumstance it was noticed that if the doctors did not speak about possibility of occurrence of fracture, there was a mention of it in the FIR. It was noticed that the FIR was the outcome of due deliberation. Therefore the Honble Supreme Court set aside the judgment of the High Court which had reversed the acquittal judgment of the trial court. In the case on hand the circumstances similar to the circumstances in Dharam Singh are not forthcoming. Moreover what the Supreme Court has held in this case is when there is enmity between the accused and the witnesses, evidence has to be scrutinized with great care - 43 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 and caution. It is not the principle that if enmity exists, the witnesses always give false evidence; there may be tendency to give false evidence in order to falsely inculcate the persons whom they hate and therefore the evidence requires scrutiny with great care and caution. In the case on hand, it is not found that the witnesses have given false evidence.

31. Mohd. Hanif and Others Vs. State of Maharashtra¹² is the judgment of the High Court of Bombay in which the oral evidence of the witnesses was found to be not believable because of many reasons. The High Court doubted that they were eye witnesses, especially in the background of all of them giving puppet like version about having seen the incident standing at different places.

32. Sri. Yug Mohith Chaudhry has placed reliance on a judgment of the Supreme Court in Golbar Hussain and 12 (2017) SCC Online BOM412- 44 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Others Vs. State of Assam and Another¹³, to garner support for his argument that when independent eye witnesses turn hostile, the evidence of other eye witnesses who have supported cannot be believed without corroboration. The observations found in paras 10 and 11 are : 10. The second issue for consideration is the testimonies of PWs⁴ and 5 in absence of any corroboration

from any independent witness. PWs4 and 5 are related witnesses as they are the brothers of the deceased Hasen Ali. There is no bar on the admissibility of a statement by related witnesses supporting the prosecution case, but it should stand the test of being credible, reliable, trustworthy, admissible in accordance with law and corroborated by other witnesses or documentary evidence of the prosecution. This Court has held in *Manga alias Man Singh v. State of Uttarakhand*, (2013) 7 SCC629 that it is the quality of the witness that matters and not the quantity, when the related witness was examined and found 13 (2015) 11 SCC242- 45 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 credible. In such a case non- examination of an independent witness would not be fatal to the prosecution case.

11. In the present case, however, the prosecution witnesses PWs4 and 5, contradict each other, and their statements are not corroborated by any independent witness in spite of the incident happening in the market place, with shops on both sides of the road. Therefore, in our view, as the testimonies of PWs4 and 5 are not completely reliable, this is a fit case where corroboration by an independent witness was required. The case of the prosecution also weakens on the ground that the only independent witness PW-8 turned hostile. A similar situation arose in *Shyamal Saha and Anr. v. State of West Bengal*, (2014) 12 SCC321 where the only independent witness turned hostile. This Court decided to affirm the acquittal and granted benefit of doubt to the accused considering the factual background and circumstances involved in the case. - 46 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 33. In the above referred case, the Honble Supreme Court, having noticed material contradictions in the testimonies of PW4 and PW5, opined that corroboration was required. Same is not the situation in the case on hand. It is true that PW17, PW18 and PW19, the independent eye witnesses did not support. Either they wanted to be neutral or they might be interested in accused for deposing against prosecution. The way they have answered in examination in chief itself is sufficient to draw an inference that their evidence is far from truth.

They all belong to village Mamadapur where the incident occurred. PW17 has stated that he knew the accused and both the deceased. But he has stated he does not know how they died. The evidence of PW18 is that he does not know the accused and also the deceased, and does not know how they died. PW19 has stated that he knows the accused, but had not seen the deceased and does not know anything about death. Mamadapur is a village, not a big town. PW22 has stated that about 300 persons witnessed the incident. When two persons were killed in - 47 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 their village, if PW17, PW18 and PW19 state that they do not know anything about incident, it is hard to believe truth in their version. Therefore looked from any angle, PW2, PW10, PW12 and PW22 do not appear to be untrustworthy witnesses, there was no unnaturality in their conduct. Their evidence, being free of interestedness, is fully reliable.

34. Then in regard to argument that accused no.2 was not present in the village at the time of incident, accused no.2 stated like that when he was examined under section 313 Cr.P.C. What PW22 has answered is that accused no.2 was living in the parental home of his wife. The witnesses saw the participation of accused no.2. As their evidence is believable, if accused no.2 stated at a later a stage that he was not in the village, it cannot be believed. Even if accused no.2 was living in his wifes house at another village, it does not mean that he was not present at the time of incident. He might have come to Mamadapur, this inference is possible to be drawn. If it - 48 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 was his specific defence, the burden was on him to prove it. It is enough if defence is found to be probable, but mere making a statement under section 313 Cr.P.C. does not stand to the test of probability. Any explanation that accused gives when questioned under section 313 Cr.P.C must appear to be reflection of questions about specific defence put to prosecution witnesses during cross examination; an accused may lead evidence from his side if necessary. If a specific defence is introduced for the first time during section 313 Cr.P.C., stage, it

is of no use. Therefore explanation of accused no.2 cannot be believed.

35. As the evidence discloses, and as Sri. Yug Mohith Chaudhry also argued, accused no.1 surrendered before police on 23.10.2013 and handed over the weapon. When the police produced him before the Magistrate, they did not seek him to police custody, rather submitted an application for committing him to judicial custody. We do not find any infirmity or abnormality in committing accused no.1 to judicial custody. The evidence of PW25, the - 49 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 investigating officer shows that he went to spot on 23.10.2013, conducted spot panchanama, seized certain material objects, recorded the statements of witnesses and then returned to police station. After his return to police station accused no.1 surrendered before him and handed over one koita(sickle) and his blood stained clothes, a mobile phone and a memory card. The moment he surrendered before the police officer, it means he was under police custody. But by that time PW25 had already completed other part of investigation including recording the statements of eye witnesses. When accused no.1 handed over the koita and other items, PW25 seized them. For these reasons PW25 might have thought it unnecessary to apply for police custody of accused no.1, whose presence probably was not required for further investigation. In this context it may be stated that it is not always necessary that police custody must be sought, the investigating officer may decide in his wise discretion to apply for police custody or not.-. 50 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 36. It is true that till 29.10.2013, as becomes evident from the evidence of PW22, PW25 did not order for arrest of accused 2 to 4. PW25 has not stated anything about it. This appears to be a lapse in investigation, but not so serious a lapse as to vitiate the investigation. Conversely the evidence of PW25 discloses that by the time accused nos.2 to 4 were arrested, major part of investigation was over, what remained was to obtain some reports, for which reason police custody of accused nos.2 to 4 was not necessary.

37. It has been argued by Sri. Yug Mohith Chaudhry that the prosecution produced only two weapons marked MO8 and MO15. The witnesses speak that three weapons were used. PW2 has stated that two koitas were seized in his presence. He has identified one iron koita at MO8 and another iron elige patti (FU n) at MO13. From the evidence of PW25, it becomes clear that accused no.1 produced one weapon which PW25 has identified as MO15. It was PW2 who first identified MO15. It is to be stated - 51 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 that Elige Patti is also a weapon. If witnesses stated that there were three koitas, probably they might have referred to Elige Patti to koita. The discrepancy in this regard is not prominent. Totally three weapons were produced during trial. Therefore for all the above reasons, we find it difficult to accept the argument of Sri. Yug Mohith Chaudhry, and therefore hold that the evidence of PW2, PW10, PW12 and PW22 is trustworthy and the trial court has not erred in acting upon their testimonies. Point No.(iii) 38. Certainly if a husband finds his wife to be having illicit relationship transgressing the matrimonial discipline, it evokes anger in him, and how a husband reacts to a situation like this depends on his personality. Different persons react differently. This is connected with human behaviour influenced by sociological background. In the case of K.M. Nanavati Vs. State of Maharashtra 14, cited by Sri Vishwanath Bichagatti and Sri Yug Mohith 14 AIR 1962 SC605- 52 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 Chaudhry, the following is the observation : 84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ?. No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable

man placed in the position of the accused would have lost his self- control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately. - 53 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 39. In Dauvaram Nirmalkar, the Honble Supreme Court reiterated the same position by placing reliance on Nanavati. The facts in the case discloses that the accused-appellant killed his own brother Dashrath Nirmalkar who was not only addicted to alcohol but also ill tempered. On the night of occurrence, Dashrath Nirmalkar consumed alcohol and asked the appellant to leave the house, else he would kill him. This made the appellant lose his self control on account of a slow burn reaction followed by the final and immediate provocation. In these circumstances, the Honble Supreme Court found that Exception 1 to section 300 of IPC could be applied to convict the appellant under part I of section 304 of IPC.

40. Three other decisions relied upon by Sri Yug Mohith Chaudhry depict the facts which do not constitute an offence punishable under section 302 of IPC. Saroj @ Suraj Panchal and Another vs State of West Bengal¹⁵ discloses the facts that the daughter of accused no.1 15 (2014) 4 SCC802- 54 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 namely Kumari Bandana Panchal and the deceased namely Sukumar Ray were in love with each other to the disliking of the family of accused no.1. On 10.07.1990 around 8.00 p.m all the accused severely beat the deceased seeing his presence in their house. The appearance of the deceased during night hours in their house caused very much annoyance to them and being unable to tolerate the presence of the deceased was held by the Supreme Court to be the reason for the accused getting provoked suddenly and therefore it was held that Exception 1 to section 300 could be applied.

41. In Sudhir Prakashnarayan Shrivastav vs State of Maharashtra¹⁶, the facts indicate that the deceased namely Pramod was a vendor of tender coconuts and the accused was a cycle tyre repairer. Both were addicted to liquor. On the date of incident the deceased demanded money from the accused to buy liquor, but the

latter refused. Thereafter the deceased went to the shop of 16 CrI.A.748/2013 - 55 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the accused and urinated in the water being used by the accused for repairing the cycle tyres and then abused him. Offended by this conduct of the deceased, the accused took the scythe from the cart of the deceased and gave blows to him on the neck, shoulder, face, abdomen etc., in all causing 13 injuries. In these circumstances the Honble Supreme Court held that passing of urine in the water caused sudden provocation to the accused and he lost his temper beyond his control which was reflected from multiple injuries that he implicated. In this background, First Exception to section 300 IPC was made applicable.

42. Gurubasavaiah and Another vs. State of Karnataka¹⁷ is a judgment of the Division Bench of this court where the facts show that the deceased gained entry stealthily into the house of the accused. There was illicit relationship between the deceased and accused no.3, who was the wife of accused no.1. Accused no.2 is the son of accused nos.1 and 3. Seeing the presence of the deceased 17 (1979) CrI.LJ.603 - 56 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 in the night hours, accused nos.1 and 2 were suddenly provoked and in that heat they assaulted and killed the deceased. Therefore the accused were found guilty of the offence under section 304 part-II IPC instead of section 302 of IPC.

43. Now we refer to the decisions referred by Sri Vishwanath Bichagatti. Abalu Das Vs. The King Emperor¹⁸ is the judgment of Calcutta High Court where punishment of life imprisonment for the offence under section 302 IPC was reduced to rigorous imprisonment for ten years by applying Exception 1 to section 300 of IPC. Therein the facts were that the deceased namely Hur Singh had developed intimacy with Lakya, the wife of Abaludas. On the night of 21.05.1900, Hur Singh went to the house of Lakya on her invitation. At that time, Abaludas and other accused seized Hur Singh, carried him to a distant place and broke his arms and one leg. They left him in open. Hur Singh died on the next day in the 18 1901 SCC Online Calcutta 69 - 57 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 hospital. Assessing this situation it was held: Learned counsel for the Crown has suggested that the accused laid an ambush for the deceased, and that the woman was made use of to decoy him into the house. We feel very doubtful, however, whether the woman could have been a party to such a design. It may be that the accused were watching the woman and lying in wait for the deceased, whom they know to be the lover of Lakya; and that may account for their springing on him, as they did. But however this may be, in our opinion the provocation afforded by the deceased did amount to grave and sudden provocation within the meaning of exception (1) to s.300 of the Penal Code, 1860. The learned Judge does not accept this plea, because the accused took the deceased to some little distance, before they murdered him. But we think that the provocation was of a nature that would continue to influence the feeling of the accused for a considerable period after the deceased was caught in the bari in the company of Lakya; and for these reasons we are inclined to take a merciful view of the case and to alter the conviction from one under - 58 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 s.302 of the Indian Penal Code, 1860 to one under s. 304 of the Indian Penal Code, 1860, which we accordingly do. Further, we reduce the sentences passed upon Santiram Das and Sakalu Das to rigorous imprisonment for ten years in each case, while we reduce the sentence passed upon Abalu Das to one of rigorous imprisonment for seven years.

44. Emperor Vs. Balku¹⁹ is the judgment of the Allahabad High Court. Here the facts were that Budhu, the person killed and the accused were sleeping on the same charpai in the veranda of the house of the accused. In the midnight Budhu got up and went into the room where the wife of the accused was sleeping. After bolting the door behind him Budhu started having intercourse with the wife of the accused. Accused got up and peeped through a chink of the door and saw Budhu and his wife having sexual intercourse. The accused returned and slept on the charpai. After sometime, Budhu came out of the room and lay down on the same charpai by the side of accused. 19 1938 SCC Online Allahabad 364 - 59 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 When Budhu started dozing accused got up and stabbed Budhu several times and killed him. The question that arose was whether Exception 1 to Section 300 of IPC could be applied. The answer was: A point that gave us some doubt is whether the fact that the accused, after having seen the adultery being committed, waited until Budhu had come out and had lain down and begun to doze on the charpai, before he made an attack on him, would have an effect on this case. The question before us is whether the case comes within exception 1 to section 300 of the Penal Code, 1860 which states as follows:- Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation. Now for this exception the accused must be deprived of the power of self control by provocation which is not only grave but also sudden. No doubt the accused had to wait some interval before Budhu came out, before he could do anything at all, and after Budhu came out the accused who was lying on the charpai naturally waited a

- 60 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 short time before he made a move. He might have sprung up at once and attacked Budhu. But in practice persons of this class are somewhat slow movers. When Budhu came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that this man now lying beside me had been dishonouring me a few minutes ago. Under these circumstances we think that the provocation would be both grave and sudden. We have been referred to Abalu Das v. King Emperor, where there was a case in which it was held that when certain accused persons had the provocation of seeing adultery being committed by the deceased with the wife of one of them, the provocation would be considered to be grave and sudden after an interval during which the deceased man was taken to a certain distance before being assaulted. We think that in the present case the exception No.1 will apply, and accordingly we reduce the conviction from one under section 302 of the Penal Code, 1860 to one under section 304 of the Penal Code, 1860. We sentence the accused to five years rigorous - 61 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 imprisonment and we acquit him of the offence under section 302 of the Penal Code, 1860 and we allow the appeal to this extent. (emphasis supplied) 45. Next judgment is *Boya Munigadu Vs. Queen*²⁰. In this case the accused found that the deceased was having connection with his wife and was moved intensely by what he saw. At that moment he did not react, but on the next day morning he saw his wife eating with the deceased without serving food to him. As he was a witness to what had occurred on the previous evening, that provoked him to kill the deceased, namely, Narasimhudu. When this circumstance was brought to fore, the Madras High Court held as below: In the morning he saw his wife eating with the deceased and giving him food while she left her husband without it. If he had not been a witness to what had occurred on the previous evening, this conduct would have a special significance, indicative of improper relations between the deceased and the wife; 20 1881 SCC Online Madras 1 - 62 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 and, if having witnessed the act of adultery, he connected this subsequent conduct, as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying, as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self -control, and reduced the offence from murder to culpable homicide not amounting to murder.

46. The judgment of the High Court of Madras (Madurai Bench) in *Poovamal Vs. State*²¹, also deals with applicability of Exception 1 to section 300 in the background of circumstances that the mother herself killed her son when the latter disagreed to live with her. The accused became helpless after the death of her husband. She requested her son, i.e., the deceased, to live with her and all her requests to convince him went in vain. This 21 2012 SCC Online Madras 489 - 63 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 resulted in her axing the son to death. The findings of the Madras High Court are found in paragraph No.43 which is extracted below. 43. There was no premeditation. She suddenly picked up the axe. The situation was not created by her. It was created by her son. Her immediate post conduct was her attempt to kill herself. What she did was killing of her son. In the facts and circumstances, it is an intentional act, why and under what circumstances she did it, we have already seen. So Poovammals case will not fall under Section 300, I.P.C. read with Section 302, I.P.C. but will fall under Exception I to Section 300, I.P.C. so she become punishable under Section 304, I.P.C., Part I.

47. In order to assess the argument of both the counsel, we now refer to Exception 1 to section 300 of IPC which reads as below: 300. Murder . Exception 1.-When culpable homicide is not murder.-Culpable homicide is not murder if - 64 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:- First.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. - 65 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 48. The language of the provision of law is very clear that the provocation must be grave and sudden, and it must result in depravation of the power of self control of the offender and in that state of mind he must have caused the death of a person. If these ingredients are forthcoming in the evidence brought on record, the offender can be said to have committed culpable homicide not amounting to

murder which is punishable according to section 304 of IPC. Explanation part makes it further clear that based on facts, the court has to decide whether provocation was grave and sudden. It means the evidence brought on record must disclose that the circumstances were as such that the accused had in all probability lost control over himself because of sudden provocation, however assessment of evidence to this effect must be made in the light of three provisos to Exception-I.

49. The provocation may be short lived; the accused may endure the provocation for a considerable time, however it should not be too long. Endured or - 66 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 sustained provocation requires elucidation that the provocation emanated from the victim must have tormented the accused; it should be persisting in him and any further act at the instance of victim must appear to be sufficient to evoke the feelings of the tormenter or sufferer to lose control over himself and do an act resulting in death of the victim (provoker). The ultimate act of causing death must also appear to be the outburst of sustained provocation and it must be free from preparation and premeditation. The whole circumstance must not disclose malice which engenders intention to kill.

50. In the case of K.M. Nanavati, it is held as below: 139. The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In Mancini v. Director of Public Prosecutions L.R. (1942) A.C. 1, Viscount Simon, L.C., states the scope of the - 67 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 doctrine of provocation thus: It is not at all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self control, as the result of which he commits the unlawful act which causes death. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini (1914) 3 K.B. 1116, so that

an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a - 68 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter. (emphasis supplied) 51. The present case has to be examined in the light of above principles. We state that none of the rulings cited by Sri Vishwanath Bichagatti and Sri Yug Mohith Chaudhry helps the accused for, the facts in them show that the acts were done in the state of provocation which did not last long; moreover no case discloses any kind of preparation made by the accused. The finding in Abalu Das is that visit of the deceased to the house of the accused to meet the wife of the latter ignited provocation in him. The case of Balku also demonstrates eruption of provocation in him when he peeped through the chink of the door and saw his wife and the deceased having sexual intercourse. The time interval between his seeing the intercourse and till the deceased came out of the room to - 69 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 sleep beside him was not too long. Boya Munigadu indicates the hurt feelings of the accused being inflamed when he was ignored by his wife without serving food to him on the next day morning. Here also the provocation was for a shorter duration of not more than a day. In the case of Poovamal what figures out is that actually she lost control over herself when her last request was turned down by her son, it was a momentary reaction and not a premeditated one.

52. In the decisions cited by Sri Yug Mohith Chaudhry, which are referred to already the facts disclose altogether a different situation to take a view that the crimes referred there might have been taken place in a circumstance falling under

Exception 1 to section 300. To repeat, in Dauvaram Nirmalkar, the accused got enraged when the deceased, an alcoholic and quarrelsome by nature, asked him to leave the house or else he would be killed. No doubt, the accused had tolerated the deceased, but the last incident of quarrel might have - 70 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 triggered his feelings, and the fact of his losing self control became evident when he tried to kill himself by holding live electric wire. Saroj @ Suraj Panchal is not a case of sustained provocation; the appearance of deceased in the house of accused for the purpose of meeting his girlfriend suddenly aroused provocation in them as they disliked the love affair between the daughter of accused no.1 and the deceased. Sudhir Prakashnarayan Srivastav is also a case of sudden provocation. Urination in the water being used by the accused for his tyre repair work was the main reason. Multiple injuries inflicted by accused demonstrated loss of self control in such a situation.

53. In the present case, we do not find such kind of a situation as appears in the above referred rulings, rather what is disclosed is a well planned action. From the suggestions given to the eyewitnesses in the cross examination, a clear inference can be drawn that illicit relationship between the two deceased was known to the accused and many people in the village. Suggestion given - 71 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 to PW2 in the cross examination is that Sangeeta was going to the house of Basavaraj and that the latter's mother had given Sangeeta leniency and in fact, Basavaraj's mother had brought Sangeeta to her house. PW10 was suggested that Sangeeta was living in the house of Basavaraj and that the father of Basavaraj caught them red handed when both of them were found together amid standing jawar crop. PW-11, the mother of Basavaraj is given a suggestion in such a way as she was supporting the illicit relationship between her son and Sangeeta and therefore for that reason there used to take place quarrels between her and her husband. Suggestion given to PW-12 in the cross examination is that Sangeeta was present in the house of Basavaraj on the date of incident. PW-22 is suggested that both the deceased used to meet in the jowar fields for quite a long time.

Another answer was elicited from him that Basavaraj used to be found with Sangeeta and that PW-22 and his family members had advised him that he should not take leniency with Sangeeta as she was the wife of another. Therefore from - 72 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 all these suggestions a clear inference can be drawn that the relationship between both the deceased was not anew. Matter would have been totally different if the relationship between them had developed one or two days before the incident took place, if that were to be the case, an inference could have been drawn about sustaining the provocation when accused no.1 came to know of his wife having developed relationship with Basavaraj. The circumstances are as such that accused no.1 was aware of the relationship; he had sufficient time to ponder over the same; he did not retort within a short duration of time. But what the evidence discloses is a premeditated planned action. Accused 1 to 4 joined together; first they all went near the house of Basavaraj, called him out of his house and then tied him to a tree. Then Sangeeta was brought from her house i.e, from the house of accused no.1. She was also tied to the same tree. Accused no.1 brought sickles from his house. All these do not indicate a decision taken in a haste under the state of provocation.-. 73 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 54. It is true that second accused asked the eye witnesses to listen to a conversation between the two deceased which was recorded in a mobile phone. Vishwanath Bichagattis argument was that if the trial court had heard the conversation it would have been possible for the trial court to take a proper decision. In fact, the judgment of the trial court shows that the public prosecutor made an effort to play the mobile phone, but the trial court found that no other supporting material or record was available to accept that the voices recorded in M.O. 29 were that of both the deceased. This conclusion is incorrect because even according to defence M.O. 29 contained the conversation between both the deceased. There was no dispute about it and the trial court could have heard the conversation to draw inferences. Anyway while hearing the arguments, we heard the conversation by inserting M.O. 29 to the computer system in the presence of

learned counsel for the accused Sri Vishwanath Bichagatti and we found that there was a kind of intimate conversation between the two. But now the - 74 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 question is whether this conversation triggered the provocation. The onus was on the accused to establish that because of this conversation the accused, especially the first accused lost control over himself and this led to the incident of killing the two. It appears that the accused might have recorded the conversation without the knowledge of both the deceased. Recording also indicates that the accused wanted to justify their action if anybody would question them, and it can also be said it was a part of their preparation. Looked in this view, it is not possible to hold that the accused had endured the provocation in them. The matter would have been altogether different if only accused no.1 was involved in the incident, but there were four. If there were to be provocation, accused no.1 being the husband of Sangeeta must have carried it, and it is inappropriate to say that the conduct of his wife did not hurt his feelings; he was hurt and there is no doubt in it. But being hurt, what he did thereafter assumes importance. The matter would have been different had he alone caused the death of his wife and her paramour. But - 75 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 accused 2 to 4 would join him. It is the specific plea of accused no.2 that he was not present at the scene of occurrence as he was residing in another village. He has stated so when he was questioned under section 313 of Cr.P.C. This is just a statement without any probability in his stand, for eye witnesses have testified the participation of accused no.2 in commission of offence. If it is assumed for arguments sake, that he was residing in another village, if his presence and participation is proved by the eye witnesses, the obvious inference is that he might have been asked by accused no.1 to come over to Mamadapur. Moreover involvement of accused nos. 3 and 4, who are cousins of accused nos. 1 and 2 assumes significance. Sri Yug Mohith Chaudhry argued that all the four accused belonged to same family, and the affair between the deceased was a dishonour to the reputation of the family, and this is how the situation must be gauged. This is only a plausible argument, but not acceptable because the whole

situation depicts a premeditated action. So we do not find any circumstance favourable to the accused in - 76 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 order to apply Exception-I to Section 300 IPC for punishing them under Section 304 IPC. Point No.(iv) 55. We have examined the case on hand in the background of the principles laid down by the Honble Supreme Court in the case of Bachan Singh and Machhi Singh (supra). In the background of the guidelines spelt out in Bachan Singh, the Honble Supreme Court laid down the following propositions while deciding Machhi Singh. The propositions are: 38. .. (i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability; (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'. (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life - 77 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

56. Having laid down the above principles, the Supreme Court further directed the following questions to be asked and answered. 39. In order to apply these guidelines inter-alia the following questions may be asked and answered: (a) Is there something uncommon about the crime which renders sentence of - 78 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 imprisonment for life inadequate and calls for a death sentence?. (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating

circumstances which speak in favour of the offender ?.

57. Now the case on hand is to be examined in the background of the above principles. No doubt the incident was very cruel. It was committed in the presence of many villagers by rendering the deceased helpless. As they were tied to a tree, they could not make any attempt to protect themselves. In spite of the fact that the incident shocks the conscience, it may be stated that the case does not answer the test of rarest of rare case. All the accused were in their prime youth when the incident occurred, and in fact one of the accused was a juvenile who was tried separately. In the light of the judgment of the Supreme Court in the case of Manoj (supra), we called for reports from the Chief Superintendent, Hindalaga Jail, Belagavi, - 79 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 where accused 1 to 3 are serving sentence, the Psychiatrist of the Belagavi Institute of Medical Sciences and the Probation Officer. The report of the Chief Superintendent of Jail is as follows :

58. The present age of first accused is 34 years. His conduct and behaviour inside the jail is good and satisfactory. He maintains jail discipline. Before admission to jail accused no.1 had completed PUC education and inside the jail, he underwent different kinds of trainings such as baking technician of food processing, veterinary assistant training and another training conducted by Karnataka Sahakara Kukkata Mahamandali, i.e., relating to poultry farming. He was arrayed as accused in Crime No.173/2010 registered by Chikkodi Police Station for the offences under sections 323 and 324 IPC, but no case was registered in the court pursuant to the said FIR.

59. Regarding the second accused, his conduct and behaviour as a prisoner is reported to be good and he also maintains discipline inside the jail. His present age is 31 - 80 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 years. He is illiterate, but being an inmate of the jail, he underwent job related training, i.e., Self employed tailor of apparel, made-ups and home

furnishing. He too was shown as accused in Crime No.173/2010, but no charge sheet appears to have been filed.

60. Age of accused no.3 now is 30 years. The report about him is that his conduct is good and satisfactory inside the jail and he too maintains jail discipline. Before admission to jail, he had completed VIII standard and being an inmate of the jail he did not acquire any training. Except the present one, he was not involved in any other case. Jail authority has enclosed certificates relating to trainings undergone by accused nos. 1 and 2.

61. The report of the Probation Officer is the family of accused 1 and 2 depends on agriculture for their livelihood. The family possess four acres of land. Family is not sound financially. The Probation Officer has stated that before the incident took place, the conduct and behaviour of accused 1 and 2 was good and they had good - 81 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 relation with the other villagers; they were mixing freely with the villagers and were also involving themselves in the social activities. Same is the report of the Probation Officer about accused no.3.

62. The mental status examination report issued by Dr.Chandrashekar T.R, Department of Psychiatry, Belagavi Institute of Medical Sciences, is not adverse to accused 1 to 3 and he has indicated that they have tendency for reformation. It is also mentioned that according to the information given to him by the staff of the jail, there is possibility of reformation.

63. All the three accused are still young. Accused 1 and 3 expressed remorse for their wrongness when we too examined them in the court. Though accused no.2 stated that he had no remorse, we think that in view of the reports, he is a person who can be reformed. If an opportunity is provided to them to reform themselves, they can turn out to be better citizens. Therefore drawing balance sheet between aggravating and mitigating - 82 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 circumstances as has been observed by the Supreme Court in Machhi Singh, we find that death penalty cannot be imposed on accused 1 to 3. It is enough if they are sentenced to life imprisonment and fine. Point No.(iv) is thus answered. Point No.(v) 64. We do not think that accused could be convicted for the offence under Section 307 IPC. What the evidence discloses is that when PW2 went forward for the rescue of the deceased persons, the accused threatened to kill them. No doubt this amounts to intimidation but it does not disclose the intention of the accused to make an attempt on the life of PW2. The reaction of accused at that moment was to alarm those who wanted to come to the rescue of the deceased. If in that course PW2 sustained injuries due to impact of sickle held by accused no.1, it would amount to an offence under section 324 IPC. Therefore we are of the opinion that holding the accused guilty of the offence under section 307 IPC is improper.-. 83 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 However conviction for offence under section 506 IPC has to be maintained, in as much as the evidence discloses intimidation caused by the accused when the eye witnesses attempted for rescue of the deceased.

65. In the result, we pass the following:

ORDER

(i) Reference made under Section 366 of Cr.P.C. is rejected; (ii) Appeal preferred by the accused is partly allowed. The judgment of the trial court holding the accused guilty of offence under Section 307 of IPC is set aside. They are held guilty of the offence under section 324 of IPC and each one of them is sentenced to rigorous imprisonment for two years and fine of Rs.5,000/-, and in default to pay the fine, each of them shall undergo imprisonment for one month; - 84 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 (iii) For the offence under section 302 IPC, each of accused 1 to 3 is directed to undergo life imprisonment and pay fine of Rs.25,000/- and in default of payment of fine, each of them shall further undergo imprisonment for a period of one year. (iv) Conviction and sentence for the offence under Section 506 of IPC is

confirmed. (v) Sentence of imprisonment for all the offences shall run concurrently. (vi) According to section 428 of Cr.P.C, the period of detention undergone by accused 1 to 3 before conclusion of trial and the sentence of imprisonment they have already served after conviction is ordered to be set off. (vii) The trial court shall issue conviction warrant in accordance with the judgment of this court.-. 85 - NC:

2023. KHC-D:14868-DB CRL.A No.100365 of 2022 C/W CRL.RC No.100001 of 2022 (viii) Registry shall communicate this order to the trial court and the concerned jail authority. (ix) Registry of this court shall send back the records to the trial court. Sd/- JUDGE Sd/- JUDGE Bvv/Ckl List No.:

19. Sl No.: 2

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