

M S Leela Vs. State By

M S Leela Vs. State By

SooperKanoon Citation : sooperkanoon.com/1233802

Court : Karnataka

Decided On : Dec-22-2021

Judge : K.Somashekar

Appeal No. : CRL.A 942/2011

Appellant : M S Leela

Respondent : State By

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF DECEMBER, 2021 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL APPEAL No.942 OF 2011 BETWEEN: M.S. Leela W/o Sambashiva Aged about 44 years Coorg by Caste Working as Operator at Klobar Lubrications R/at Mogarahalli Village Srirangapatna Taluk Permanent R/o Badagakeri Village Virajapet Taluk, Coorg District. ...Appellant (By Smt. Archana Murthy - Advocate) AND: State by K.R. Sagara Police Station. ...Respondent (By Sri. Rahul Rai .K - HCGP) This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment of Fast Track Court, at Srirangapatna, dated 12.08.2011 and 17.08.2011 in S.C.No.174/2008. 2 This criminal appeal coming on for final hearing this day, the court delivered the following:

JUDGMENT

This appeal is directed against judgment of conviction dated 12.08.2011 and order of sentence dated 17.08.2011 rendered by the trial Court in S.C.No.174/2008 dated 12.08.2011, whereby convicted the accused for the offences punishable under Section 323, 324 and 304 (2) of IPC, 1860. The accused is sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.5,000/- (Rupees Five Thousand Only), in default to pay fine, further shall undergo simple imprisonment for a period of six months for the offence punishable under Section 304(2) of IPC, 1860. The accused was sentenced to undergo simple imprisonment for a period of six months for the offence punishable under Sections 323 of IPC. The accused is sentenced to undergo simple imprisonment for a period of one year for the offence 3 punishable under Sections 324 of IPC. Substantive sentence for all offences which awarded against the accused was ordered to run concurrently. Whereas, under this appeal seeking to allow the appeal by considering the grounds as urged therein and further seeking for acquittal of the accused for the aforesaid offences.

2. Heard learned counsel Smt.Archana Murthy for the appellant and learned HCGP for the State who are present before the Court physically.

3. Perused the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.174/2008 and so also evidence of PWs.1 to 20 inclusive of Exs.P1 to 16 and MOs.1 to 6 on part of the prosecution and on the defence side got marked at Exs.D1 to D9 (a).

4. Factual matrix of the prosecution case are as under :

4. Smt.Y.D.Nagarathna - complainant filed the complaint before the K.R.Sagara Police Station and based upon her complaint crime came to be registered by recording FIR. Whereas in her complaint it is alleged that her husband - Nanjundaaradhya and herself were residing at Mogarahalli Village (Kalmanti) of Srirangapatna Taluk, Mandya District. Her husband was working in Vikranth Factory at Mysuru. Her family consisting of her husband and their two children namely Madhukiran and Ganesh Babu. When the complainant Smt.Y.D.Nagarathna along with her husband and their two children residing in newly constructed house at Kalamanti, Mogarahalli Village. The accused - Leela

and her family was also residing in the house situated at Mogarahalli village just opposite to the house of the complainant -Smt.Y.D.Nagarathna.

5. It is further alleged that house of the accused - Leela had connection of water tap and the complainant 5 used to fetch water from the tap of the accused in her house for which there was some quarrel in between the complainants family and the accused family. Just two days prior to the incident on 29.07.2008 that the complainant obtained new water tap connection of her house for which she stopped to fetch water from the tap of accused - Leela. Such being the fact the husband of the accused namely Sambhashivaiah who is cited as PW.7 in the charge sheet used to come to the house of complainant - Smt.Y.D.Nagarathna and had some cordial relationship between them for which accused - Leela since one year used to quarrel with the complainant- Smt.Y.D Nagarathna suspecting the illicit relationship of the complainant with CW.7 Sambhashivaiah. For this reason, at about 2 to 3 times that PW.5 - H.C.Swamy and PW.6 - Devaraju pacified the quarrel which took place among the families of Smt.Y.D Nagarathna and accused - Leela. 6

6. It is further alleged that on 29.07.2008 at around 6.00 p.m. wherein the complainant - Smt.Y.D.Nagarathna was present along with her husband - Nanjundaaradhya and children PW.2 - Madhukiran, PW.3 - Ganesh Babu and her elder sisters son PW.4 - Manukumar, somebody had knocked the door at round 6.30 p.m. Therefore, to open the said door the complainant - Smt.Y.D Nagarathna and her husband - Nanjundaaradhya alleged to have come near the door and complainant - Smt.Y.D Nagarathna opened the door and found the accused - Leela, w/o Sambashivaiah was present in front of the door of their house by holding knife and suddenly attacked upon the complainant - Smt.Y.D Nagarathna by saying as where is her husband and saying so she picked up quarrel with the complainant and assaulted on her right hand twice with means of knife and also stabbed over the stomach. During the quarrel in between Smt.Y.D Nagarathna and accused - Leela, deceased 7 Nanjundaaradhya came to the rescue of his wife Smt.Y.D.Nagarathna from the hands of the accused - Leela. By the time she was saying as firstly to finish her and thereafter to take away life of Nanjundaaradhya, while saying so she attacked Nanjundaaradhya with means of knife and stabbed

him on the left side of his chest part and caused grievous injuries. Then accused alleged to have assaulted Nanjundaaradhya and the complainant - Smt.Y.D Nagarathna shouted for help by caught holding her and also bitten on her right shoulder and right arm. When the incident took place among Smt.Y.D Nagarathna and accused - Leela their children started shouting for help. In the meanwhile, accused who came outside along with the knife and also holding brick pieces which was laying in front of their house and accused thrown the same towards the complainant - Smt.Y.D Nagarathna and that brick hit on the head of the complainant. As a result of this she sustained some injuries and so also, her husband Nanjundaaradhya fell 8 down by sustaining injuries. Subsequently, her son namely Madhukiran went to the shop of one PW.5 - Swamy who is none other than family member of the complainant and called him, and with the assistance of said Swamy and Devaraju shifted Nanjundaaradhya to the K.R.Hospital in order to provide treatment to them to save their life. When injured Nanjundaaradhya was shifted from the scene of crime to K.R. Hospital, Mysuru the doctor declared him as brought dead. But the complainant - Smt.Y.D Nagarathna had got admitted in the hospital for treatment as an in-patient and got treatment as she had sustained some sort of injuries from the hands of the accused - Leela. When the doctor in K.R hospital declared Nanjundaaradhya as brought dead and also given information in terms as medico legal case and based upon that information forwarded by the K.R.Hospital, Mysuru that one of the police had been to K.R.Hospital recording information in terms of statements of the complainant - Smt.Y.D.Nagarathna 9 and based upon her complaint criminal law was set into motion by registering the case in Crime No.134/2008 for the offences punishable under Sections 323, 324 and 304(2) of IPC. PW.19 - H.B Venkateshaiah, PSI of K.R.Sagara Police Station, Mandya received the intimation from K.R.Hospital, Mysuru and rushed to hospital and approached the doctor namely Pushpalatha who was in charge of the patient and in the presence of the doctor he recorded her statement at around 11 p.m. Subsequently, PW.19 had return from the K.R.Hospital, Mysuru based upon the statement the case in Crime No.134/2008 was registered by recording FIR and investigation was handed over in further to PW.18 - T.Nataraj being the Police inspector on 30.07.2008 at around 6.15 a.m. he apprehended the accused through his staff members and recorded her

voluntary statement to recovery weapons used by her for commission of crime and kept her in safe custody and went to the mortuary of Mysore Government College 10 Hospital and in the presence of one D.B. Shivakumar, D.C. Jayaram and D.M.Ankegowda conducted inquest over the dead body of the Nanjundaaradhya as per Ex.P5. During the inquest over the dead body held by investigating agency that they have noticed one external stab wound measuring below the left nipple and sent the dead body of Nanjundaaradhya to conduct autopsy through P.C.344 and recorded the statements of Mallaaradhya, R.D Rajeshwari and Manukumar.

7. Subsequently the investigating officer PW.18 rushed to the scene of crime and in the presence of one Chennaveerannaaradhya and R.R.Puttaswamaaradhya conducted inquest over the dead body and also conducted mahazar and also recovered brick pieces found at the scene of crime used for commission of offence as shown by PW.1 - Smt.Y.D Nagarathna and in her presence also in the panch witnesses the seizure mahazar at Ex.P2 had been taken and also for having seized the brick piece and subjected the same to the P.F11No.58/2008. Subsequently, produced the accused and she had given voluntary statement and based upon her voluntary statement that PW.18 - T.Nataraj - Police inspector who is the investigating officer has recovered MO.1 - knife used for commission of offence and same was seized in the presence of one Govindaraju and Gangadhara and also subjected the photographs at the time of mahazar had been drawn and same was subjected to the P.F.No.59/2008. Subsequently, produced the accused before the Court having jurisdiction with remand report. As on 31.07.2008, PW.18 - T. Nataraj recorded the statement of PW.5 - Swamy and PW.6 - Devaraju. On 01.08.2008 he recorded the statement of PW.2 - Madhukiran and PW.3- Ganesh Babu. On 02.08.2008 he received the clothes from Medical College hospital through PC.344 and subjected the same to P.F.No.60/2008 and recorded the statement of CW.7 - Saambashivaiah who is none other than the husband of accused - Leela. On 12 07.01.2008 sent cloths, waist thread of the deceased for FSL examination and report. PW.17 received the FSL report and also for having sent the blood stained clothes to the doctor who conduct autopsy over the dead body and forwarded the articles for the purpose of securing opinion. Thereafter PW.7 handed over further investigation to PW.18 who after receipt of the postmortem report and opinion of the doctor inclusive of the wound certificate

of complainant- PW.1, completed the investigation and laid the charge sheet against the accused before the committal Court having jurisdiction to proceed further.

8. Subsequent to laying of the charge sheet against the accused that the committal court passed an order as under Section 209 of Cr.P.C. for compliance of relevant provision under Sections 207 and 208 and then the case was committed to Court of sessions for trial and number was assigned in S.C.No.174/2008 and the trial Court heard the arguments of the prosecution and 13 defence counsel and framed the charges against the accused for the offences punishable under Sections 323, 324 and 302 of IPC and whereby accused did not plead guilty and claims to be tried. Accordingly, plea was recorded by the trial Court. Subsequent to framing of charge by the trial Court against the accused that the prosecution let in their evidence by subjected to examination in all PW.1 to 20 and got marked several documents at Ex.P1 to 16 and so also got marked MOs.1 to 6. On the part of the defence side got marked Exs.D1 to D9 and closed its side.

9. Subsequent to closure of the case of prosecution that the statement of accused as contemplated under Section 313 of Cr.P.C for recording incriminating statement appeared against the accused in the evidence adduced by the prosecution whereby the accused denied the evidence of the prosecution adduced so far. Subsequent to recording the incriminating statement as contemplated under Section 313 of Cr.P.C, 14 the accused called upon to enter into the defence evidence as contemplated under Section 233 of Cr.P.C and whereby the accused did not come forward to adduce any defence evidence.

10. Subsequent to closure of evidence on the part of the prosecution and then heard arguments advanced by the learned public prosecutor and so also, defence counsel whereby scrutinized the evidence adduced on part of the prosecution with exhibited documents and having been convinced with the evidence, held conviction against the accused for the offences punishable under Sections 323, 324, 304(2) of IPC, 1860. It is this judgment which is challenged under this appeal by urging various grounds for intervention.

11. Whereas, learned counsel for the appellant Smt.Archana Murthy has taken me through the evidence of complainant / PW.1 - Smt - Y.D.Nagarathna and also injured person and based upon her statement 15 at Ex.P1, criminal law was set into motion. But PW.2 - Madhukiran and PW.3 - Ganesh Babu who are the children of deceased - Nanjundaaradhya and also PW.1 - Smt - Y.D.Nagarathna, PW.4 - Manukumar who is her relative, PW.7 - Mallaaradhya who is none other than the brother-in-law of the deceased, PW.12 - Y.D.Rajeshwari all these witnesses on the part of the prosecution are interested witness so that trial Court ought to have been disbelieved their evidence but has given more credentiality and arrived at the conclusion that the prosecution has proved the guilt of the accused. Therefore, this appeal requires intervention and re-appreciation of evidence if not, the accused who is the gravamen of the accusation would be the sufferer. PW.5 - H.C.Swamy is the person acquainted to the family of the deceased Nanjundaaradhya having money transaction with the deceased Nanjundaaradhya and they were in good terms with deceased family. Apart from that PW.5 is not an eyewitness to the incident as 16 per the theory which has been stated in the charge sheet laid by the investigating officer but the trial Court ought not to have believed the evidence. PW.6 is also not an eyewitness relating to the incident where in her complaint statement and also theory has been stated in the charge sheet laid by the investigating officer but his evidence was also considered by the trial Court. But it is not the in proper perspective manner and his evidence cannot be believed as he had not seen the incident and how it took place among the family members of PW.1 - Smt - Y.D.Nagarathna and accused - Leela at the adjacent house of the Nanjundaaradhya and Smt.Y.D.Nagarathna had categorically stated in her evidence and even PW.1 has been subjected to cross-examination at length wherein she has categorically stated that she is in good terms with all the family members of deceased and even PW.1 - Smt.Y.D.Nagarathna was in good terms with the neighborers in the locality. Such being the position at 17 no stretch of imagination one can say that no body has came forward to help when the incident alleged to have taken place at around 6.00 to 6.30 p.m. that too in the evening time and added to this, no independent eyewitnesses have been examined on the part of the prosecution in order to prove the guilt of the accused that she has committed murder of the deceased

Nanjundaaradhya by assaulting with means of MO.2 - knife by entering into the premises of the house of the deceased wherein their house was situated opposite to their house. But the trial Court ought not to have been convicted the accused for the alleged offence when the prosecution has failed to prove the guilt of the accused with beyond all reasonable doubt.

12. Further, it is contended by learned counsel for the appellant by referring to the evidence of PW.8 - Devaraju who is mahazar witnesses and he has been secured by the investigating agency but he did not 18 supported the case of the prosecution relating to the fulcrum of the mahazar at Ex.P3 for having seized M.O.2 - knife. But PW.6 - Devaraju did not spell out with regard to proving the recovery of M.O.2 - knife from the possession of the accused. The trial Court did not appreciate the evidence of aforesaid witness but given more credentiality to the evidence of PW.1 / complainant and also injured and her two children who are examined as PWs.2 and 3 and PW.4 is none other than nephew of the deceased Nanjundaaradhya. But they are interested witnesses on the part of the prosecution to prove the guilt of the accused. The trial Court misdirected and also misread their evidence even that PW.1 has been subjected to examination and also thoroughly cross-examined. It is stated in the cross- examination that PW.1 who is the author of the complaint at Ex.P1 and recorded by PW.19 being PSI and based upon her complaint criminal law was set into motion but she did not spell out in her evidence even 19 that she has given witness as upon injury relating to the incident as narrated by her in the complaint that how the incident took place that too be in front of the door of the house of the deceased Nanjundaaradhya who was assaulted with the means of knife according to the post mortem report at Ex.P10. Therefore, under this appeal it requires for re-appreciation of the aforesaid evidence, if not, the accused who is the gravamen of the accusation would be the sufferer. Therefore, under this appeal it requires intervention as contended by the learned counsel for the appellant.

13. Learned counsel for the appellant further submits that PW.11 - Chennaveeraaradhya and PW.13 - R.R.Puttaswamaaradhya who are the mahazar witnesses who have stated in their evidence relating to the presence of blood stains in front of the gate which was situated in the premise of the house of the

deceased Nanjundaaradhya. The trial Court ought to have 20 accepted the defence of the accused that PW.1 Smt.Y.D.Nagarathna and PW.5-Swamy were talking with each and deceased Nanjundaaradhya being not tolerated assaulted to PW.1 by means of club and caused hurt. But later due to failure of balance, deceased fell on gate spikes in front of his house that iron gate and due to the impact of the said attack he sustained grievous injuries as indicated at Ex.P10, post mortem report issued by the PW.16 Dr.Kumar who conducted autopsy and issued report stating that death was due to shock and puncture of heart. PW.1 Smt.Y.D.Nagarathna was cross-examined and in her cross-examination which is running into several pages has stated that relationship with the accused and her husband - Sambhashivaiah who is cited as CW.7 in the charge sheet were cordial prior to the incident as narrated in her complaint and from this it is clear that the accused did not had any motive or grudge with deceased Nanjundaaradhya and family members. There 21 is no motive factor to commit the alleged offence as narrated in the theory of the charge sheet laid by the investigating officer against the accused. The trial Court was misdirected and misread the evidence of PW.1 Smt.Y.D.Nagarathna and also her two children who were subjected to examination as PWs.2 and 3 and their relative PW.4 who is the nephew of the deceased Nanjundaaradhya.

14. PW.2 - Madhukiran who is the son of PW.1 Smt.Y.D.Nagarathna has categorically stated in the cross-examination that the appellant who is accused came and assaulted her mother with means of knife at that time of the incident his father - Nanjundaaradhya had come forward to rescue his wife and afterwards he went outside the house. The trial Court erroneously believed his evidence and also evidence of PW.1 Smt.Y.D.Nagarathna relating to incident as narrated in her complaint statement. But the prosecution failed to establish the guilt of accused considering that the 22 accused had committed murder of the deceased Nanjundaaradhya by infliction of injuries as indicated at Ex.P10, post mortem report with means of MO.2 - knife that too be injuries below the left nipple of his chest and also puncture wound in his right ventricle heart.

15. PW.2 - Madhukiran who is the son of the deceased Smt.Y.D.Nagarathna and PW.1 Smt.Y.D.Nagarathna alleging and stating that the accused forced the

deceased Nanjundaaradhya inside the gate situated in the house of the deceased was that very place of the incident is not proved by the prosecution by facilitating worthwhile evidence. Therefore, this appeal requires for re-appreciation of evidence as the trial Court has misdirected and also misread the evidence. If not intervention, for re- appreciation of the evidence certainly the accused who is gravamen of the accusation would be the sufferer and also there shall be miscarriage of justice. On all these premises learned counsel for the appellant submits to 23 consider grounds as urged in this appeal and consequently, to set aside the judgment of conviction and order of sentence rendered by the trial court in S.C.No.174/2008 dated 12.08.2011. Consequent upon setting aside the judgment of conviction and order of sentence the accused be acquitted for the offences punishable under Sections 323, 324 and 304(2) of IPC, 1860.

16. On controvert to the arguments advanced by the learned counsel for the appellant by referring so much of evidence, but learned HCGP for the State he has taken me through the concept of homicide. But homicide is the killing of human being. It may be lawful or unlawful. Act of unlawful homicide are those falling under Sections 299, 300, 302 and 304 of IPC, this observation has been made by the trial court and arrived at a conclusion and also held conviction against the accused by appreciating the evidence of PW.1 Smt.Y.D.Nagarathna and PWs.2 and 3 who are the 24 children of the deceased. But the offences under Section 302 of IPC, 1860 and even charges was framed against the accused there is no dispute about the death of the deceased Nanjundaaradhya whereby infliction of the injuries but there was some puncture wound at his heart ventricle as according to the post mortem report at Ex.P10 issued by PW.16 - Dr.Kumar who conducted autopsy over the dead body. The acts of the accused it appears that causing death of the deceased but it must be the proximity that it is in the knowledge of the accused. Even if a person whose death was intended does not die, but another person dies, it is culpable homicide as according to Section 301 of IPC.

17. In the instant case accused - Leela who went to the house of PW.1 - Smt.Y.D.Nagarathna holding deadly weapon MO.2 - knife causing death of the person and because of the infliction of the injuries but the accused who attacked PW.1 Smt.Y.D.Nagarathna and caused some sort of injuries as per Ex.P8 of the

wound 25 certificate issued by PW.15 - Latha who gave treatment to her. Because of the intervention of her husband Nanjundaaradhya that accused assaulted on his left side of the chest with means of MO.2 knife as a result of infliction of puncture wound of his heart as per post mortem report at Ex.P10 that PW.1 Smt.Y.D.Nagarathna injured did not die due to restrain from her husband who came forward to rescue his wife from the clutches of the accused - Leela. But the accused assaulted deceased Nanjundaaradhya with means of knife on the ventricle part of his chest. The accused was saying as the deceased to maintain a thing in his house properly. But came to his house and saying so deceased Nanjundaaradhya slapped on her cheek and gave one blow. The accused saying to finish him firstly and thereafter to finish his wife. Saying so that the accused - Leela had not only attacked PW.1 Smt.Y.D.Nagarathna but also attacked her husband Nanjundaaradhya with means of knife - MO.2 and 26 infliction of injuries on the vital parts of the right ventricle as per post mortem report of the deceased at Ex.P10. PWs.1 to 3 are the material witnesses on the part of the prosecution and the dangerous weapon also termed as deadly weapon which causes damage to the heart by puncture it is noticed by the doctor during the course of the autopsy over the dead body and also mentioned the cause of the death at Ex.P10. This evidence on the part of the prosecution, itself held that the accused had intention to commit murder of not only Nanjundaaradhya but also intending to commit murder of Smt.Y.D.Nagarathna but she escaped from her clutches due to the intervention of her husband, there was some sort of injuries which are simple in nature as indicated at Ex.P8 inflicted on her.

18. Whereas, in the instant case the incident took place on 29.07.2008 at around 6.30 p.m. but deceased Nanjundaaradhya lost his breath at around 7.50 p.m. 27 after 35 minutes of the incident therefore, death was not caused instantaneously but consequence to the infliction of injuries on the vital part of his left side of the chest part i.e. puncture wound on the heart that Nanjundaaradhya died while shifting to K.R Hospital, Mysuru to provide treatment. Therefore, scope of Sections 299 or 300 of IPC, 1860 relating to the whether the homicidal death in aforesaid provision of IPC, 1860 that there is no doubt there are some ingredients and that ingredients has been observed by the trial Court for arrival at the conclusion that the prosecution has proved the guilt of the accused with beyond all reasonable

doubt and also accused is responsible for infliction of the injury on the vital part of the chest of the deceased Nanjundaaradhya as per post mortem report at Ex.P10. On the day of the incident accused - Leela suspected the presence of her husband Sambashivaiah in the house of PW.1 - Smt.Y.D.Nagarathna for having illicit relationship with 28 him. Therefore, her husband went to the house and consequently, the accused had been to her house by holding deadly weapon that is knife - MO.2 which itself indicates that the accused who went to the house of the deceased intentionally to cause some injury to PW.1 Smt.Y.D.Nagarathna and even during the course of the incident as narrated in her complaint statement that the accused who not only caused some injuries to her but also injuries to her husband Nanjundaaradhya, as a result of which he lost his breath while shifting him from the scene of crime to K.R.Hospital, Mysuru. Therefore, culpable homicide and even particular injury is likely to cause death and the injury must be sufficient in the ordinary course of nature of cause of death same shall be incurred even in the evidence of PW.16 who conducted autopsy over the dead body and detection of the dead body as noticed that the puncture wound of the heart of the deceased Nanjundaaradhya. Therefore, the question of degree of probability it is likely to 29 prioritize not merely position of incident narrated but the ingredients of Section 299 of IPC relating to culpable homicide and but there is no such knowledge as under Section 300 (3) of IPC, 1860. But death must be most probable result of injury having regard to the ordinary course of nature. Intention to cause death is immaterial, provided death results from intended bodily injury and that injury is sufficient in the ordinary course of nature to cause death. On all these premises learned HCGP for the State had contended that prosecution has established the guilt of the accused by facilitating the worthwhile evidence and the evidence of PWs.1, 2 and 3 and 4 who have been subjected to examination have stated in their evidence and also in the cross- examination. It is further alleged that even PW.17 who is the investigating officer in part and PW.18 - T.Nataraju who is the investigating officer who laid the charge sheet against the accused and he conducted spot mahazar at Ex.P2 and also conducted seizure 30 mahazar at Ex.P3 for having seized MO.2 - knife by CW.20 being PSI who has received complaint at Ex.P1 and recorded FIR at Ex.P14 and thereafter the case was taken up for investigation. PW.18 laid the charge sheet and these witnesses were also

subjected to examination on the part of the prosecution to prove the guilt of the accused and more so have been stated in their evidence and their evidence has been corroborated with the evidence of Pw.1 to 4. Therefore, in this appeal it does not arise for call for intervention wherein the trial Court has considered all the evidence of the witnesses and also rightly come to the conclusion by assigning the reasons for arrival at conclusion that the prosecution has proved the guilt of the accused. Therefore, in this appeal it does not arise for call for intervention and consequently seeking for dismissal of the appeal being devoid of merits.

19. In this context of the contention as taken by the learned counsel for the appellant by referring to so 31 much of evidence that too be the evidence of PW.1 who is the author of the complaint at Ex.P1 and so also, injured that she had sustained simple injuries on her person as per Ex.P8. PW.15 - Dr.S.Latha who subjected to examine her as in patient. In this regard it is relevant to refer to Section 299 of IPC, 1860 in respect of culpable homicide which reads thus:

299. Culpable homicide.-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Explanation 1. - A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. Explanation 2 - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies 32 and skilful treatment the death might have been prevented. Explanation 3 - The causing of the death of child in the mothers womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

20. This issue was extensively addressed by the Honble Supreme Court in the reliance of Rampal Singh v. State of Uttar Pradesh (2012) 8 SCC289 Insofar as presumptive value regarding intention or knowledge - the intention must be judged not in the light of the actual circumstances which finds place or not the theory put

forth by the prosecution, but in the light of what he supposed to be the circumstances. This concept has been extensively addressed by the Honble Apex Court in the case of Palani Gaidan v. Emperor reported in (1919) 42 Mad 547. Whereas it is held that the accused cannot be convicted either of murder or 33 culpable homicide, he could of course be punished both for his original assault but the prosecution has to establish the case against the accused by facilitating the worthwhile evidence. But in the instant case Nanjundaradhya who is none other than the husband of PW.1 - Smt.Y.D.Nagarathna but he lost his breath by infliction of injuries on his heart which is a punctured wound i.e., on the right ventricle shows puncture wound as per Ex.P10 issued by PW.16- Dr.Kumar who conducted autopsy over the dead body. The incident took place initially in between PW.1 - Nanjundaradhya and accused - Leela. But both the family members of PW.1 and accused were residing opposite direction. The family members of complainant i.e., PW.1 - Smt.Y.D.Nagarathna had been to the house of accused - Leela for fetching water from the tap which was in the premises of her house. There was some cordial relationship in between both the family members. But deceased Nanjundaradhya was also having a water 34 connection and then the PW.1 - Smt.Y.D.Nagarathna had been stabbed to proceeded to the house with accused - Leela. Therefore, her husband Sambashivaiah who had been to the house of PW.1 - Smt.Y.D.Nagarathna as there was some cordial relationship of family in between the both. Therefore, the intention or knowledge even though it is a motive factor and even though it is important factor even for that incident took place. In the instant case at a spur of a moment that on 29.07.2008 at around 6 p.m. that accused - Leela who had been to her house and saying her husband - Sambashivaiah was not present and therefore, she went to the house of that PW.1 - Smt.Y.D.Nagarathna to make some enquiry about her husband and in the meanwhile of knocking the door that having heard the sound that Nanjundaradhya and also his wife PW.1 - Smt.Y.D.Nagarathna have been even come forwarded to open the door that PW.1 - Smt.Y.D.Nagarathna had been firstly come to the door for the purpose of opening 35 and when she opened the door that accused - Leela asked her where is her husband - Sambashivaiah. While she was asking about her husband, there was some exchange of words took place in between PW.1 and accused - Leela. In the meanwhile of the incident in between them Accused -

Leela alleged to have assaulted injured - Smt.Y.D.Nagarathna with means of knife by choosing her shoulder and also her stomach. But for that assault made on her by accused - Leela, she was shouting for help and her husband who was present in the house had rushed to the place to rescue his wife and in the meanwhile deceased - Nanjundaaradhya slapped on her cheek as on the spur of moment even averred in the complaint at Ex.P1 and even the theory has been put forth by the prosecution that a prudent man can infer that the incident firstly arise and taken in between PW.1 - Smt.Y.D.Nagarathna and accused - Leela as where the deceased - Nanjundaaradhya was alleged to be supporting his wife 36 PW.1 - Smt.Y.D.Nagarathna to develop some sort of illicit intimacy with Sambashivaiah who is no other than the husband of accused - Leela. This is of course could be the motive factor for that there was some differences arose in between both the family of accused - Leela and family of PW.1 - Smt.Y.D.Nagarathna and for that kind of ill-will or animosity developed in the between them the same ended in the incident as narrated in the complaint which one can infer as a prudent man assessing the evidence of PW.1 - Smt.Y.D.Nagarathna who has given a complaint statement at Ex.P1 while she was under treatment in K.R.Hospital, Mysuru and that her complaint is received by PW.19- H.B.Venkateshaiah- PSI and based upon the complaint that the FIR at Ex.P14 came to be recorded and the entire case was taken up for investigation by PW.18 - T.Nataraj who laid the charge sheet against the accused and the charge sheet consisting the spot mahazar at Ex.P2 which bears the signature of PW.1, PW.11 - 37 Chennaveeranaardhya and PW.13 - R.R.Puttaswamaaradhya who were secured for the purpose of conducting mahazar.

21. Ex.P5 is the inquest conducted over the dead body of Nanjundaaradhya in the presence of PW.9 - D.C.Jayaramu and PW.10 - D.M.Ankegowda. But PW.15 - Dr.S.Latha who subjected to examination injured PW.1 - Smt.Y.D.Nagarathna and issued wound certificate at Ex.P8 and provided treatment to her as an in-patient. It is opined that she has sustained with simple injuries. But deceased - Nanjundaaradhya who alleged to have come to rescue PW.1 - Smt.Y.D.Nagarathna, in the meanwhile, accused saying as to take away his life firstly and thereafter life of his wife - Nagarathna and saying so, accused alleged to have attacked upon him with means of knife by infliction of injuries on left side

chest part as infliction of punctured wound on the heart as indicated in Ex.P10 38 - wound certificate. But in the instant case, the scene of crime situated at the main door of the house of deceased - Nanjundaaradhya and within the compound of the house of PW.1 - Smt.Y.D.Nagarathna. But crime of assault to PW.1 and homicidal death of her husband - Nanjundaaradhya. But while deceased - Nanjundaaradhya had intervened to save or rescue his wife that the accused alleged to have assaulted upon him with means of M.O.2 - knife which is a deadly weapon. But deceased was shifted from scene of crime to K.R.Hospital, Mysuru on 29.07.2008 and reached at 7.05 p.m. and succumbed to the injuries as per Ex.P10 - P.M.Report. But the incident took place on 29.07.2008 at around 6 p.m. and there was no instantaneous death. But deceased Nanjundaaradhya was shifted from the scene of crime in a Van and accompanied with one Swamy and one Devaraju and on seeing the body of Nanjundaaradhya, the Doctor declared him as brought dead. Subsequently, intimation was given to the police 39 as Medico Legal Case and based upon the information given by the K.R.Hospital, Mysuru, PW.19 rushed to the hospital and recorded the statement of PW.1 as per Ex.P1 and registered the case by recording the FIR at Ex.P14. But Ex.P9 is the intimation letter issued by PW.16 - Dr. Kumar and noticed the injury such as the stab injuries measuring 1.5 cm x 0.5 cm over the left side of chest region situated 7 cm from midline and 8 cm below the left nipple, and it was right vertical which shows puncture wound measuring 1 cm x 0.1 cm x cavity deep, pericardium puncture correspondingly chest cavity contains 1000 ml. of blood clots. Even for discrepancy of homicidal death of Nanjundaaradhya on 29.07.2008 at around 7.05 p.m. while injured - Nanjundaaradhya was taken to the K.R.Hospital from the scene of crime but the time factor from the scene of crime to K.R.Hospital is the actual cause for death. Whether death was occurred instantaneously accidentally or due to delay in shifting the injured 40 Nanjundaaradhya who succumbed to the injuries and even lost his breath and the Doctor declared him as brought dead are the vital points for consideration and it shall be established by the prosecution. But the accused stabbed on the left part of the chest with means of M.O.2 - Knife but the motive factor relating to intention or knowledge this is the vital factor on the part of the prosecution which should be established by facilitating worthwhile evidence. This evidence requires for appreciation properly and it is the domain vested with the

trial Court and equally vested for marshalling of evidence and it is chaff from the grain, if not, the accused who is the gravamen of the accusation would be the sufferer. Even in the instant case PW.1 - Nagarathna who is the injured and also the author of the complaint at Ex.P1 as there was some quarrel that took in between her and the accused and consequently alleged that she had beaten her on right shoulder twice and so also, over the stomach with means of M.O.2 - 41 knife. But infliction of injuries on her person as per Ex.P8, and the injuries are simple in nature. If the accused was having any intention or knowledge, certainly she would have caused infliction of greater injuries with greater force by using M.O.2 - knife. But even prior to the incident narrated in the complaint statement, the family of complainant - PW.1 and also accused namely Leela were in cordial terms. But CW.7 - Sambashivaiah who is none other than husband of accused - Leela had some affairs with PW.1 - Nanjundaaradhya and they were in talking terms and so also, she was in talking terms with PW.5 - Swamy wherein he was doing some monetary transaction with her husband - Nanjundaaradhya. But while that PW.5 and PW.1 - Nagarathna were talking to each other, it was seen by the deceased and he had assaulted her and in the meanwhile, he was pushing and perhaps would have come into contact with some iron spikes of the gate in the premises of the house of deceased - 42 Nanjundaradhya. But in the instant case, accused - Leela who assaulted with means of M.O.2 - knife by chosen his vital part of chest and infliction of some puncture wound on right ventricle as according to the evidence of PW.16 - Dr.Kumar who issued P.M.Report at Ex.P10. But in the instant case, there are no eye witnesses but PWs.2 and 3 being the children of deceased - Nanjundaaradhya and PW.1 - Nagarathna are not the child witnesses as where PW.2 has attained the age of 17 years and PW.3 was 13 years and they have been subjected to examination but the rational answer to be given and putting them for subjecting to examination, the same can be seen from the evidence itself. However, appreciation of evidence it is the domain vested with the trial Court but there is no eye witness in the instant case as there was initially altercation took in between the complainant - PW.1 and accused - Leela and there was some ill-will and animosity developed in between them as the accused 43 suspected that her husband - Sambashivaiah having some illicit intimacy with PW.1 - Nagarathna and whereby it was supported by Nanjundaaradhya who took

some loan from PW.5 - Swamy. But on the date of the incident even though crying for help and even though several houses were situated and so also there were neighbourers, but no person had come forward to even see the incident or even for help, but deceased alone was the person who had come to rescue his wife which is the theory of the prosecution and in the meanwhile of the intervention the accused alleged to have assaulted on the vital parts of chest with means of M.O.2 - knife. But there is no blood stains found even in the premises of the house of the deceased and the incident took place in his house while the accused alleged to have entered into the house by holding knife which is a dangerous weapon. Even there was no blood stains found on the cloths of the accused and so also, at the scene of crime which had taken place in the 44 compound wall of the house of deceased - Nanjundaaradhya. But one can assess the entire materials as a prudent man that too be the murder took place in the premises of the house of deceased by the accused by assaulting with means of M.O.2 - knife and causing injuries to PW.1. The accused went to the place of occurrence in a planned manner by holding deadly weapon of M.O.2 - knife and where she had approached the house of deceased by knocking the door and on hearing the sound PW.1 - Nanjundaaradhya opened the door and in the meanwhile, there was some exchange of words took in between complainant - PW.1 and accused - Leela relating to the conduct of her husband - Sambashivaiah i.e. CW.7. But accused alleged to have stabbed with means of M.O.2 - knife and on being given a blow the deceased sustained with injuries on the vital part and PW.16 being the Doctor who conducted autopsy over the dead body and issued Ex.P10 opined that death was due to shock and hemorrhage as a result of stab injury to the heart. But in the instant case and looking into the theory of prosecution the deceased - Nanjundaaradhya lost his breath at around 7.05 p.m. as where the Doctor declared him as brought dead. But the deceased died whether almost instantaneously or lost his breath while he was shifted from the scene of crime to K.R.Hospital, Mysuru has to be looked into by appreciating the evidence of prosecution. But having regard to the nature of injuries and also their location, it would be difficult for accepting the entire evidence as facilitated by the prosecution that the accused assaulted deceased with means of knife and having an intention/knowledge to take away his life. Even the facts clearly discloses, as

contended that it should be pre-consented plan to assault the deceased, but there is no absolute evidence. Even at the place where the accused had been approached to the house of deceased, but there is no specific evidence has been brought on the part of the prosecution to prove the guilt 46 of the accused. But in the instant case, PW.1 has been subjected to examine as he being the injured witness and also subjected to examine PWs.2 and 3 who are the children of deceased, but accused never had intention / knowledge to commit the murder of deceased - Nanjundaaradhya alleging that she had carried M.O.2 - knife from her house which is situated just opposite to the house of deceased and had inflicted some puncture wound on the heart as indicated at Ex.P10 - P.M.Report as contended by the counsel for the appellant. However, taking controvert the fact that MO.2 at the blade part even causing for injuries of the nature found on the vital parts of the deceased, but it is also worth noticing that apart from some sort of abrasion wound over the person of PW.1 - Nagarathna. But there was some sort of incise cut wound on the chest part and having regard to the nature of injuries and their location it would be difficult to accept the contention made by the prosecution that the accused having an 47 intention/knowledge had been to the house of deceased by holding M.O.2 - knife and so also assaulted him, while he was intervening to rescue his wife PW.1 - Nagarathna. But in a totality of the circumstances of the case as prudent man cannot infer that the accused had been to the scene of crime by holding M.O.2 - knife for infliction of injuries on the vital parts of the deceased and committed murder as narrated in a theory of the prosecution.

22. The entire case is revolving around the evidence of PW.1 - Nagarathna who is an injured and also the evidence of PWs.2 and 3, children of the deceased inclusive of PW.4 who is the nephew. But at a cursory glance of the entire evidence including the evidence of PW.15 and 16 who are the Doctors and even though PW.1 had been subjected to cross-examination at length and even there shall be some incisive cross- examination but at a cursory glance of entire material evidence on the part of the prosecution as well as on the 48 part of defence, it is difficult for consideration of evidence of PWs.1 to 4 on the part of the prosecution in toto that the prosecution has proved the guilt of the accused with beyond all reasonable doubt. But the question would arise that whether in the circumstances

put in forth by the prosecution under which accused had given a blow with means of M.O.2 - knife on the vital parts of the chest of deceased - Nanjundaaradhya and caused the punctured wound on the heart as indicated in the autopsy report issued by PW.16 being the Doctor as per Ex.P.10. Even though it can be said that deceased who succumbed to the injuries but the motive factor and even accused had an intention to causing death of deceased, this aspect has not been established by the prosecution by facilitating the worthwhile evidence. But the trial Court has come to the conclusion even framing of charge under 302 of IPC it is a higher degree of offence and also committed murder but come down to the conclusion that the 49 prosecution has proved the guilt of the accused and held sentence under Section 304-II of IPC and inclusive of offence under Sections 323 and 324 of IPC and the same has been incorporated in the operative portion of the order. But accused - Leela was in judicial custody from 30.07.2008 till 06.10.2009 and again she was in incarceration from 23.04.2010 till 23.09.2011 and it is almost 2 years 7 months 6 days, but on consideration of the entire evidence including the medical evidence though it clearly indicates that conviction of the accused cannot be under Section 302 of IPC, 1860 but the trial Court has given credentiality to the evidence of PWs.1 to 4 and arrival of conviction as under Section 304-II of IPC. But Section 304-II of IPC element of intention or knowledge it should be establish by the prosecution. But in the instant case, there was no strong evidence on the part of prosecution that accused had an intention to infliction of injuries on the vital part of the deceased and so also having an intention to 50 infliction of injuries of PW.1 as per the wound certificate at Ex.P8. In the instant case, deceased - Nanjundaaradhya who succumbed to the injuries and lost his breath due the injuries inflicted on his vital parts. Therefore, a single injury caused by and it may not be arise for convicting the accused even for the offence punishable under Section 302 and rightly come to the conclusion by the trial Court by marshelling of evidence and so also, chaff from the grain for arrival of a conclusion. But in cases of a single injury the facts and circumstances of each case has to be taken into consideration before arriving at a conclusion whether the accused have appropriately even held conviction even for death of a person. Even taken into consideration the facts and circumstances while granting even appropriate sentence by the sentencing court, but the list of circumstances even for it is

illustrative, but it is the exhaustive but it should be the endeavour of the court for arrival of appropriate 51 conviction. But the sentence should be according to the gravity of the offence and it is the domain vested with the sentencing court. But some relevant factors which are required to be established by the prosecution for arrival of conclusion and also sentencing the accused. In the instant case, PW.1 - Nagarathna who is the injured and who is none other than wife of deceased - Nanjanduraadhya and the house of the injured PW.1 and house of accused - Leela have been situated opposite and they were in a cordial terms even prior to the incident. But Nanjundaaradhya was supporting his wife PW.1 - Nagarathna saying as to have illicit relationship with husband of accused - Leela - Sambashivaiah. But for that reason there was some animosity developed in between the family of PW.1 Nagarathna and accused - Leela which resulted in the incident narrated in the complaint at Ex.P1 and also resultant to the last breath of Nanjundaaradhya who is no other than the husband of PW.1 - Nagarathna. But 52 the injuries inflicted with means of brick piece and also with means of M.O.2- Knife and so also, on her head and also chosen the vital part of her stomach. But infliction of injuries on PW.1 - Nagarathna are found to be simple in nature as per Ex.P8. But in totality of the circumstances of the case of the prosecution and even on close scrutiny of evidence, it is required to refer Section 134 of the Indian Evidence Act, 1872. It is well- known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. But evidence of PW.1 - Nagarathna and so also evidence of her children PWs.2 and 3 runs contrary to each other and there shall be some clouds of doubt of a theory put in forth by the prosecution that injuries inflicted on the vital part of Nanjundaaradhya with M.O.2 - knife by accused - Leela or injuries inflicted on the vital part it came into contact of iron spikes which is put on the 53 gate of the house of deceased. Therefore, it is the quality of evidence and not the quantity of evidence which is required to be judged by the court to place credence on the statements of witnesses and material evidence facilitated, in order to prove the guilt of the accused. In this regard, it is relevant to refer the reliance of Honble Supreme Court reported in (1997) 2 Crimes 175 (Del) Raja v. State and the case reported in 2008 (8) JT650- State of Uttar Pradesh v. Kishanpal.

23. Whereas keeping in view Section 134 of the Indian Evidence Act, 1872 in law of evidence it does not require any particular number of witnesses are to be examined to prove / disprove a fact. However, even with a testimony of single witness even on the part of the prosecution, and even the Court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely, 54 i) wholly reliable, ii) wholly unreliable and iii) neither wholly reliable nor wholly unreliable.

24. In the first two categories, there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. It was extensively addressed by the Honble Supreme Court in the case of Lallu Manjhi vs. state of Jharkhand reported in AIR 2003 SC854 These are all the reliances referred in this matter for referring the evidence of PW.1 who is the injured and author of the complaint at Ex.P1 and even the evidence of PWs.2 and 3. But in the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but quality of their evidence which 55 is important, it is cardinal principles of criminal justice delivery system as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time- honoured principle, that evidence must be weighed and not counted. Further, the test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. Whereas the legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is the quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Indian Evidence Act, 1872. It is relevant to refer the reliance reported in AIR 2013 SC1204 relating to plurality of witnesses and so also quality of witnesses as under Section 134 of Indian Evidence Act.

25. But in the instant case though the prosecution has subjected to examination of several witnesses and 56 also got marked several documents inclusive of M.O.2 - knife which is a deadly weapon alleged to have been used by the accused but the entire case of the prosecution has been revolving around the evidence of PW.1 -

Nagarathna and PWs.2, 3 and 4. But in totality of the case of the prosecution and even on close scrutiny of the evidence, a prudent man can come to the conclusion that whether the prosecution has established the guilt of the accused beyond all reasonable doubt but it is based upon the worthwhile evidence as elicited. But in the criminal justice delivery system, it is the domain vested with the prosecution to prove the guilt of the accused by facilitating positive, cogent and corroborative evidence to probabalise that accused had caused the death of deceased by infliction of injuries. But in the instant case, there is no absolute evidence even though subjected to examine the material witnesses as PWs.1 to 4 and the entire evidence has been revolving around evidence of those witnesses and 57 PW.1 - Nagarathna herself is a injured witness but she is alleged to have been sustained injuries which are simple in nature as per Ex.P8 - wound certificate. But her husband - Nanjundaaradhya succumbed to injuries while he was shifted from the scene of crime to K.R.Hospital, Mysuru. But declared him as brought dead. Therefore, in the totality of the circumstances of the case and even on a close scrutiny of evidence put in forth by the prosecution, it is opined that the prosecution did not facilitate worthwhile evidence. When the doubt arises in the evidence of prosecution, the benefit of doubt always accrues in favour of the accused alone. But in the instant case, the trial Court did not appreciate the evidence in a proper perspective manner. Therefore, in this appeal warranting circumstances arise, since the prosecution did not prove the guilt of the accused beyond all reasonable doubt. Therefore, in terms of the aforesaid reasons and findings, it is deemed appropriate for intervention of the 58 impugned judgment of conviction rendered by the trial Court. Accordingly, I proceed to pass the following:

ORDER

The appeal preferred by the appellant / accused under Section 374(2) of Cr.P.C. is hereby allowed. Consequently, the judgment of conviction dated 12.08.2011 and order of sentence dated 17.08.2011 rendered by the trial Court in S.C.No.174/2008 is hereby set-aside. Consequent upon setting aside the judgment of conviction, the accused is hereby acquitted for the offence punishable under Sections 323, 324 and 304 Part II of IPC, 1860 for which sentence has been awarded by the trial court. If any bail bond has been executed by the accused, the same shall stand cancelled. Sd/- JUDGE DKB/RJ

