

The State Of Karnataka Vs. Bhaskar

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Court : Karnataka

Decided On : Jan-31-2022

Judge : K.Somashekar and P.N.Desai

Appeal No. : CRL.A 1059/2016

Appellant : The State Of Karnataka

Respondent : Bhaskar

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE31T DAY OF JANUARY, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE P.N.DESAI CRIMINAL APPEAL No.1059 OF 2016 BETWEEN: The State of Karnataka By Chitradurga Town Police Station Chitradurga District Rep. by State Public Prosecutor High Court Building Bengaluru - 577501. ...Appellant (By Sri. Rahul Rai .K - HCGP) AND:

1. Bhaskar S/o Somashekar Aged about 35 years Occ: Secretary Anupama Vidya Samsthe R/o Kamanabavi Badavane 1st Cross, Chitradurga - 577501.
2. Jagadeesh S/o Hanumanthappa Aged about 33 years Occ: Medical Officer PHC, Kyasapura 2 R/o Kamanabavi Badavane Chitradurga - 577501.

3. Srinivas S/o Hanumanthappa Aged about 33 years Occ: Councilor Town Municipality and Secretary Seed Education Society R/o Kamanabavi Badavane Chitradurga - 577501.
4. Vinay W/o Lakshmanamurthy Aged about 27 years Occ: Lab Technical Student Manjunatha Paramedical Science R/o Kamanabavi Badavane 1st Cross, Chitradurga - 577501.
5. Anand S/o Srinivas Aged about 36 years Occ: Working at Mess Anupama Vidya Samsthe R/o Near Channakki Honda B.D. Road, Chitradurga - 577501.
6. Swamy @ Thippeswamy S/o Chowdappa Aged about 35 years Occ: Garage work R/o Near Kalammana Temple Kamanabavi Badavane Chitradurga - 577501.
7. Divakara S/o Hanumanthappa 3 Aged about 37 years Occ: Lab Technical District Hospital R/o Kamanabavi Badavane 1st Cross, Chitradurga - 577501.
8. Hanumantha S/o Chandrashekar Aged about 28 years Occ: Working at Hostel of Anupama Vidya Samsthe R/o. Bovi Colony Near Channakki Honda Chitradurga - 577501.
9. Manikanta @ Mani S/o H.R. Manjunath Aged about 24 years Anupama Vidya Samsthe R/o. Hariyabbe, Hiriya Taluk Chitradurga - 577501.
10. Lakshmanamurthy S/o S. Hanumantha Aged about 51 years Occ: Agriculture R/o Kamanabavi Badavane 1st Cross, Chitradurga - 577501.
11. Kiran .B S/o K. Basavaraja Aged about 25 years Occ: DCE Student Saint Maries Polytechnic College Anupama Vidya Samsthe Chitradurga - 577501. 4
12. P. Renukamma W/o Muthanna Aged about 47 years Occ: cook of Hostel Anupama Vidya Samsthe R/o. Jogimatti Road 1st Cross, Prashanth Nagara Chitradurga - 577501.
13. Raghu @ Kunta Raghu @ O.P. Raghavendra S/o H.R. Panduranga Aged about 34 years Anupama Vidya Samsthe Chitradurga R/o Hariyabbe, Hiriya Taluk-572143.

14. Thippeswamy @ Thippeshi S/o Boraiah Aged about 30 years Occ:Peon Anupama Vidya Samsthe R/o Bukkambudi Village Challakere Taluk - 577501.

15. Raghavendra S/o. Mahantesh Aged abot u24 years Occ: Student, Lab Technician Anupama Vidya Samsthe R/o Ambalagere Village Hiriur Taluk - 572143.

16. Ravi Kumar @ Ravi S/o. Mallikarjuna Aged about 35 years 5 Occ: Car Driver Anupama Vidya Samsthe Somashekhar R/o Jogimatti Road 4th Cross, Chitradurga - 577501.

17. Joshi S/o. Syman Aged about 28 years Occ: Car Driver Anupama Vidya Samsthe R/o Manandavadi Vayanadu District Kerala State - 698590. ...Respondents (By Sri. S. Shankarappa - Advocate for R-1 to R-17) This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, by the Advocate for the appellant praying to i) grant leave to appeal against the judgment and order dated 19.01.2016 passed by the learned I-Addl. District and Sessions Judge, Chitradurga in Sessions Case No.51/2011 in acquitting the Respondent / accused of the offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 r/w Sec. 149 of IPC; ii) set aside the judgment and order dated 19.01.2016 passed by the learned I-Addl. District and Sessions Judge, Chitradurga in Sessions Case No.51/2011 in acquitting the Respondent / accused of the offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 r/w Sec. 149 of IPC; iii) convict and sentence the Respondent / accused for the offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 r/w Sec. 149 of IPC. 6 This criminal appeal coming on for dictating judgment through video conference this day, K. Somashekar .J delivered the following:

JUDGMENT

This is one of the classic appeals preferred by the State challenging the acquittal judgment rendered by the Trial Court in S.C.No.51/2011 dated 19.01.2016 for offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 read with Section 149 of the IPC, 1860. The State has preferred this appeal seeking to set aside the acquittal judgment rendered by the Trial Court and thereby to convict

the accused / respondents for the alleged offences leveled against them by considering the grounds urged therein.

2. Heard the learned HCGP Shri Rahul Rai K who is present before court physically for the appellant / State and so also the learned counsel Shri S. Shankarappa for Respondent Nos.1 to 17 in respect of the present appeal which is slated for Dictating 7 Judgment. Perused the acquittal judgment rendered by the Trial Court in S.C.No.51/2011 and also considered the evidence of PW-1 to PW-20 and so also the several documents which were got marked at Exhibits P1 to P31 inclusive of MO-1 to MO-44 including the contradictory statements got marked at Exhibits D1 to D6.

3. Factual matrix of the appeal is as under: It transpires from the case of the prosecution that previously, a complaint was filed by Madhusudan Reddy regarding assault made upon him by Accused No.1 namely Bhaskar S/o. Somashekar as on 19.04.2010. Accused No.1 and others are said to have assaulted Madhusudan Reddy on 19.04.2010. Keeping the said enmity in mind, at the instigation of Accused No.8 / Somanna @ H. Somashekhar S/o. Hanumanthappa, with a common object to take away the life of Madhusudan Reddy, as on 27.05.2010 at around 10.30 8 p.m. on Kote Road in Chitradurga, it is stated that Accused Nos.1 to 7, Accused Nos.9 to 11 and Accused Nos.13 to 19 are alleged to have formed an unlawful assembly by holding deadly weapons such as clubs, plastic pipes and are said to have hatched a criminal conspiracy to take away the life of the said Madhusudan Reddy and are said to have waited for his arrival. As expected, the said Madhusudan Reddy had come to Kote Road, Chitradurga along with his wife Swarupa Rani by walk. At that time, the said Accused Nos.1 to 7 and 9 are said to have enticed Madhusudan Reddy on the pretext of arriving at a compromise with him and had taken him upstairs to the first floor of the house of Accused No.1. There, they are said to have committed riot and are said to have assaulted Madhusudan Reddy by means of clubs, plastic pipes, as a result of which he is said to have sustained injuries. In view of grievous injuries sustained, he is said to have died. However, subsequently after his death, in order to destroy the 9 evidence, the accused are said to have transported his body in an Innova Car bearing No.KA-16/M-8393 and another car bearing No.KA-

16/M-4122. The body of Madhusudan Reddy is alleged to have been transported to a pit which was situated at a distance of 100 meters from Bukkapattana Cross and it is further alleged that the body of Madhusudan Reddy was set fire by dousing petrol / diesel. In pursuance of the act of the accused and on filing of a complaint by PW-1 namely Swarupa Rani W/o. Madhusudan Reddy, criminal law was set into motion by recording an FIR as per Exhibit P22 for offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 read with Section 149 of the IPC, 1860.

4. PW-1 / Swarupa Rani W/o. Madhusudhan Reddy had first filed a missing complaint as per Exhibit P1 and the said complaint was filed at 00.30 hours on 28.05.2010, which bears her signature at Exhibit P1(a). 10 Exhibit P2 is another complaint which has also been filed by PW-1 / Swarupa Rani who is arraigned as CW-1 in the charge-sheeted materials and this complaint was filed by her at 03.30 hours as on 28.05.2010. Both complaints at Exhibits P1 and P2 have been filed by her as on 28.05.2010, one at 00.30 hours and another at 03.30 hours. Based on both her complaints, FIR has been recorded as per Exhibit P22 and Exhibit P23 is the report sent by PW-18 / PSI to the court having jurisdiction as on 28.05.2010. Subsequent to registering the crime and also setting the law into motion, the I.O. / PW-20 Onkarappa S/o. Somlanaik, the Police Inspector has taken up the case for investigation and conducted investigation thoroughly and laid a charge-sheet against the accused before the Committal Court. It is relevant to state that PW-17 / Mohammed Saleem who is a PSI is also an I.O in part and PW-18 / Shivamurthy who is a Head Constable, is also an I.O. in part relating to certain 11 materials which find place in the charge-sheet. But the entire investigation has been carried out by PW-20 / Onkarappa and after completion of entire investigation, he has laid the charge-sheet against the accused before the court having jurisdiction, that is Committal Court. Subsequent to laying the charge-sheet by the I.O. against the aforesaid accused, the Committal Magistrate had passed an order under Section 209 of the Cr.P.C. by following the provisions of Sections 207 and 208 of Cr.P.C. relating to furnishing the copy of the charge- sheet to the accused for the purpose of reference and also for the purpose of defence by engaging the services of a counsel. Subsequent to passing an order as under Section 209 of the Cr.P.C. by the Committal Magistrate, an order was passed committing the case to the Court

of Sessions for trial. Accordingly, the case in S.C.No.51/2011 was registered and subsequently presence of the accused were secured. 12

5. The Trial Court, after hearing the arguments of the Public Prosecutor for the State and so also the defence counsel relating to framing of charge on prima facie materials finding place, framed the charge against the accused. Charge No.1 is in respect of offences under Sections 114, 143, 147, 148, 323, 324 read with Section 149 of the IPC, 1860 and clubbing of charge in respect of all these offences has been framed by the Trial Court. Charge No.2 has been framed by the Trial Judge in respect of offences under Sections 114, 302 read with Section 149 of the IPC, 1860 but both Charge No.1 and Charge No.2 are against the accused persons relating to the allegation of murder of deceased Madhusudan Reddy on that ground that accused persons had assaulted over his person with means of clubs / plastic pipes alleged to have been used by accused persons. Charge No.3 has been framed by the Trial Court in respect of offences under Sections 114, 201 read with 13 Section 149 of the IPC, 1860. But all these Charge Nos.1, 2 and 3 have been framed by the Trial Judge in respect of the allegations made against the accused that the accused have committed the murder of the deceased Madhusudan Reddy.

6. Subsequent to framing of charges by the Trial Court, the accused did not plead guilty but claimed to be tried. Accordingly, plea of the accused were recorded separately. The prosecution has thereafter let in evidence by subjecting to examination PW-1 to PW-20 and got marked several documents at Exhibits P1 to P31 and so also got marked MO-1 to MO-44 inclusive of contradictory statements of PW-2 Babu Reddy as per Exhibits D1 and D2 and Xerox copy of the articles published in Hai Bangalore weekly marked at Exhibits D3 to D5. But Exhibit D5 is the photo of PW-3 published in page No.15 of Hai Bangalore Weekly dated 02.08.2012. But Exhibit D6 is the contradictory 14 statement of C.R. Krishna Reddy who is examined as PW-4. Subsequent to closure of the evidence on the part of the prosecution, the accused Nos.1 to 7, 9 to 11 and 13 to 19 were subjected to examination as required under Section 313 Cr.P.C. relating to incriminating evidence appearing against the accused. But the accused have denied the truth of the evidence of the prosecution witnesses adduced so far.

Accordingly, their statements were recorded separately. Subsequent to recording the incriminating statements, accused were called upon to adduce defence evidence if any as contemplated under Section 233 Cr.P.C. But the accused did not come forward to adduce any defence evidence. Subsequent to closure of the evidence on the part of the prosecution, the Trial Court had heard the arguments advanced by the learned Public Prosecutor and so also the defence counsel in respect of the accused persons and thereby analyzing the evidence of 15 PW-1 to PW-20, the documents at Exhibits P1 to P31 and so also Exhibits D1 to D6 as well as MO-1 to MO-44, and so also the cross-examination at length done by the defence counsel, and being convinced that the prosecution did not facilitate worthwhile evidence to convict the accused for the alleged offences, consequently rendered an acquittal judgment in S.C.No.51/2011 by its order dated 19.01.2016. It is this judgment which is under challenge in this appeal by urging various grounds.

7. It is contended by the learned HCGP for the State in this appeal that the acquittal judgment in S.C.No.51/2011 dated 19.01.2016 rendered by the Trial Court is contrary to the facts of the case narrated in the complaint filed by PW-1 / Swarupa Rani who is the gravamen of the incident narrated in her complaint. Based upon her complaint, criminal law was set into motion by recording an FIR as per Exhibit P22 in 16 relation to Missing Complaint of her husband Madhusudan Reddy and another complaint at Exhibit P3 in respect of Exhibit P23 of the report sent by PW-18 PSI. Criminal law was set into motion based upon her complaint as per Exhibit P2. But both the missing complaints as per Exhibits P1 and P2 were filed by PW-1 / Swarupa Rani as on 28.05.2010, the first complaint at 00.30 hours and the second complaint at 03.30 hours. It is contended by the learned counsel that the reasons assigned in the acquittal judgment rendered by the Trial Court are erroneous and improper. Therefore, in this appeal, it requires for re- visiting the impugned judgment of acquittal. If not, it would result in substantial miscarriage of justice. PW-1 / Swarupa Rani and PW-2 / Babu Reddy S/o. Bhaskar Reddy were arraigned as CW-1 and CW-2 insofar as the criminal law being set into motion by recording an FIR. It is contended that the missing 17 complaint at Exhibit P1 and the complaint at Exhibit P2 relating to murder of Madhusudan Reddy have not been properly appreciated by the Trial Court,

thereby resulting in acquittal of the accused for the alleged offences. Therefore, the evidence of PW-1 and PW-2 in respect of Exhibits P1 and P2 and so also in respect of Exhibit P22 and Exhibit P23 relating to the FIR recorded by PW-18 requires to be re-appreciated inclusive of the evidence of PWs 12 and 14. The Trial Court has failed to appreciate the fact that the evidence of PW-2 is corroborated by the evidence of PW-4 and PW-14. But the Trial Court has given more credence to minor contradictions and so also omissions which naturally occur while facing trial by accused persons. But the domain is vested with the Trial Court and hence the Trial Court is required to properly appreciate the evidence. If not, certainly it would result in substantial miscarriage of justice. 18

8. The second limb of arguments advanced by the learned HCGP for the State is that the Trial Court has not properly appreciated the evidence of PW-1, PW-3, PW-5, PW-6 and PW-18. But PW-17, PW-18, PW-19 and PW-20 they are the official witnesses on the part of the prosecution. But PW-20 who is the I.O. has laid the charge-sheet against the accused after completion of investigation and also he has drawn the mahazar in the presence of panch witnesses and so also had seized MO-1 to MO-44 inclusive of drawing a spot mahazar at Exhibit P4, Seizure mahazar at Exhibit P9 and another Seizure Mahazar at Exhibit P10 and Inquest over the dead body of Madhusudan Reddy as per Exhibit P11 and another mahazar dated 04.06.2010 as per Exhibit P12 and so also drew the mahazar as on 29.05.2010 as per Exhibit P16. These are all the mahazars which have been drawn by the Investigating Agency in the presence of panch witnesses secured and also have drawn the sketch as per Exhibit P25 and so also secured the FSL19reports at Exhibits P26 to P27 and DNA report at Exhibit P28. But PW-20 is the I.O. who laid the charge- sheet against the accused before the Committal Court and even Computer Discs were also got marked at Exhibits P29 to P31. Therefore, in this appeal, it requires for re-visiting the acquittal judgment rendered by the Trial Court and more so, it requires to re- appreciate the evidence of PW-1 and PW-2 in respect of Exhibit P1 and P2 and so also the evidence of PW-3, PW-5, PW-6 and PW-18 inclusive of the evidence of PW-20 being the Investigating Officer. But viewed from any angle, the judgment of acquittal rendered by the Trial Court is found to be erroneous and deserves intervention by considering the grounds urged in this appeal and consequently to allow the appeal and to set

aside the judgment of acquittal rendered by the Trial Court and thereby to convict the accused for offences punishable under Sections 143, 147, 148, 323, 324, 302, 201, 114 read with Section 149 of the IPC, 1860. 20

9. Learned counsel Shri S. Shankarappa for Respondent Nos.1 to 17 appears through video conferencing. He has stoutly addressed his arguments by referring to the evidence of PW-1 / Swarupa Rani who is none other than the wife of the deceased Madhusudan Reddy and so also has referred to the evidence of PW-2 / Babu Reddy inclusive of the evidence of other witnesses. It is also submitted that the deceased Madhusudan Reddy is the accused in several offences and also is a rowdy sheeter. This submission is made by the learned counsel for accused who are arraigned as respondents 1 to 17 in this matter, counter to the arguments advanced by the learned HCGP for the State by referring to the evidence of PW-1. PW-1 / Swarupa Rani is none other than the wife of the deceased Madhusudan Reddy. Both PW-1 / Swarupa Rani and so also her husband Madhusudan Reddy had left their house on 27.05.2010 for walking, from SLM Nilaya situated in the limits of Kote Road in Chitradurga Town. At around 10.30 p.m. while PW-1 / Swarupa Rani and her husband Madhusudan Reddy were walking as per their daily walking routine, while they came near the house of Accused No.1 situated in the limits of Kote Road, Chitradurga Town, Accused No.1 who was present there had requested the deceased Madhusudan Reddy to come along with him upstairs to his house where they could talk to each other and they could arrive at a settlement of the issues between them. Saying so, Accused No.1 took deceased Madhusudan Reddy to his house on the First Floor and PW-1 / Swarupa Rani, Wife of deceased Madhusudan Reddy remained on the road in front of the house of Accused No.1. On 27.05.2010 even after half an hour since the Madhusudan Reddy did not return to the house, therefore, PW-1 / Swarupa Rani made an enquiry with Accused No.1 as to the whereabouts of her husband 22 Madhusudan Reddy. But Accused No.1 had replied to her queries that her husband Madhusudan Reddy already went back. But on 27.05.2010, PW-1 / Swarupa Rani had informed to PW-5 / Geetha about the information which she has secured on enquiry with Accused No.1. But on 28.05.2010, the charges were framed against the accused relating to offences such as unlawful assembly and also rioting with a common object by holding deadly weapons and that they had beaten the

deceased Madhusudan Reddy with means of clubs / plastic pipes. As a result of that, Madhusudan Reddy sustained injuries and succumbed to the same. Hence that the accused have committed murder of the deceased Madhusudan Reddy and also thereafter had burnt his body by dousing petrol / diesel. But partially his body was burnt, as according to the evidence of the Doctor who conducted autopsy over the dead body of Madhusudan Reddy. But on 28.05.2010, Exhibit P1 that is the missing complaint was received at around 23 00.30 hours in the night by PW-18 who is the I.O. in part. But on 28.05.2010 at around 03.30 hours, registered a case in Cr.No.217/2010 in respect of missing of her husband Madhusudan Reddy and this missing complaint was registered by Chitradurga Town P.S. PW-1 / Swarupa Rani who went to the police station at around 11.30 p.m. and she made a complaint as per Exhibit P1 and police were not there. Thereafter, the PSI who is the Investigating Agency had come and received her complaint as per Exhibit P1 at around 12.30 hours in the night. As per Exhibit P1, the deceased Madhusudan Reddy went to the house of Accused No.1 but he did not return to his house. It is the allegation made in the theory of the prosecution. But on 28.05.2010 at around 00.30 hours, the Missing Complaint as per Exhibit P1 was filed and FIR was recorded as per Exhibit P22. The complaint was made against accused persons relating to eliminating her husband Madhusudan Reddy and based upon her 24 complaint, criminal law was set into motion by recording an FIR as per Exhibit P22 and FIR as per Exhibit P23. But the date of receiving Exhibit P1 and Exhibit P22 by the Jurisdictional police, that is on 15.06.2010 though is noted, the time is not noted. This glaring material discrepancy requires to be considered. The same has been considered by the Trial Court by appreciating the evidence of PW-1 / Swarupa Rani and also PW-2 / Babu Reddy. But on 28.05.2010 at around 1.30 hours in the night, PWs 1, 3 and 5 after lodging the complaint at Exhibit P1, had met PW-2 near the temple. At that time, the said PW-2 / Babu Reddy had informed that Bhaskar / Accused No.1 and others had assaulted Madhusudan Reddy and had taken him in an Innova car. After receiving the said information, PWs 1, 3 and 5 had again gone to the police station on 28.05.2010, at around 03.30 hours in the night and further registered the case in Cr.No.217/2010 for offences under Sections 143, 147, 148, 323, 307, 363, 25 114 read with Section 149 of the IPC, 1860. But Exhibit P2 is the complaint relating to

eliminating Madhusudan Reddy and based upon the complaint made by PW-1 / Swarupa Rani, criminal law was set into motion in respect of Exhibits P22 and P23. But the date of Exhibit P2 / written complaint submitted to the SHO of Chitradurga Town P.S. though is mentioned as 28.05.2010, the time is not mentioned. Hence, there are some inconsistencies and contradictions arising in the evidence on the part of the prosecution and the same has been appreciated by the Trial Court while rendering a judgment of acquittal. Therefore, in this appeal, it does not arise to call for any interference.

10. The second limb of arguments advanced by the learned counsel is insofar as the allegation and also narration in respect of Exhibit P2 of the complaint made by PW-1 / Swarupa Rani in respect of holding of weapons such as clubs, stones and plastic pipes by 26 Accused Nos.1 to 7 and others. But PW-2 / Babu Reddy, PW-3 / Chandrashekar and PW-5 / Geetha have been cited as witnesses in the charge-sheet and also they have been subjected to examination on the part of the prosecution insofar as Exhibit P2 relating to eliminating the deceased Madhusudan Reddy by accused / felonies / offenders. But Exhibit P2 of the complaint was received by the court having jurisdiction on 29.05.2010. But no timing has been mentioned insofar as receipt of the complaint as per Exhibit P2 annexed with the FIR said to have been recorded by the police having jurisdiction insofar as setting the law into motion for heinous offences of Section 302 of the IPC, 1860 inclusive of other offences. But PW-17 had submitted Exhibit P21 seeking alteration by adding an offence under Section 302 IPC, which was received by the Jurisdictional Court on 28.05.2010 by adding certain offences in Cr.No.217/2010 insofar as unlawful assembly, rioting, causing injuries over the person of 27 Madhusudan Reddy and also as regards murder of Madhusudan Reddy inclusive of destroying the evidence in order to screen the accused from legal punishment. But instead of Section 307 of the IPC, offences in the FIR relating to the case in Cr.No.217/2017 by referring to the mentioned offences have been lugged against the accused.

11. PW-17 has stated in his evidence and specifically stated that no separate mahazar has been prepared by the I.O. during the course of investigation even for offences which took place in the house of the accused No.8 and also no material

objects were seized and also in Exhibit P4, it is not mentioned about the incident alleged to have taken place at the house of Accused No.8. But PW-16 and PW-17 have stated in their evidence that they traveled in a private car as on 28.05.2010 at around 10.00 a.m. searching for the accused and had apprehended Accused Nos.1, 5, 9 and 28 Accused No.18 at New Rotti Dhaba, Mysore, while they were having some refreshment. On 28.05.2010 at around 3.00 p.m. Accused No.1, Accused No.5, Accused No.9, Accused No.18 were produced before PW-17 being an I.O. in part. Subsequent to production of those accused, Exhibit P9 of the Seizure mahazar has been drawn by the I.O. dated 28.05.2010 in the presence of panch witnesses in between 3.30 to 4.15 p.m. and in all, four mobile phones marked as MO-26 to MO-30 were seized and also subjected under PF No.111A/2010 dated 28.05.2010. This is the Seizure mahazar has been drawn by the Investigating Agency / PW-17 by securing panch witness namely PW-8. Exhibit P9 and P.F. was received by the court having jurisdiction on 29.05.2010. This glaring materials were also appreciated by the Trial Court and also on scrutinizing the evidence of the prosecution inclusive of the evidence of PW-17 in respect of Accused No.5 / Ananda insofar as Exhibit 29 P10. But PW-17 had altered the offences of Sections 307 to 302 IPC and submitted his requisition as per Exhibit P21 to the court having jurisdiction for seeking alteration of the offences from Sections 307 to 302 IPC. PW-17 who drew the spot mahazar and PW-2 / Babu Reddy had shown the place in the presence of PW-6 and PW-17. But PW-6 had turned hostile relating to the fulcrum of Exhibit P4 and so also for having seized MO- 23 to MO-25 and MO-1 to MO-5 which were subjected under PF No.111/2010 dated 28.05.2010.

12. At the instance of Accused No.5, on 28.05.2010 at around 5.00 p.m., PW-19 who is an I.O. in part, secured panch witnesses namely PW-9 and PW- 10 and Accused No.1, Accused No.5, Accused No.9 and Accused No.18 have been led along with PW-9 and PW- 10 being panch witnesses and Exhibit P10 of the mahazar has been drawn in respect of partially burnt body of Madhusudan Reddy. But Exhibit P10 dated 30 28.05.2010 has been drawn in between 7.30 to 8.00 p.m. in the night hours with the help of search light which has been used by accused persons and also for having seized MO-6 to MO-22, MO-31 to MO-37 which indicates in the seizure mahazar and also for having subjected in PF No.112/2010

dated 28.05.2010. In PF Column No.5 and 6 and it is not specifically mentioned as to at whose instance the MOs have been seized by the I.O. during the course of the investigation. It requires for consideration under this appeal and the same has been already considered by the Trial Court and whereby the evidence of the prosecution has been found to be camouflaged and the same has been considered and rendered an acquittal judgment. The inquest over the dead body was held by the Investigating Agency at the Eucalyptus grove in the forest area which was 1 km away from Anthapura Gate situated in Sira Taluk, Tumkur District. The inquest 31 over the dead body has been held by the I.O. in the presence of panch witnesses as per Exhibit P11 as on 28.05.2010 in between 9.00 to 11.00 p.m. by PW-19 / I.O. But body of Madhusudan Reddy was alleged to be completely burnt and only bones of the body were visible but injuries were not visible on the body of Madhusudan Reddy and no articles were available on the body of Madhusudan Reddy as indicated in Column No.7 of the Inquest Mahazar as per Exhibit P11 drawn by PW-19 / Investigating Agency.

13. PW-3 Chandrashekar had given statement during the course of investigation and PW-2 / Babu Reddy has also given statement during the course of investigation. Even at a cursory glance of their statements and more so PW-19 has admitted in his evidence that Exhibit P5 and P6 even though photos have been subjected, did not disclose the identity of the person. But Exhibit P14 dated 29.05.2010 has been 32 drawn in between 11.00 a.m. to 2.00 p.m. by PW-12 in the limits of G.H. Sira. But PW-12 being the Doctor who conducted post-mortem over the dead body of Madhusudan Reddy has opined that cause of death is not possible to be determined. Further, after receipt of the FSL report as per Exhibit P15 on 04.08.2010, PW- 12 has opined that there are no fatal injuries over the body of Madhusudan Reddy except fractured mandible and medial incisions. PW-19 being the I.O. had seized two Innova cars during the course of investigation and drew the mahazar as per Exhibit P16 on 29.05.2010 between 3 to 3.45 a.m. produced by PW-16. Exhibits P17 and P18 are the photos and also in the incisive cross- examination in respect of PW-16, two cars have been seized under the mahazar and which were subjected in PF No.113/2010. 33

14. Exhibit P27 is the FSL report relating to subjecting to chemical examination and positive presence of petroleum residue in Article No.1 burnt clothes, No.2 burnt cloth pant piece and soil. But Exhibit P28 is the DNA report issued by the authority opining that for identification of Item No.1 femur bone, requisite sample from their biological parents or biological children has to be identified. Therefore, sample blood received from grandmother / sister not suitable for evaluation of DNA profiling. But PW-1 / Swarupa Rani who is none other than the wife of the deceased Madhusudan Reddy she has filed a missing complaint as per Exhibit P1 and also complaint as per Exhibit P2 and the criminal law was set into motion based upon her complaint. But the said Exhibits P1 and P2 are hit by Section 162 of the Cr.P.C. and the same can be seen even in the evidence of PW-1 and also the theory set up by the prosecution relating to 34 eliminating the deceased Madhusudan Reddy. Therefore, the counsel has cited a reliance in the case of KARIA @ KARIGOWDA vs. STATE OF KARNATAKA (ILR 2013 KAR992 followed by AIR 1996 SC2644 These citations are squarely applicable to the present case and also given facts and circumstances of the case. PW-1 / Swarupa Rani had given evidence wherein she has stated relating to her complaint at Exhibits P1 and P2. But nothing worthwhile has been elicited by the prosecution to prove the guilt of the accused that the accused have committed the murder of the deceased Madhusudan Reddy. PW-2 / Babu Reddy had also given evidence on the part of the prosecution. But at a cursory glance of the evidence of PW-1 insofar as her missing complaint at Exhibit P1 and so also the complaint relating to eliminating her husband as per Exhibit P2, but the evidence of PW1 and so also the evidence of PW2 inclusive of the evidence of PW-3, runs contrary to each 35 other and there is no credentiality of their evidence and it is further contradictory to the evidence of PW-4 / Krishna Reddy and even this witness has not withstood the statement said to be recorded by the I.O. during the course of investigation as revealed from Exhibit D6, his contradictory statement marked. At a cursory glance of the evidence of PW-4, it runs contrary to the evidence of PW-1, PW-2 and PW-3. But PW-4 has given a go-by to his version even relating to identification of accused, as he has not properly identified the accused persons and the same can be seen in his evidence itself.

15. Lastly, the learned counsel has taken us through the evidence of PW-20 and also the evidence of PW-4. PW-20 is the I.O. who has laid the charge-sheet against the accused after completion of the entire investigation done by him. However, there is a delay of recording his statements and he met PW-16 and PW-17 only on 29.05.2010. But PW-20 being the I.O. who 36 recorded his evidence after a delay of two days, in respect of serious offences of eliminating Madhusudan Reddy who is none other than the husband of Swarupa Rani. However, at a cursory glance of the evidence of the aforesaid witnesses, the theory put forth by the prosecution are found to be camouflaged and clouds of doubt arise and the same has been seen in the acquittal judgment rendered and also same has been considered by the trial Court. PW-1 to PW-2 have been subjected to examination on the part of the prosecution relating to proving the guilt of the accused. But PW-1 / Swarupa Rani who had filed a missing complaint and also a complaint of eliminating her husband Madhusudan Reddy as per Exhibits P1 and P2. These two complaints were received by PW-18 being the I.O. in part as on 28.05.2010 at around 00.30 hours and 3.30 hours respectively. 37 PW-3 who is the brother-in-law of the deceased Madhusudan Reddy insofar as Exhibit P11 as recorded as per Exhibits P5 and P6 photos. But PW-5 who is a sister of PW-3 and these witnesses were also subjected to examination on the part of the prosecution to prove the guilt of the accused. But PW-2 who is an independent witness and also the panch witness insofar as Exhibit P4 and this mahazar has been drawn by the I.O. as on 28.05.2010 in between 7.00 and 8.30 a.m. But PW-2 did not spell anything about what he had witnessed about the incident and he has also denied his statement marked at Exhibit P4. But PW-7 being a panch witness was secured by the I.O. relating to Exhibit P4 and the mahazar has been conducted. But PW-2 who is a witness has been subjected to examination and did not withstand the versions of his statement in Exhibit P11 and even though confrontation made, the prosecution did not elicit worthwhile evidence to believe the theory of the prosecution relating to 38 eliminating Madhusudan Reddy by accused persons. PW-6 is the witness as per Exhibit P4 and PW-9, PW10 are witnesses as per Exhibits P9 to P11. But all these witnesses have turned hostile and turned around their statements recorded by the I.O. during the course of investigation. But at a cursory glance of the evidence of PW-15 along with PW-16

who are alleged to have apprehended Accused Nos.1, 5, 9 and Accused No.18 on 28.05.2010 at around 10.00 a.m., but it is only the correspondence relating to tracing of the accused along with two cars. But evidence has not been let in as to who drove these two vehicles. PW-16 also accompanied PW-15 while apprehending the aforesaid accused. But at a cursory glance of the important evidence, it reveals that apprehending of the accused is not proved in the private car engaged by them, though the said car and the driver have been subjected to examination and documents have been produced, it is not known 39 whether the car was hired or was facilitated for the purpose of apprehending the accused persons.

16. PW17 being an I.O. in part had prepared a spot mahazar per Exhibit P4 and subjected to photos Exhibits P5 to P8 and prepared sketch as per Exhibit P19 and MOs 1 to 5 and MOs 23 to 25 said to have been seized at the spot and recorded the statement of PW-2 / Babu Reddy. But at a cursory glance of the evidence of PW-17 / PSI who took up the investigation further on 28.05.2010 at around 4.00 p.m. from PW-18 / I.O. and proceeded further for investigation, but on 28.05.2010 at around 5.00 p.m., PW-16 produced Accused Nos.1, 5, 9 and 10. But voluntary statement of Accused No.5 has been recorded as per Exhibit P20. But the contents in Exhibit P20 of the voluntary statement given by Accused No.5 who even admits relating to the voluntary statement of Accused Nos.5, but it is only to set up in order to suit the purpose of 40 the theory of the prosecution case in order to lay the charge-sheet against the accused. Exhibit P19 is the rough sketch drawn by the I.O. during the course of investigation. Exhibit P9 is the Seizure mahazar which has been drawn at the instance of Accused No.1, 5, 9 and Accused No.18 relating to MO-26 to MO-30 mobiles. But PW-1 / Swarupa Rani who filed a missing complaint as per Exhibit P1 as on 28.05.2010 at around 00.30 hours and this missing complaint has been received by PW-18 / H.C.No.124 who was the Station House Officer on 27.05.2010 from 9.00 p.m. to 28.05.2010 and based upon her missing complaint, the case in Cr.No.217/2010 was registered and FIR was forwarded to the Superintendent of Police and also the same has been got marked as per Exhibit P22. But based upon the written complaint as per Exhibit P2, this complaint has been filed by PW-1 / Swarupa Rani as on 28.05.2010 at around 3.30 a.m. and based upon her complaint, criminal law was

set into motion by 41 registering the case in Cr.No.217/2010 and FIR has been recorded and also submitted as per Exhibit P23.

17. According to the evidence of PW-17 who apprehended Accused Nos.1, 5, 9 and 18 as on 28.05.2010 at around 3.00 p.m. and more so handed over the investigation to PW-19 who is an I.O. in part, this investigation was taken up by him on 28.05.2010. According to PW-19, he took up the investigation from PW-17 as on 28.05.2010 and both PW-17, PW-19 who were the Investigating Agency but PW-19 did not state specifically relating to production of Accused Nos.1, 5, 9 and 18. But according to the evidence of PW-20, he had done the entire investigation and laid the charge-sheet against the accused. He took up the investigation from PW-19 on 29.05.2010 at 10.30 a.m. and PW-20 has stated in his evidence that on 30.05.2010 he apprehended Accused No.16 and on 01.06.2010, apprehended Accused No.6. But on 28.05.2010 to 42 01.06.2010 on the part of the prosecution, there is no evidence specifically let in by the prosecution relating to production of Accused Nos.1, 5, 9 and 18, which implies that there has been some perfunctory investigation carried out by the Investigating Agency in order to file a charge-sheet against accused persons. However, the prosecution even though has let in the evidence of PW-1 to PW-20 and also marked several documents at Exhibits P1 to P44 inclusive of contradictory statement of newspaper writings relating to eliminating the deceased Madhusudan Reddy inclusive of several MOs having been got marked and even PW-1 to PW-20 have been subjected to examination on the part of the prosecution to prove the guilt of the accused, but no worthwhile evidence has been facilitated. The same has been appreciated by the Trial Court at a cursory glance of PW-1, PW-2, PW-3 and PW-4 inclusive of the evidence of PW-17, PW-18, PW-19 and PW-20 and has rightly come to the conclusion that the prosecution has 43 miserably failed to prove the guilt of the accused by facilitating worthwhile evidence. Hence, the appeal being devoid of merits, deserves to be rejected. Accordingly, the learned counsel submits that the appeal be dismissed as being devoid of merits and thereby to confirm the acquittal judgment rendered by the Trial Court.

18. In the context of contentions taken by the learned HCGP for the State and so also the arguments advanced by the learned counsel for the respondents /

accused and so also referring to the evidence facilitated by the prosecution as stated supra, it is relevant to refer to a judgment rendered by the Honble Supreme Court in the case of SHARAD BIRDHICHAND SARDA vs. STATE OF MAHARASHTRA ((1984) 4 SCC116) where the Apex Court has dealt extensively the issues in respect of the concepts regarding, i) Circumstantial evidence, 44 ii) Evidence Act, 1872, and iii) Benefit of doubt. Circumstantial evidence relating to cardinal principles for conviction on the basis of circumstances of last seen together and other circumstances examined in the light of the facts of the given case. In criminal trial - benefit of doubt - when can be given - where two possibilities, one of commission of crime and the other of innocence are reasonably possible, accused entitled to benefit of doubt. In criminal trial, testimony of witnesses insofar as related witnesses, should be scanned with great caution and care. This citation has been cited in this appeal, wherein the ratio has been laid down by referring to so many judgments. The said judgment is applicable to the facts and circumstances of the present case. 45 It is also relevant to refer as to what is mens rea. Mens rea is a guilty mind, the term used to describe the mental element required to constitute a crime. Generally it requires that the accused meant or intended to do wrong or at least knew he was doing wrong. However, the precise mental element varies from crime to crime. Most criminal cases involve one of the concepts of mens rea namely: Intent which is the explicit and conscious desire to commit a dangerous or illegal act. For example, if a person targets and assaults someone with the goal of inflicting harm on the victim, he is displaying criminal intent. Insofar as the concept of knowledge, this term applies if a person is aware that his or her actions will have certain results, but does not seem to care. Recklessness is the decision to commit a certain action despite knowing about associated risks. 46 Negligence is the mildest form of criminal culpability. A person commits negligence when she fails to meet a reasonable standard of behavior for her circumstances. These are the concepts of mens rea. Actus Reus: To constitute a crime the third element, which we've called wrongdoing or which Russell has termed as physical event, is necessary. Actus reus is a physical result of human conduct. When criminal policy regards such conduct as sufficiently harmful it is prohibited and therefore the criminal policy provides a sanction or penalty for its commission. Action Crimes - The wrongdoing

in action crimes is just an act, the results of which are immaterial. This is to be termed as actus reus.

19. In the instant case, it is relevant to state relating to the doctrine of Last seen theory. The foundation of this theory lies on the principle of probability, cause, and connection as no fact takes place in isolation. Basically, it means that if an event takes place then other events also take place which are the probable consequences of a major event or is related to it either retrospectively or prospectively. But insofar as the last seen theory is concerned, it is relevant to refer to Section 7 of the Indian Evidence Act which is called the Doctrine of Inductive Logic in which it is stated that if any fact related to the occasion, cause, or effect lead to the circumstance in which that thing occurred or it provided an opportunity for the occurrence of that thing then those facts will be relevant. Also, under Section 114 of the Indian Evidence Act, the court can presume that certain facts exist if some other facts are proved to be existing in the cases of natural events, human conduct, and public and private business. Though the last seen theory relieves the court from the burden of proving guilt yet it is weak evidence and it needs to be corroborated with other factors like if there was motive with the person who was last seen with the deceased or he could even administer the kind of injury that caused death. In the case of *JASWANT GIR V. STATE OF PUNJAB* ((2005) 12 SCC438), it was held by the Honble Supreme Court that if the other links are not present to corroborate the theory then it is not safe to convict solely based on this theory. However, the last seen theory concept is also referred to in the instant case whereby the State has preferred an appeal by challenging the acquittal judgment rendered by the Trial Court.

20. Section 3 of the Indian Evidence Act relates to proving / disproving or not proving a fact. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so as to probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. 49 Disproved. - A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the

supposition that it does not exist. Not proved. - A fact is said not to be proved when it is neither proved nor disproved.

21. However, the last seen theory requires corroborative evidence. Accused persons cannot be convicted solely on the evidence of last seen with the deceased. But PW-1 / Swarupa Rani who is none other than the wife of the deceased Madhusudan Reddy, on the fateful day, that is on 27.05.2010 at about 10.30 p.m., had gone along with her husband for walking and when they were proceeding in front of the house of Accused No.1, according to some criminal conspiracy among accused persons, Accused No.1 is said to have 50 called Madhusudan Reddy to his house on the pretext of compromising some issues and accordingly the said Madhusudan Reddy had gone to the house of Accused No.1 situated on the First Floor. But PW-1 / Swarupa Rani had remained outside the house on the Kote Road, Chitradurga Town. But she did not make any venture to accompany her husband upstairs to the house of Accused No.1 when he went inside the house of Accused No.1, but PW-1 remained in front of his house on the road. However, under Section 3 of the Indian Evidence Act, it is the domain vested with the prosecution to prove the case of the prosecution by facilitating worthwhile evidence, even equally domain is vested with the Trial Court to appreciate the evidence. Accordingly, the Trial Court has gone through the evidence of PW-1 to PW-20 and main evidence of PWs 1, 2, 3, 4 and 5 inclusive of official witnesses such as PW-17, PW-18, PW-19 and PW-20 which have been referred above. But 51 at a cursory glance of the evidence of these witnesses even on the part of the prosecution, there appears to be some camouflage and also clouds of doubt. When clouds of doubt arises in the mind of the court, naturally that benefit of doubt shall always accrue on the part of the accused alone. It is the doctrine of criminal justice delivery system. Accordingly, in the instant case, the Trial Court had extended the benefit to the accused which case has ended in acquittal. But the said judgment has been challenged in this appeal by urging various grounds.

22. In the impugned judgment of acquittal in paragraph no.108 of the judgment in S.C.No.51/2011, during the course of the incriminating statement recorded by the Trial Court, it reveals that the case in Cr.No.96/2007 for offences under Section 302, case in Cr.No.134/2008 for offences punishable under Sections 341, 323,

506 of IPC, Cr.No.274/2008 for offences punishable under Sections 504, 507 of IPC, Cr.No.306/2009 for offences punishable under Sections 324, 323, 504 and 506 of IPC, Cr.No.80/2008 for offences punishable under Section 107 of the IPC and Cr.No.6/2009 for offences punishable under Sections 341, 504, 307 of IPC, Cr.No.110/2006 for offences punishable under Sections 395, 110 of IPC. These are all the cases which were registered against the deceased Madhusudan Reddy. In the same paragraph of the acquittal judgment rendered by the Trial Court, it is stated that since 2002 to 2011, in all there were 33 cases for offences punishable under Sections 324, 506, 498(2), 323, 504, 395, 114, 420, 427, 379, 380, 457, 395 read with Section 34 of the IPC, which were registered against PW-2 / Babu Reddy and PW-3/Chandrashekar. Since 2003 to 2008, four cases for offences punishable under Sections 143, 147, 504, 420, 395, 107, 109 of the IPC, 53 which were registered against PW-3 / Chandrashekar and PW-5 / Geetha, mother of PW-3.

23. On a perusal of the oral evidence of PW-1 to PW-3 and evidence of PW-5, PW-16 and PW-17, it indicates that subsequent to 10.30 p.m. on 27.05.2010 upto 6.45 a.m. of 28.05.2010, several timings PW-1 to PW-3, PW-5 to PW-17 and police, namely the Investigating Officers have taken up the case, have passed through the place situated in front of and behind the house of Accused No.1 / Bhaskar. Therefore, doubt arises in the theory set up by the prosecution in respect of serious offences of eliminating Madhusudan Reddy, and about the trustworthiness of the evidence of PW-1 to PW-3, PW-5 to PW-7 and also the evidence of PW-17 regarding conducting of the mahazar and even the contents of the mahazar and seizure mahazar noted at Exhibit P4. But the fulcrum of the mahazar at Exhibit P4 has not been established 54 by the prosecution by putting forth worthwhile evidence even regarding the reasons for either disappearance or death of Madhusudan Reddy. Even the oral evidence of PW-14 / Channabasappa, PW-2 / Babu Reddy and PW- 4 / Krishna Reddy do not corroborate each other and also do not corroborate with their statements recorded by the Investigating Agency during the course of investigation. But the I.O. recorded the statements of PW-14 who is cited as CW-18 namely K.M. Channabasappa on 27.06.2010 and as regards copy of the charge-sheet relating to Cr.No.353/2008 registered by the Chitradurga Town P.S. Station produced for the purpose of reference.

24. The Trial Court has referred the evidence minutely and even referred that several criminal cases were registered against PW-2 to PW-5 and PW-14 inclusive of deceased Madhusudan Reddy separately and also jointly. Therefore, it is made clear that PW-2 to 55 PW-5 and PW-14 inclusive of the deceased Madhusudan Reddy are the members of a group to commit the crime and also they are the offenders in various crimes which have been registered, which has been noted and also observed by the Trial Court to arrive at an acquittal judgment rendered by the Trial Court. As according to the evidence and also theory set up by the prosecution, PW-2 / Babu and PW-1 / Swarupa Rani and PW-3 and PW-5 came to know that Madhusudan Reddy has been eliminated by Accused No.1 and other associates. The fulcrum of Exhibit P1- with uncorroborated evidence of PW-9, PW-10 are neither believable nor trustworthy evidence on the part of the prosecution. According to the theory of the prosecution and as per the information provided by Accused Nos.1, 5, 9 and Accused No.18, that PW-19 being the I.O. in part had gone to the forest area at a distance of 1 k.m. from Anantapura Gate in the presence of PW-9 and PW-10 by recording mahazar, 56 seized material objects and also subjected to photos at Exhibits P5 and P6. PW-12 / Medical Officer had conducted autopsy over the dead body of Madhusudan Reddy. However, the oral evidence of PW-12 and DNA report, do not prove the identity of the body of the deceased alleged to have been shown by Accused No.5. In the instant case, medical evidence and the evidence of PW-12 on the part of the prosecution are not sufficient to identify the body of Madhusudan Reddy. Though the mahazar is marked at Exhibit P10 and photos of Madhusudan Reddy as per Exhibits P5 and P6, even in the totality of the evidence, along with the uncorroborated oral evidence of PW-1 to PW-5 and PW-14 and contents of the mahazar inclusive of the contents of Exhibits P1, P2, P4 and P10 which documents have been got marked on the part of the prosecution, are not sufficient to even to connect the accused persons that they have caused disappearance of the body of Madhusudan Reddy by partially burning 57 him by dousing petrol / diesel after murdering him. There is no evidence of partial burning of the body of Madhusudan Reddy. The prosecution has miserably failed to explain by acceptable reason even as to the delay caused in forwarding the FIR marked at Exhibit P22 to the court having jurisdiction even in respect of sensational case relating to eliminating the

deceased Madhusudan Reddy as according to the theory of the prosecution and even criminal prosecution has been let in based upon the missing complaint at Exhibit P1 and complaint at Exhibit P2 and thus complaints have been filed by PW-1 / Swarupa Rani who is none other than the wife of the deceased Madhusudan Reddy. But Madhusudan Reddy who is also involved in several heinous offences and the Trial Court has rightly come to the conclusion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt that the accused have committed the murder of the deceased Madhusudan Reddy by causing injuries over 58 the person as narrated in her missing complaint at Exhibit P1 and so also complaint filed by her as per Exhibit P2 whereby criminal law was set into motion.

25. It is required to refer as regards the distinction between culpable homicide and murder. Culpable homicide is genus and murder is its species. All murders are culpable homicides. But all culpable homicides are not murders. This issue has been extensively addressed by the Honble Supreme Court of India in a judgment rendered in the case of RAMPAL SINGH vs. STATE OF UTTAR PRADESH ((2012) 8 SCC289. Insofar as presumption regarding intention or knowledge, intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be circumstances. Hence, the accused cannot be convicted either of murder or culpable homicide and this issue has been extensively 59 addressed in a judgment in the case of PALANI GANDAN vs. EMPEROR ((1919) 42 MAD547). Further, it is relevant to refer to the explanations of Section 299 IPC relating to culpable homicide. Explanation 1 of Section 299 IPC.-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 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 60 the child may not have breathed or been completely born.

26. Insofar as Section 300 of the IPC, 1860, except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- Secondly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- Thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- Fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without 61 any excuse for incurring the risk of causing death or such injury as aforesaid. These concepts are required to be established by the prosecution even in Charge No.1 by clubbing of so many evidence relating to causing of injuries over the body of Madhusudan Reddy. But the Trial Court has appreciated the evidence of PW-1 / Swarupa Rani and PW-2 / Babu Reddy inclusive of PW-3 and PW-4. But Chapter XVII of the Code of Criminal Procedure, 1973 requires to be referred to in respect of charge. i) Section 211 Cr.P.C. relates to contents of charge; ii) Section 212 Cr.P.C. relates to particulars as to time, place and person; iii) Section 213 relates to when manner of committing offence must be stated; iv) Section 218 of the Cr.P.C., relates to separate charges for distinct offences. 62 For every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately provided that where the accused person, by an application in writing, so desires and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

27. In the instant case, Charge No.1 consists Sections 143, 147, 148, 323 and 324 read with Section 149 of the IPC, 1860 and the Charge No.2 is for offences under Sections 114, 302 read with Section 149 of the IPC, 1860 and Charge No.3 has been framed by the Trial Court in respect of offences under Sections 114, 201 read with Section 149 of the IPC, 1860. All the said charges are in respect of the deceased Madhusudan Reddy who is none other than the husband of PW-1 / Swarupa Rani and even on that count also, it does not 63 require for intervention in this appeal, as there is some camouflage and there are clouds of doubt. When

clouds of doubt arises in the mind of the court, naturally a prudent man is always to be expected that the benefit of doubt is always to be accrued on the part of the accused alone. However, at a cursory glance of the entire evidence of PW-1 to PW-20 inclusive of the material documents at Exhibits P1 to P44 and so also the contradictory statements and even the fulcrum of the mahazar at Exhibit P2, it is important to state relating to the scope of Section 134 of the Indian Evidence Act, 1872. It is the quality of evidence and not the quantity of evidence that is required to be judged by the court to place credence on the statements. This issue has been extensively addressed by the Honble Supreme Court of India in the case of STATE OF UTTAR PRADESH vs. KISHANPAL ((2008) (8) JT650 :

2008. (11) SCALE233 64 28. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but only quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses are required to be examined to prove / disprove a fact. It is the principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. 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. This issue has been extensively addressed by the Honble Supreme Court of India in the case of LAXMIBAI (DEAD) THROUGH LRs. Vs. BHAGWANTBURA (DEAD) THROUGH LRs (AIR 2013 SC1204. 65 Whereas in the instant case, though the prosecution has let in evidence of PW-1 to PW-20 and several documents have been got marked, but there is no worthwhile evidence facilitated for consideration. However, it is relevant to refer that evidence must be cogent, corroborative and positive to probabalise that the accused have committed the alleged offences. But in the instant case, there is no worthwhile evidence facilitated and therefore, the Trial Court has rightly come to the conclusion and held that the prosecution has miserably failed to prove the guilt of the accused. When doubt has crept in the mind of the court, the same rightly accrues on the part of the accused alone. Therefore, in this appeal, it does not arise to call for interference. Consequently, the appeal deserves to be rejected as opined.

29. In view of the aforesaid reasons and findings, we are of the opinion that the appeal deserves to be rejected. Accordingly, we proceed to pass the following:

66.

ORDER

The appeal preferred by the State under Section 378(1) and (3) of the Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the Trial Court in S.C.No.51/2011 dated 19.01.2016 is hereby confirmed. If any bail bond has been executed by the respondents / accused, the same shall stand cancelled.

Sd/- JUDGE Sd/- JUDGE KS

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