

Somashekara Vs. Vasanthakumar

Somashekara Vs. Vasanthakumar

SooperKanoon Citation : sooperkanoon.com/1233848

Court : Karnataka

Decided On : Feb-08-2022

Judge : K.Somashekar and P.N.Desai

Appeal No. : CRL.A 778/2014

Appellant : Somashekara

Respondent : Vasanthakumar

Advocate for Def. : Sri. Shankar

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE8H DAY OF FEBRUARY, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE P.N.DESAI CRIMINAL APPEAL No.778 OF 2014 BETWEEN: Somashekara S/o Mastaiiah Aged about 40 years R/o Basavanamathikere Kunigal Taluk Tumkur District - 5721030. ...Appellant (By Sri. N. Dinesh Rao - Advocate) AND:

1. Vasanthakumar S/o. Lorry Chennaiah Aged about 33 years R/o. Basavanamathikere Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130.
2. Nagaraju @ Autoraju S/o. Bettaswamy Aged about 41 years R/o. Basavanamathikerehalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130. 2

3. Anil S/o. Krishnappa Aged about 29 years Autodriver R/o. Basavanamathikerehalli Yadiyuru Hobli, N/o Haridevarhalli Gubbi Taluk Tumkur District - 572216.

4. Raghu S/o. Ganganna Aged about 33 years Autodriver R/o. Dobarahattihalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130.

5. Santhosh S/o. Rajanna Aged about 25 years R/o. Basavanamathikerehalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130.

6. Ravikumar @ Ravi @ Venkataramu S/o. Giryappa Aged about 34 years R/o. Basavanamathikerehalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130.

7. Bhoja S/o. Srinivasaiah Aged about 33 years R/o. Basavanamathikerehalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130. 3

8. B.B. Padmaraju @ Papanna S/o. Bettaswamigowda Aged about 50 years R/o. Basavanamathikerehalli Yadiyuru Hobli, Kunigal Taluk Tumkur District - 572130.

9. State of Karnataka By Amruthur Police Station Rep. by State Public Prosecutor High Court Building Bangalore - 560 001. ...Respondents (By Sri. Shankarappa .S- Advocate for Respondents No.1, 3 and 7; Sri. R. Srinivas - Advocate for Respondents No.2, 4, 5 and 6; Smt. M. Gayathri-Advocate for Respondent No.8; Smt. K.P. Yashodha - HCGP for Respondent No.9) This Criminal Appeal filed under Sec.372 of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment and order of acquittal dated 07.04.2014 passed in S.C.No.228/2009 on the file of the court of Fast Track, at Tumkur, acquitting the accused for the offences punishable under Sections 120(B), 143, 147, 148, 504, 506(B), 302, 114 r/w Sec.149 of IPC and convict the accused / Respondents No.1 to 8 for the charges framed and pass sentence. This criminal appeal coming on for dictating judgment through video conference this day, K. Somashekar .J delivered the following:

4.

JUDGMENT

This appeal is preferred against the judgment of acquittal rendered by the trial Court in S.C.No.228/2009 dated 07.04.2014, whereby acquitting the accused for the offences punishable under Sections 120-B, 143, 147, 148, 504, 506-B, 302, 114 read with Section 149 of Indian Penal Code, 1860.

2. The State has preferred this appeal by challenging the acquittal judgment by urging various grounds and seeks for consideration of the grounds and consequently, set aside the acquittal judgment rendered by the trial Court and to convict the accused for the offences leveled against them.

3. Heard learned counsel Sri.N Dinesh Rao for the appellant / complainant who is present before the Court physically and also learned counsel Sri.S.Shankarappa for respondent Nos.1, 3 and 7 and so also, Smt.M.Gayathri for respondent No.8. But counsel 5 Sri.S.Shankarappa for the aforesaid respondent accused would take care of the counsel namely Sri.R.Srinivas for respondent Nos.2, 4 to 6 who is on record.

4. Perused the impugned judgment of acquittal rendered by the trial Court which is challenged under this appeal consisting of evidence of PWs.1 to 34 and several documents got marked at Exs.P1 to 42 and inclusive of evidence of DWs.1 to 3 and contradictory statements of Mastaiyah as per Ex.D1, pocket calendar of 2012 at Ex.D2, copy of inquest mahazar at Ex.D3 and copy of charge sheet at Ex.D4. These exhibits have been got market on the part of prosecution and also defence side, apart from MOs.1 to 15.

5. Factual Matrix of the appeal are as under: It is transpired in the case of the prosecution that one Shivaramaiah of Basavanamathikere village had launched criminal prosecution by filing a complaint on the ground that first accused namely Vasanthakumar, 6 S/o Lorry Channaiah and his associates had made some altercation with him on 23.04.2009 in the night hours after Lok Sabha election schedule and accused persons thought that Ramesh, S/o Masthaiah had got the complaint registered in order to cause some harassment to them and further they sported grudge against Ramesh as he did not support Congress in Lok Sabha elections and in this background accused persons hatched criminal conspiracy to do away with Ramesh and to eliminate him and as such assembled in the house

of accused No.4 namely Raghu S/o Ganganna and due to this criminal conspiracy hatched among them they were armed with deadly weapons such as sword, machete and longs and came to circle of Basavanamathikere by using two auto-rickshaws bearing Registration No.KA-06-B-5981 belonging to the first accused namely Vasanthakumar and Registration No.KA-06-B-5401 belonging to the second accused - Nagaraju @ Autoraju. The aforesaid accused as 7 according to the criminal conspiracy hatched among them came in auto-rickshaws at around 8.30 a.m.

6. It is further contended that first and second accused had longs in their hands and accused No.3 - Anil, S/o Krishnappa had machete and they got down from the auto-rickshaw with common intention and went to assault CW.1 who is arraigned as PW.10 namely Somashekara S/o Mastaiah who is none other than the brother of the deceased - Ramesh. PW.10 and deceased - Ramesh were sitting in front of the shop of Gangabairaiiah and one accused alleged to have come forward to attack, then CW.1 / PW.10 escaped from the scene of crime and he took heel from there and accused persons alleged to have chased his brother namely Ramesh who was also about to take heel from there and the first accused alleged to have assaulted deceased - Ramesh with means of long on his right ankle part and due to that aforesaid Ramesh fell down on the ground in front of the house of Gousepeersab. It is further 8 transpired in the case of the prosecution that the first accused alleged to have assaulted Ramesh on his head and on left hand with means of long and severing the left hand. The second accused alleged to have assaulted with means of long on left hand of Ramesh again and accused No.3 alleged to have assaulted deceased with means of sword on the right hand and also over the body. Accused No.4 alleged to have assaulted Ramesh on both the legs and over the body with means of machete. Accused No.8 namely B.B.Padmaraju @ Papanna S/o Bettaswamigowda present there and instigated other accused persons alleged to have assaulted Ramesh and killed him. Accused Nos.5, 6 and 7 alleged to have given fist blow over Ramesh saying as to die and after fatally assaulting injured Ramesh, accused persons took heel from there in their auto-rickshaws. CWs.1 to 4 and CW.23 took injured Ramesh for treatment in autorickshaw to Kunigal Hospital and got first aid 9 treatment to save his life but on the advice of the doctor they shifted the injured to Victoria Hospital, Bengaluru to

provide better treatment to him and also admitted the injured. But the injured did not respond to the treatment provided in Victoria Hospital, Bengaluru and he lost his breath at around 12.20 p.m. on the aforesaid date.

7. In pursuance of the act of the accused and also on filing of the complaint by PW.10 as per Ex.P11, criminal law was set into motion by recording FIR as per Ex.P28 for the offences punishable under Sections 120- B, 143, 147, 148, 504, 506-B, 302, 114 read with Section 149 of IPC, 1860 by the investigating agency and thereafter the case has been taken up by the investigating officer and during investigation the investigating officer has recorded the statements of witnesses and so also, drew mahazar in the presence of panch witnesses and inclusive of securing post mortem 10 report at Ex.P40 and FSL report at Ex.P42 and secured MOs.1 to 15. These material objects were seized in respect of mahazar and so also drew spot mahazar at Ex.P7 in the presence of PW.10 which bears their signature.

8. Subsequent to completion of investigation by PW.33 - B.K Shekar, he laid the charge sheet against the accused before the committal Court in C.C.No.588/2009. Subsequent to laying of charge sheet by the investigating officer that the committal Court had passed an order under Section 209 of Cr.P.C by following provisions of Sections 207 and 208 and the case was committed to the Court of sessions by passing order dated 21.10.2009. Subsequently, the case in S.C.No.228/2009 has been numbered and whereby securing the accused to face trial by issue of process in accordance with relevant provision of Cr.P.C. Accused engaged the services of counsel respectively. After hearing on the charges by the Public Prosecutor and the 11 defence counsel, the trial Court framed the charges against the accused in respect of aforesaid offence and whereby the accused did not pleaded guilty but claimed to be tried. Accordingly, charges were framed against the accused on 19.01.2010 and the plea of the accused was recorded separately. Subsequent to framing of charges against the accused that the prosecution let in the evidence by subjecting to examination of PWs.1 to 34 and so also, got marked several documents as per Exs.P1 to 42 and inclusive of several materials as per MOs.1 to 15 and so also got marked Exs.D1 to 4. But subsequent to recording incriminating statement of the accused appeared against them as required under

Section 313 of Cr.P.C., that the accused were called upon to enter into defence evidence as contemplated under Section 233 of Cr.P.C. Accordingly, Exs.D1 to 3 were got examined on the part of defence side only.

9. Subsequent to closure of the evidence on the part of prosecution witnesses as adduced and examined 12 the accused persons as required under Section 313 of Cr.P.C to enable them to the evidence which has been let in on the part of the prosecution and also appeared against them. But the accused were denied the truth of the evidence on the part of the prosecution adduced so far. Accordingly, it was recorded separately. Subsequent to recording the incriminating statement appeared against the accused they were called upon the accused adduced as contemplated under Section 233 Cr.P.C. Accordingly, on the part of the accused that DWs.1 to 3 were got examined. Subsequent to the closure of the evidence on the part of the prosecution in entirety and also on the part of the defence side that the trial Court heard the arguments advanced by the learned public prosecutor and so also, arguments advanced by the defence counsel and having convinced by the evidence let in by the prosecution and even on close scrutiny of the evidence as well as several documents has been got it marked on the part of 13 prosecution and inclusive of evidence of Ex.D1 to 3 and so also, close scrutiny of the material objects of MOs.1 to 15 which were got marked on the part of prosecution and having convinced that the prosecution did not facilitate the worthwhile evidence, consequently rendered the acquittal judgment in S.C.No.228/2009 dated 07.04.2014 for the offences which were lugged against the accused. It is this judgment which has been challenged under this appeal by urging various grounds.

10. Whereas, learned counsel Sri.N.Dinesh Rao for appellant / complainant namely Somashekara who is none other than brother of the deceased - Ramesh and whereby he has preferred this appeal by urging various grounds challenging the acquittal judgment on the ground that the trial Court has ignored acceptable evidence on record on the part of prosecution which are sufficient to hold the guilt of the accused, but manifest error has been committed by the trial Court by 14 rendering acquittal judgment which amounts to substantial miscarriage of justice. Whereas the learned counsel for the appellant has taken us through the evidence of PW.10 who is the complainant and gravamen of the incident narrated in his

complaint at Ex.P11 and more so, he is the brother of deceased - Ramesh and he was also sitting along with his brother in front of the shop of one Gangabairaiiah. But accused persons alleged to have assaulted deceased - Ramesh with means of dangerous weapons like sword, machete and long and on the instigation of accused No.8 but PW.10 is eyewitnesses to the incident as narrated in his complaint at Ex.P11 and so also, that theory of the prosecution but the trial Court has committed grave error by not accepting his evidence in entirety. But reasons assigned in the acquittal judgment are not valid reasons and also it is not acceptable reason and same is required to be re-appreciated in this appeal even gone through the evidence of PW.26 being Doctor who 15 initially treated the injured in Kunigal Government Hospital on 28.04.2009 at around 9 a.m. but evidence of panch witnesses namely PWs.19, 20 and 21 have been subjected to examination on the part of prosecution relating to seizure of weapons and seizure of clothes and also two auto-rickshaws alleged to have been used by the accused according to the criminal conspiracy hatched to eliminate deceased - Ramesh in the concept of that he was not supporting Congress party in Lok Sabha election but he was supporting BJP. But the fulcrum of Exs.P8, 16 and 17 relating to the seizure mahazar of the said articles has been conducted by the investigating agency and same has not been considered by the trial Court and also their evidence has not been ascertained by the trial Court in proper perspective manner. Therefore, in this appeal it requires for re-visiting of impugned judgment and consideration of evidence of PW.10 who is the eyewitness and brother of the deceased - Ramesh and his evidence has been 16 corroborated with the evidence of PW.17 - Mastaiiah who is none other than the father of the deceased and their evidence finds corroborated with the evidence of PWs.19, 20 and 21.

11. It is further contended that insofar as medical evidence and also scientific evidence and both evidence corroborates with the oral evidence on record which further strengthens the case of the prosecution. However, the trial Court has erroneously considered the evidence in terms of rejection of the theory put forth by the prosecution by assigning reasons in the impugned judgment rendered by the trial Court. The reasons assigned in the judgment of the trial Court rejecting the FSL report at Ex.P42 and report issued by PW.34 is improper. Therefore, grave error is committed by the trial Court by rendering the acquittal judgment and same

can be seen in the impugned judgment and also made observation by the trial Court in various paras of the bulky judgment of acquittal rendered by the trial 17 Court. But according to the error committed by the trial Court in stating that the evidence of PW.10 is unbelievable as he is an interested witness on the part of prosecution and his evidence is not corroborated by any other evidence on the part of prosecution. On this premises also learned counsel for appellant / complainant emphatically submits that observation made by the trial Court and also reasons assigned in the trial Court by rendering the acquittal judgment is exaggerated and if that acquittal judgment is confirmed, certainly there shall be substantial miscarriage of justice and accused hatched criminal conspiracy to eliminate the deceased - Ramesh who is brother of PW.10 / complainant and accused assaulted the deceased mercilessly with means of dangerous weapons like sword, machete and iron longs alleged to be used by them and also incident had taken place on 28.04.2009 at around 8.30 a.m. in morning whereby PW.10 - Somashekar and deceased - Ramesh were sitting in 18 front of the tea shop of Gangabariah by that time accused were attacking injured Ramesh with means of dangerous weapons held in their hands and execution in accordance with criminal conspiracy hatched by the accused persons. But the trial Court did not properly appreciated the facts and manner in which incident alleged to had taken place and erroneously came to the conclusion even relating to the evidence of PW.1 and so also facts at Ex.P1 do not tally with Ex.P7 and also erred in accepting defence version that there are possibility that the deceased might have been assaulted at the garden and the place of incident as claimed by the prosecution is not proved on the part of the prosecution by facilitating worthwhile evidence.

12. The learned Counsel for the appellant / complainant by referring to the evidence of PW.17 and PW.10 narrated in his complaint at Ex.P11. PW.17 even he is not the eyewitness but he is a hearsay witness but he also accompanied with PW.10 whereby deceased - 19 Ramesh was shifted from Kunigal Government Hospital to Victoria Hospital to provide better treatment to save his life. Therefore, evidence of PW.10 and 17 on the part of the prosecution are required to be considered, if not considered in this appeal, certainly there shall be substantial miscarriage of justice.

13. Lastly, counsel for the appellant submits by referring the acquittal judgment rendered by the trial court that the trial Court was not justified in doubting the evidence of PW.10 by pointing out to minor discrepancies with regard to assault made by each of the accused, place of assault, which discrepancies are natural and ought to have occurred, when a witness is examined after considerable lapse of time on the part of prosecution to prove the guilt of the accused but trial Court was not justify in doubting the evidence of PW.10 who is eyewitness who is brother of the deceased and whereby on seeing the incident of attack made by each one of the accuse holding deadly weapons that he was 20 took away from there to save his life itself is enough for consideration of evidence on the part of prosecution and more important evidence of PW.10. The trial Court has erred in holding that PW.10 who is gravamen of the incident he did not made any interference to rescue his brother and therefore, his version appears to be doubtful of the theory put in forth by the prosecution. These views were also taken by the trial Court by PW.10 who is the eyewitness and also he has narrated in this complaint at Ex.P11 and moreover, evidence of PW.10 inclusive of the averments made in the complaint at Ex.P11 and also various mahazars has been conducted by the investigating officer in the presence of panch witnesses and inclusive of evidence of PW.33 - B.K.Shekar who laid the charge sheet against the accused and also fulcrum of mahazar at Ex.P7 that is spot mahazar and mahazar at Ex.P8 and seizure mahazar at Ex.P12 seizure mahazar at Ex.P16 seizure mahazar at Ex.P17, 18 and 19 and these are all the 21 mahazars conducted by the investigating officers in the presence of panch witnesses and fulcrum of mahazar is not considered by the trial Court. Therefore, in this appeal it requires for reconsideration of the evidence in the entirety on the part of the prosecution and also requires for re-visiting of impugned judgment of acquittal rendered by the trial Court.

14. It is further contended that accused No.8 has taken plea of alibi and he was subjected to examination as DW.3 and documents as per Exs.D1 to D4 were got it marked. That one - Lingaraju who is the relative of accused No.8 was working as driver attached to his vehicle and on the fateful day on 28.04.2009 that the driver namely Lingaraju had died due to the accident. Ex.D3 is the inquest mahazar held over the dead body of the Lingaraju at Government Hospital Magadi and whereby

he was met with an accident and also got marked charge sheet as per Ex.D4 but the trial Court 22 ought to have seen the plea of alibi taken by accused No.8 namely B. Padmaraju by manipulating and also getting documents after the incident narrated in Ex.P11 of the complaint which filed by PW.10 and also erroneously held by the trial Court that plea of alibi of accused No.8 is proved but same cause to the benefit of other accused also but observation made by the trial Court by rendering acquittal judgment. But credentiality has been given to the evidence of PW.10 who is brother of the deceased and also eyewitness, but entire approach made by the trial Court it is only resulted in the acquittal of the judgment even for heinous offences which has been lugged against the accused. Therefore, in this appeal it requires for re- visiting of impugned judgment of acquittal and also requires for re-appreciation of the entire evidence let in by the prosecution in a proper perspective manner and consequently, seeks to set aside the acquittal judgment rendered by the trial Court in S.C.No.228/2009 and 23 convict the accused for the offences punishable under Sections 120-B, 143, 147, 148, 504, 506-B, 302, 114 read with Section 149 of IPC, 1860.

15. Learned counsel for the appellant has submitted a synoptic note for consideration in this appeal. It states that Ramesh is the brother of complainant namely Somashekara, S/o Mastaiyah and the date of the incident is 25.04.2009 in front of the shop of Gangabaraiah. The complaint has been lodged by the complainant on 25.04.2009 at around 9.45 a.m. before Amrutur Police Station and so also, referring the spot mahazar as per Ex.P7 and inquest mahazar as per Ex.P27 and Post mortem report as per Ex.P40. But in the facts of the case i.e., the nutshell of the prosecution theory that on 23.04.2009 elections were held to Tumkur Loksabha Constituency but the accused were said to be supporters of Congress party. Deceased Ramesh and complainant PW.10 were said to be supporters of BJP party. But according to the 24 prosecution the accused had assembled in the house of accused No.4 on 24.04.2009 and hatched criminal conspiracy to eliminate victim Ramesh and so also, narrating the conspiracy hatching among the accused in respect of deadly weapons of sword, machete and longs and arrived at Basavanamattikere in two autos bearing Nos.KA05B5981 and KA06B5401 as per M.O.10 and 11 and belonging to accused Nos.1 and 2. That first and second accused had longs in their hands. Accused No.3 had sword and

Accused No.4 had machete while alighting from the auto and attacked deceased Ramesh who was sitting in front of the shop of Gangabairaiiah with complainant PW.10 and attacked deceased Ramesh. Accused No.1 assaulted victim with means of long on right ankle as a result, the deceased fell down on the road in front of house of Ghousepeersab and thereafter the other accused were also assaulted over his person and accused Nos, 5, 6 and 7 alleged to have kicked on the person of deceased 25 Ramesh saying as to die . But this incident took place due to the instigation made by accused No.8. These are all the contentions has been made by the learned counsel while submitting the synoptic notes and also referring the witnesses and other documents. But the trial Court has given more credentiality to the evidence of PW.10 who is the complainant and also gravamen of the incident narrated in the complaint at Ex.P11 and so also, stated in the evidence of DW.1 - Suresh, DW.2 - U.D.Krishnakumar, who is the police inspector in CID unit and DW.3 - Padmaraju, brother of former MLA Ramaswamy gowda. This synoptic note has been made by the learned counsel for the appellant / complainant in support of the prosecution theory and also case has been put forth on the part of the prosecution against the accused person and so also, in support of the grounds as urged in this appeal for consideration for seeking intervention of the acquittal judgment rendered by the trial Court. 26

16. In support of his contention learned counsel for appellant / complainant has placed the following reliances for consideration in this appeal: i) Shivaji Sahabrao Bobade and another vs. State of Maharashtra (1973) 2 SCC793ii) State of Karnataka vs. Suvarnamma and another (2015) 1 SCC323iii) Vijay Mohan Singh vs. State of Karnataka (2019)5 SCC43617. The aforesaid reliances are aptly applicable to the present case on hand the same may be considered in addition to the grounds as urged in this appeal for seeking intervention and so also, to set-aside the acquittal judgment and consequently, convict the accused for the offences which are leveled against them.

18. Learned counsel Sri S.Shankarappa for Respondent Nos.1, 3 and 7 inclusive of Respondent No.8 and whereby engaging the services of learned 27 counsel Sri R.Srinivas for Respondent Nos.2, 4 to 6 who is on record and more so, counsel namely Smt.M.Gayathri for respondent No.8. Learned counsel Sri S.Shankarappa

has taken us by referring the evidence of PW.10 who is the gravamen of the incident narrated in complaint at Ex.P11 and more so, criminal law was set into motion by recording the FIR as per Ex.P28. PW.31 - T.S.Radhakrishna who is the investigating officer in part recorded the FIR based upon the complaint at Ex.P11 and even though he has narrated in the substance of FIR at Ex.P28. But Ex.P30 is the voluntary statement of accused No.5 whereby bears his signature as per Ex.P30(a). Similarly, voluntary statement of accused No.2 as per Ex.P.33 and bears his signature at Ex.P33(a) and also signature of PW.33 at Ex.P33(b) who is the investigating officer who laid charge sheet against the accused. PW.33 has done the entire investigation and laid the charge sheet against the accused and he recorded the voluntary statement of accused No.3 as per Ex.P34. PW.1 - Gangadhara has given his statement before the investigating officer during the course of investigation and so also, PWs.2 to PW.6 and they did not withstood the version of their statement in respect of Ex.P1, P2, P3, P4, P5 and P6. PW.10 - Somashekar has subscribed his signature at Ex.P7 spot mahazar said to have been conducted by PW.30. This spot mahazar has been conducted by him in the presence of PW.11 - Lakshmana. But PW.11 did not support the case of the prosecution relating to the fulcrum of Ex.P7 of the spot mahazar. PWs.8 and 9 namely Chandra and Gururaju were secured as panch witnesses relating to Ex.P8 seizure mahazar. This mahazar has been conducted by PW.33 being the investigating officer and getting the signature of PW.19 - Thimmegowda. PW.13 - Madhugiraiiah in respect of seizure mahazar at Ex.P16 and that mahazar was also drawn by PW.33 being the investigating officer. PW.14 - Krishnappa who is also 29 mahazar witness at Ex.P16. But both these PWs.13 and 14 did not withstood the fulcrum of the said mahazar conducted by the investigating officer in their presence. The aforesaid witnesses even though were subjected to examination on the part of the prosecution but they did not withstood their versions of their statements and their evidence runs contrary to the evidence of PW.10 - Somashekaara who is the brother of deceased - Ramesh and who was also present by sitting in front of the shop of Gangabaraiah. But strangely that Gangabaraiah and also Ghouse peersab whereby in front of his house even the incident took place it is on 25.04.2009 at around 8.30 a.m. in the morning. But the said Gangabaraiah and also Ghouse peersab were not examined on the part of

the prosecution and non-examination of these material witnesses has created some clouds of doubt in the case of prosecution as well as the prosecution did not come forward to put forth worthwhile evidence to secure conviction and the same has been considered by the trial Court having gone through the evidence of PW.10 - Somashekara who is the brother of the deceased - Ramesh and took him from the scene of crime on seeing the accused persons by assembling unlawfully as according to the criminal conspiracy hatched by them to eliminate deceased - Ramesh.

19. The trial court has considered the evidence of PW.10 relating to examination-in-chief and so also, cross-examination part in its entirety but his evidence is not supported with any other independent witnesses and even though he is an eye witness. PW.26 is Dr.Mamatha who issued the MLC register extract as per Ex.P22 in respect of injured Ramesh. But Ex.P40 is the post mortem report which is got marked on the part of the prosecution only through PW.33 being the investigating officer and mere because he has secured the PM report, but unless the Doctor who conducted the 31 autopsy over the dead body of the deceased is subjected to examination on the part of the prosecution and so also, cross examination on the part of the defence side, and unless the opportunity has been availed to the defence, even though deadly weapons of M.Os.1 and 2 iron longs, M.O.3 iron sword, M.O.4 - Machete alleged to have been used by the accused as according to the criminal conspiracy hatched among the accused persons to eliminate deceased - Ramesh relating to the corresponding injuries with means of M.O.1 to M.O.4 and so also, injuries indicates at Ex.P40 of the post mortem report. Whereas the prosecution did not make any endeavourance to secure the Doctor who conducted the autopsy over the dead body of deceased Ramesh but the post mortem report at Ex.P40 was only got marked through PW.33 being the investigating officer who laid the charge sheet. Similarly, Ex.P41 is the Doctor opinion report and FSL report at Ex.P42 and these reports were got it marked on the part of the 32 prosecution only through PW.33 being the investigating officer. But mere because got it marked, it cannot be said that the contents in the aforesaid exhibited documents have been proved by the prosecution and it is the domain vested with the prosecution and equally the domain vested with the defence counsel for subjected to cross-examination relating to the injuries inflicted

over the person of the deceased.

20. The evidence of PW.10 - Somashekara who is the gravamen of the incident as narrated in the complaint at Ex.P11 and so also, the evidence of PW.17 - Masthaiah, father of deceased as well as father of complainant - PW.10. But their evidence has not been corroborated by any independent witnesses on the part of the prosecution. But the evidence of PW.28 who is the police constable who apprehended accused Nos.5 and 7 and similarly, PW.29 - Huchamachigowda who apprehended accused No.6 and mere because subjected to examine those police official relating to apprehending 33 the accused and also produced before the investigating agency to proceed in further and even subjected to examine PW.31 for recording the FIR at Ex.P28. PW.32 - Gangaraju who is the police constable collected the clothes of deceased - Ramesh which are marked at M.O.9. They are the official witnesses on the part of the prosecution that too be the police official witnesses and merely because they are subjected to examination on the part of the prosecution, it cannot be said that the prosecution has proved the guilt of the accused by facilitating the worthwhile evidence. Therefore, in this appeal it does not arise for call for interference and so also, does not arise for re-visiting the impugned judgment in its entirety as sought for by learned counsel for the appellant by urging various grounds and even by facilitating the reliances in support of the contention. 34

21. DW.1 - Suresh, DW.2 - Krishnakumar and DW.3 - Padmaraju who is arraigned as accused No.8 and he was the panch witness relating to the inquest held over the dead body of one Lingaraju who was the driver working with Ramaswamygowda, the then MLA and brother of accused No.8 as per Ex.D3 and this accused No.8 has taken a plea of alibi and wherein he was present on 25.04.2009 at Government Hospital, Magadi. The said Lingaraju had died in an accident on Bangalore-Mangalore road near Narayanapura of Kudur Hobli, Magadi Taluk and accused No.8 being his brother had went to the spot. But accused No.8 was not present at the scene of crime. The allegation is that he has instigated the other accused to eliminate deceased - Ramesh as narrated in a theory of the prosecution and it is only to implicate accused No.8 in the case and this theory has been set up by the prosecution laying of charge sheet against the

accused to suit their purpose. 35

22. Learned counsel Sri Shankarappa for accused and even counsel for Respondent No.8 - Smt.Gayathri have taken us through the entire evidence of PW.10 - Somashekara who has been subjected to examination on the part of prosecution to prove the guilt of the accused and so also, the averments made in his complaint as per Ex.P11 and more so, he is the brother of injured - Ramesh. He has made the complaint as per Ex.P11 on 25.04.2009 but not subscribed his signature nor examination relating to the contents proved by the prosecution. On 25.04.2009 at around 9.45 a.m., P.W.31 being the PSI of Amrutur Police Station received complaint as per Ex.P11 and based upon his complaint, criminal law was set into motion by recording FIR at Ex.P28 and the case in Cr.No.62/2009 came to be registered. Accused Nos.1 to 4 alleged to have been assaulted on the left hand elbow and left hand of deceased - Ramesh found to be cut with means of chopper and sustained injuries on his left hand, left 36 elbow part, head and both the legs. Accused No.8 alleged to have instigated the other accused to assault the deceased. But PW.10 did not make any endeavourance to rescue his brother from the clutches of the accused persons or even made any efforts to hue and cry in order to help his brother - Ramesh who was assaulted mercilessly. PWs.1 to 3 came to the scene of crime and after seeing them accused took heel from the place and PWs.1 to 3 and 10 shifted the injured - Ramesh to Government Hospital, Kunigal on 25.04.2009 at around 9.30 AM in order to provide treatment to him and thereafter at the advise of the Doctor, injured - Ramesh was referred to Victoria Hospital for further treatment. Ex.P22 - MLC Register extract relating to injured - Ramesh. But PW.26 being the Doctor admitted the injured at around 9.00 AM but the date of admission in Kunigal Government Hospital is at around 9.00 AM brought by the relative of the injured - Ramesh. But the date, time and dispatch of 37 Ex.P11 and based upon the complaint of PW.10, PW.31 PSI of Amrutur Police Station who recorded FIR as per Ex.P28 but the date and time of dispatch of Ex.P11 and P28 on 25.04.2009 at around 10.15 a.m. But the injured - Ramesh was shifted from Government Hospital, Kunigal to Victoria Hospital, Bengaluru to provide further treatment to him. But the injured - Ramesh lost his breath while he was being carried to Victoria Hospital, Bengaluru on 25.04.2009 at around 12.20 p.m. But PW.31 being the PSI of Amrutur Police Station and even

after death of the injured, submitted a report as per Ex.P29 to invoke the offence under Section 302 of IPC as initially FIR has been recorded by PW.31 by invoking the major offence under Section 307 of IPC only after the death of injured - Ramesh that the offence under Section 302 of IPC has been invoked by submitting a report. But PW.30 - ASI of Amrutur Police Station held inquest over the dead body of deceased - Ramesh on 25.04.2009 in between 3 p.m. to 5.30 p.m. 38 in respect of the inquest report at Ex.P27. But Ex.P27 in respect of column Nos.3, 4, 6, 9 and 10. Whereas in column No.3 indicates that on 25.04.2009 at 12.20 p.m., firstly seen the deceased - Ramesh by Doctor Surendra at Victoria Hospital, Bengaluru. But in column No.4 of the inquest mahazar at Ex.P27 i.e., last seen life of the injured - Ramesh by Doctor Surendra in Victoria Hospital on 25.04.2009 at around 12.20 p.m. But column No.7 of the inquest report indicates injuries 1 to 7. But PW.7 who is the father of the deceased indicates in column no.9 but Bettaswamy who is a hear say witness is examined PW.16. In column No.10 of the inquest report, PW.18 - Gangadharaiah and PW.27 - Rangaswamy. But these are all the process that has been taken in respect of injured - Ramesh who lost his breath on 25.04.2009 at around 12.20 p.m. at Victoria Hospital whereby he was shifted from Kunigal Government Hospital as on the advise of the Doctor to Victoria Hospital for further treatment. Even at a cursory glance of evidence of PW.26 and so also, contents at Ex.P11 of the complaint and more important Ex.P28, FIR inclusive of contents of Ex.P27 - Inquest mahazar which runs contrary to the evidence of PW.10 and whereby the criminal law was set into motion by receipt of complaint at Ex.P11 and more so, he is an eye witness on the part of the prosecution and so also, he ran away from the scene of crime when the accused alleged to have assaulted on his brother deceased - Ramesh with means of deadly weapons like iron long, swords, machete and chopper.

23. PW.10 - Somashekar has subscribed his signature at Ex.P7 - spot Mahazar conducted by PW.31 being the PSI in the presence of PWs.10 and 11. As per Ex.P7 that on 25.04.2009 in between 10.45 a.m. to 11.45 a.m. in front of house of Gousepeersab, blood stains was found and also noticed in front of house of Gousepersab near the place of occurrence as a distance of 3 feet width surround feet x 1 feet blood stains was 40 found from South of house of Gousepeersab traced the western wall from 2 feet from the ground there was blood stain

splashes. Even though MOs.5 and 6 have been got it marked on the part of the prosecution having collected blood stained mud and unstained mud as well as blood stained clothes of the deceased were seized. But it is not specifically mentioned in Ex.P7 - spot mahazar conducted by the investigating officer even in the presence of PW.10 and so also in the presence of panch witnesses and it was conducted in their presence in front of house of Gousepeer sab. M.O.7 - blood stained banian, M.O.8 - blood stained lungi of deceased - Ramesh has been produced by PW.10 before the investigating officer during the course of investigation. But his evidence does not find corroborated with any other independent witness on the part of the prosecution as regards to the role of each one of the accused and also direct overt act attributed against 41 each one of the accused to attack deceased - Ramesh with means of deadly weapons.

24. PW.33 being the investigating officer recorded the voluntary statements of accused Nos.1 to 4 as per Ex.P32, 33, 34, 35 on 30.04.2009. But the voluntary statement of accused No.5 was recorded on 28.04.2009 as per Ex.P30, the voluntary statement of accused No.6 was recorded on 15.05.2009 and voluntary statement of accused No.7 was recorded on 06.05.2009. These are all the voluntary statements of accused recorded by the investigating officer which is hit under Section 27 of the Indian Evidence Act, 1872 i.e., how much of information has been secured from the accused relating to recovery and discovery of the material objects. But the material objects recovered at the instance of the accused and voluntary statement of accused No.1 as per Ex.P32. Ex.P8 is the recovery mahazar dated 30.04.2009 and this mahazar has been conducted by the investigating officer PW.33 in between 1.00 p.m. to 2.30 p.m. in the 42 presence of PWs.8, 9 and 19. But M.Os.1 to 4 such as sword, machete, iron long and chopper were seized by the investigating officer in the presence of panch witnesses as at the instance of accused No.1 it is near the Nagini River between Mantya and Singonahalli village dambar road. It is taken out 5 feet depth from the river water by PW.8 and 9. Mere because recovery of the objects by drawing the mahazar at Ex.P8 and unless the evidence let in by the prosecution to prove the guilt of the accused by facilitating evidence relating to the scope of Section 27 of the Indian Evidence Act, it cannot be given more credentiality to the mahazar conducted by the investigating officer. Even the mahazar at Ex.P16 in respect of M.Os.12, 13 -

two pants and M.Os.14 and 15 - shirts and under Ex.P36 - recovery mahazar in respect of M.O.10 - Autorickshaw bearing Regn.No.KA-06-B-5981 and M.O.11 - Autorickshaw bearing regn.No.KA-06 B5401 alleged to be used by the accused as according to the criminal 43 conspiracy hatched among them to eliminate deceased - Ramesha. But the criminal conspiracy took place in front of accused No.1. Therefore, the mahazar at Ex.P18 dated 25.04.2009 has been drawn at around 12.20 p.m. to 1.00 p.m. and similarly, mahazar at Ex.P19 dated 28.04.2009 was drawn in between 1.15 p.m. to 1.45 p.m. in front of the house of Gousepeersab which is shown by accused No.5. Though the prosecution has let in evidence by examining several witnesses, but PWs.1 to 6 have been subjected to examination and they were treated as hostile and thereafter they were not subjected to cross-examination by the prosecution and nothing worthwhile has been elicited in their statements which marked at Exs.P1 to P6. Even their statement is hit under Section 161 of Cr.P.C. and their evidence runs contrary to the evidence of PW.10 who is the gravamen of the incident and he has filed the complaint at Ex.P11 and more so, he is none other than the brother of deceased - Ramesh and 44 so also, he is one of the witnesses for having subscribed his signature at Ex.P7 - spot mahazar conducted by the investigating officer in his presence. PW.13 - Madhugiraiah has turned around his statement at Ex.P13 and it is hit under Section 161 of Cr.P.C and similarly, PW.14 - Krishnappa whereby he has given a goby to his statement at Ex.P13. But their evidence runs contrary to the evidence of PW.10 - Somashekar and also to the evidence of PW.17 - Mastaiyah who is none other than the father of the deceased.

25. Further, it is contended that the spot mahazar at Ex.P7 drawn by the investigating officer in the presence of PW.10 being the brother of the deceased but runs contrary to the map of scene of crime at Ex.P15 drawn by the Assistant Executive Engineer and it creates the clouds of doubt in the prosecution theory to prove the scene of crime and also sketch prepared. This contention is also made by learned counsel for respondent / accused. This material was also 45 considered by the trial Court even by close scrutiny of PW.7 who is the complainant and he is no other than brother of deceased and is the author of the complaint as per Ex.P11.

26. PW.19 - Thimmegowda is the witness who has been secured to draw the seizure mahazar as per Ex.P8 in respect of M.Os.1 to 4, Ex.P16 in respect of M.Os.12 to 15. PW.20 - A.C.Chaluvaiah as at the instance of accused No.1, Ex.P12 of the mahazar has been conducted and having been seized auto rickshaw M.O.11. However, the prosecution has let in evidence by subjected to examination of several witnesses but nothing worthwhile has been elicited to prove the guilt of the accused, but it is the domain vested with the prosecution to prove the guilt of the accused by facilitating worthwhile evidence and also the domain vested with the trial Court as under Section 3 of the Indian Evidence Act for appreciation of evidence. But in 46 the instant case, the trial Court has considered the evidence of PW.10 insofar as Ex.P11 of the complaint and so also, Ex.P28 - FIR and so also, evidence of PW.33 being the investigating officer who conducted the entire investigation and laying of the charge sheet and the charge sheet consisting several mahazar of the spot mahazar as per Ex.P7 which conducted by PW.31 in the presence of PW.10 for having seized M.Os.1 to 8. But PW.22 - Rangaswamaiah was subjected to examination on the part of the prosecution but he has not supported the case of prosecution and it creates some doubt in the mind of the Court. But PWs.1 to 9, 13, 14, 22 and 25 these witnesses have been subjected to examination on the part of the prosecution and they have been turned out and their statement has been got it marked at Exs.P1 to P6 and Exs.P13, 14 and 21 and even PW.31 has been subjected to examination in respect of Ex.P7 of the spot mahazar. But these witnesses have been given a goby to the versions of their statement which 47 runs contrary to the evidence of PW.10 who is a gravamen of the incident and similarly, the substances stated in Ex.P28 of the FIR. All this evidence which is put forth by the prosecution has been appreciated by the trial Court and therefore, it cannot arise for revisiting the judgment of acquittal as contended by the counsel for complainant/appellant by urging various grounds and more so, it requires for re-visiting the impugned judgment of acquittal but the appeal preferred by the appellant / complainant is being devoid of merits and deserves to be rejected. Accordingly, learned counsel for respondent / accused respectively in this matter vehemently contended and seeking for dismissal of this appeal being devoid of merits.

27. It is in this context of the contention as taken by learned counsel Sri N.Dinesh Rao for the appellant / complainant and so also, counter arguments stoutly addressed by learned counsel Sri S.Shankarappa for 48 Respondent Nos.1, 3 and 7 and inclusive of learned counsel Smt.Gayathri for respondent No.8 and so also, learned HCGP for State in respect of Respondent No.9. The case of the prosecution has been revolving around the evidence of PW.10 - Somashekara who is none other than the brother of the deceased - Ramesh and so also, son of PW.17 - Masthaiah who has been examined on the part of the prosecution. But PW.17 is not the eye witness. But he is only a hearsay witness on the part of the prosecution and the entire theory of the prosecution in the complaint as per Ex.P11 it is only briefed by PW.10 who is none other than the brother of deceased - Ramesh wherein he was present along with the deceased near the shop of Gangabaraiah on 25.04.2009 at around 8.30 a.m. But for the criminal conspiracy hatching among the accused persons with an intention to eliminate deceased - Ramesh that the accused persons holding deadly weapons of M.Os.1 to 4 such as sword, iron long, chopper and machete. They made an attempt to take away the life of deceased - Ramesh and they attacked him as according to the allegations made in the complaint at Ex.P11 and this complaint made by PW.10 who is the eye witness on the part of the prosecution and also he was present with his brother injured - Ramesh on the fateful day that too be in the morning at 8.30 a.m.

28. The theory of the prosecution reveals that when accused Nos.1 to 7 alleged to have mercilessly attacked deceased - Ramesh with means of M.Os.1 to 4 but on seeing the incident that PW.10 - Somashekara who took heel from there and did not make any endeavour to rescue his brother from the clutches of the accused persons and even not made any effort atleast to secure general public in that area even though it is a residential area but the incident took place on 25.04.2009 at around 8.30 a.m. it was in front of the tea shop of Gangabaraiah wherein deceased - Ramesh 50 and his brother PW.10 - Somashekara were sitting in order to consume tea. But on seeing those persons that accused Nos.1 to 7 inclusive of accused No.8 alleged to have attacked deceased - Ramesh with means of lethal weapons of M.Os. 1 to 4. But PW.33 being the investigating officer who conducted the entire investigation and laid the charge sheet against the

accused persons before the committal court having jurisdiction and more so, PW.33 who recorded the voluntary statement of accused No.5 as per Ex.P30, Accused Nos.1 to 4 as per Exs.P32, 33, 34 and 35. But PW.33 who recorded the voluntary statement of the accused and also conducted the seizure mahazar as per Ex.P36 for having seized certain material objects which were subjected in P.F.No.34/2009, 35/2009 and 36/2009 as per Exs.P37, P38 and P39. PW.33 conducted investigation in its entirety and laid the charge sheet. But Ex.P40 of the post mortem report it is got marked on the part of the prosecution through 51 that investigating officer only but not secured the Doctor who conducted autopsy over the dead body in Victoria Hospital, Bengaluru on 25.04.2009 wherein deceased - Ramesh lost his breath by sustaining injuries which indicates at Ex.P40. Unless the Doctor who conducted autopsy over the dead body of the deceased is subjected to cross-examination by the defence side, it cannot be arrived for conclusion relating to the correspondence of injuries which were inflicted on the person of deceased with means of M.O.1 to 4 and also it is not proper even closely verifying the contents of Ex.P40 of the P.M. report and having gone through the evidence of PW.33 being the investigating officer and even the P.M. report even got it marked on the part of the prosecution through PW.33, but unless the Doctor who conducted the autopsy over the dead body is subjected to the cross-examination on the part of the defence counsel, it is not safe for arrival of conclusion that the injuries inflicted over the person of the 52 deceased as a corresponding injuries with M.Os.1 to 4. However, the trial Court relying over the evidence of PW.10 who is a star witness on the part of the prosecution and more so, the eye witness and he has given the written complaint as per Ex.P11 and based upon his complaint criminal law was set into motion by recording FIR as per Ex.P28 by Amrutur Police. But PW.10 being the gravamen of the incident and he has even stated relating to the incident alleged to have been occurred on 25.04.2009 at around 8.30 a.m. in the morning hours. PW.10 is the eye witness relating to the incident narrated in the theory of the prosecution and PWs.1, 2, 3 and 4 they came to the scene of crime it is marked at Ex.P7 and even they have been eye witnesses to the incident but turned hostile and their evidence it would have been discussed even on the later part and this observation has been made by the trial Court at paragraph No.45 of the acquittal judgment and admittedly, the

alleged incident there were others also 53 at the place and the incident had taken place as alleged by the prosecution and even on close scrutiny of the evidence of PW.10 and even those others could have been cited as witnesses in the charge sheet and even examination before the trial Court relating to prove the guilt of the accused. But in the cross-examination of PW.10 who has stated in his evidence that the shop of one Shivaramaiah is near the shop of Gangabairaiiah where the prosecution claims the incident started first. He further states that the house of Gousepeersab is about 80 feet away from the shop of Gangabairaiiah and there are houses neighbouring the house of Gousepeersab and people are residing there itself. It means to say it is a residential area and where the incident alleged to have taken place and also narrated the facts at Ex.P7 of the spot mahazar. Insofar as evidence of PW.10, counsel for the appellant who has stoutly addressed his arguments and also observation made by the trial Court it is strange thing and beyond 54 stretch of imagination but nobody appears to have been made any attempt to rescue the deceased nor have they been made charge sheet witnesses and examined before the Court in order to prove the guilt of the accused. This observation is also made by the trial Court and it is only exaggeration and no observation needs in the case of the prosecution as where PW.10 who is the complainant and so also, eye witness to the incident and more so, the brother of the deceased. PW.10 also stated that clothes of CW.2 - Ramesh, CW.5 - Shivaramaiah and CW.3 - Gangadharaiah were blood stained. PW.10 has given evidence that they have not given the blood stained clothes to the police and this is the evidence let in on the part of the prosecution even though PW.10 has been subjected to examination to prove the guilt of the accused and this observation made by the trial Court on close scrutiny of the evidence of PW.10 coupled with the evidence of PW.17 - Mastaiah who is his father. This observation is also made and 55 also this reason has been assigned by the trial Court and it is not proper and it has erroneously made an observation, therefore, under this appeal it requires for re-appreciation of the evidence and more so, revisiting the acquittal judgment rendered by the trial Court.

29. Whereas it is vehemently contended by counsel for the appellant by referring to the evidence of PW.1 who is cited as CW.3 and he is said to be another alleged eye witness to the incident and also the person who is said to have shifted the

injured in an Autorickshaw to the hospital in the limits of Kunigal along with PW.10 - Somashekara. But this observation made by the trial Court is improper and erroneously made an observation and the trial Court has not given any credentiality to the evidence of PW.1 in its entirety and even though he has briefed the incident to his father - PW.17 and along with deceased brother Ramesh on 25.04.2009 at around 8.30 A.M. and also 56 shifted injured - Ramesh to the Kunigal Hospital in order to provide treatment and as per the advise of the Doctor, injured was shifted to Victoria Hospital, Bengaluru. But on 25.04.2009 at around 12.20 pm. injured - Ramesha lost his breath as he sustained injuries said to have been inflicted over his person.

30. PWs.2 and 4 are also alleged eye witnesses to the incident and said to have taken the injured in an auto to the hospital along with CW.1 but they did not support the case of the prosecution. Mere because they did not withstood the version of their statements, it cannot come in the way of evidence of PW.10 and inclusive of evidence of PW.17 - Mastaiah and more so, PW.33 being the investigating officer who conducted the entire investigation and laid the charge sheet against the accused by conducting spot mahazar as per Ex.P7 and several mahazars have been conducted even recording the voluntary statements of accused as per 57 Exs.P33 to 35 in respect of Accused Nos.1, 2, 3 and 4 on 30.04.2009. But the voluntary statement of accused No.5 as per Ex.P30 and this voluntary statement was recorded by the investigating officer who is examined as PW.33 on 28.04.2009 at around 9.30 a.m. But the voluntary statement of accused No.6 it was recorded on 15.05.2009 and voluntary statement of accused No.7 recorded on 06.05.2009 by PW.33. However, at the instance of accused No.1 that material objects were recovered by drawing mahazar as per Ex.P8 by PW.33 in between 1.00 p.m. to 2.30 p.m. on 30.04.2009. It is relevant at this stage to note that near Nagini river situated in the limit of Tumkur District it is between Mantya and Singonahalli village dambar road, PW.8 and 9 have been secured as panch witnesses and they picked up choppers which were marked as M.Os.1 to 4 and it is to be termed as sword, machete, chopper and iron longs. M.Os.1 to 4 were said to have been picked with the assistance of PWs.8 and 9 from 5 feet depth 58 of water at the instance of accused No.1. But recovery mahazar as per Ex.P16 was conducted by the investigating officer on 30.04.2009 between 2.40 p.m. to 3.40

p.m. In this regard, it is relevant to refer Section 27 of the Indian Evidence Act - Section 27. How much of information received from accused may be proved.- Provided that, when any fact is discovered as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

31. This issue has been extensively addressed by the Honble Supreme Court in a judgment reported in AIR 2018 SC2027 Insofar as application of Section 27 of the Indian Evidence Act, the statement must be split into its components and to separate the admissible portion. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be exercised and rejected. This issue was considered by the Honble Supreme Court in a decision reported in AIR 1976 SC483- Mohd.Inayatullah vs. State of Maharashtra.

32. In the instant case, at the instance of accused No.1 and also voluntary statement at Ex.P32 that M.Os.1 to 4 weapons i.e., sword, chopper, iron long and machete said to have been used by the accused respectively and the same were been seized by PW.33 being the investigating officer who conducted the seizure mahazar and also recorded the voluntary statements of the accused persons. But there is no specific evidence on the part of the prosecution even at a cursory glance of PW.10 and even on close scrutiny of the evidence of PW.10 coupled with the evidence of PW.33 that there is no consistent evidence relating to seizure of M.Os.1 to 4 which were alleged to be used to eliminate deceased - Ramesh. A fact discovered in an information given by the accused in his disclosure statement is relevant fact and that is only admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused. This issue has been extensively addressed by the Honble Supreme Court in Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).

33. But under Section 27 of the Indian Evidence Act, 1872, it is not necessary that a disclosure statement must be signed by maker of the same or that thumb

impression must be affixed to it. The said issue has been addressed in a decision of K.M.Ibrahim alias Bava v. State of Karnataka reported in 2000 CrI.LJ.197 (Karn).

34. However, in the totality of the scope and object of Section 27 of the Indian Evidence Act, 1872, thereby, 61 there shall be some discovery and then only concept of recover would arise. Mere because the material objects have been recovered as at the instance of accused, it cannot be said that the prosecution has proved the guilt of the accused in its entirety and unless there shall be independent evidence it should be corroborated with the facts narrated in a complaint made by the gravamen of the accused. But in the instant case, PW.10 who is the gravamen of the incident and he has filed Ex.P11 and based upon his complaint, criminal law was set into motion by recording FIR as per Ex.P28 and even his presence while drawing Ex.P7 of the spot mahazar said to have been conducted by PW.31 who is an investigating officer in part and who is the Station House Officer who recorded FIR. But PW.10 has shown the scene of crime and also subscribed his signature. Mere subscribing his signature it cannot be said that he has given evidence in entirety to prove the guilt of the accused unless his evidence has to be corroborated in 62 each one of the ingredients of the offences which are leveled against the accused persons.

35. Insofar as PW.10 who is the brother of the deceased - Ramesh made accused nos.1 to 7 inclusive of accused No.8 it appears his father PW.17 - Mastaiah who is a hearsay witnesses on the part of the prosecution and there is no direct awareness of the incident in his knowledge. Therefore, it is relevant to refer Section 3 of the Indian Evidence Act, 1872 as regards the concept of fact is said to be proved. 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 probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. But in the instant case, PW.10 who is a gravamen of the incident and he is the author of Ex.P11 but it is the domain vested with the prosecution to prove the guilt of the accused by facilitating worthwhile evidence then only 63 Section 3 of the Indian Evidence Act relating to the concept of proof of fact is said to be proved would arise.

36. In the aforesaid provision the concept of disproving a fact, states that, 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. 37. Further, Section 3 of the Indian Evidence Act, 1872 as regards the concept of a fact not proved, states that, a fact is said not to be proved when it is neither proved nor disproved. 38. Therefore, even for minor discrepancy in a testimony of the injured witness does not make untrustworthy. But in the instant case, PW.10 who is no other than brother of the deceased - Ramesh and he 64 is an eye witness and even his evidence runs contrary to the evidence of PWs.2, 3 and 4 and they were also cited as witnesses in the charge sheet and were subjected to examination on the part of prosecution but they did not withstood with full extent of version of their statement on the part of the prosecution. Therefore, the evidence of PW.10 runs contrary to the evidence of PWs.2, 3 and 4 and further contradictory to the evidence of PW.31 who is the investigating officer in part who received Ex.P11 and recorded Ex.P28 FIR and more so the criminal law was set into motion and thereafter, PW.33 who conducted the entire investigation and laid the charge sheet against the accused by compliance of Section 173(2) of Cr.P.C.

39. Further, it is relevant to refer to Section 134 of the Indian Evidence Act, 1872 regarding number of witnesses. No particular number of witnesses shall in any case be required for the proof of any fact. The 65 number of witnesses it is to be in terms of Section 101 to 103 of the Indian Evidence Act. But 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. This issue has been extensively addressed by the Honble Supreme Court in Raja Vs. State (1997) 2 Crimes 175 (Del). In the criminal justice delivery system, it is only 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. This issue has been extensively addressed by the Honble Supreme Court in State of Uttar Pradesh v. Kishanpal reported in 2008 (8) JT650 40. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a 66 single

witness, the court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely, i) wholly reliable, ii) wholly unreliable and iii) neither wholly reliable nor wholly unreliable.

41. 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. This issue has been addressed by the Honble Supreme Court in *Lallu Manjhi v. State of Jharkhand* reported in AIR 2003 SC854. In the instant case even on a close scrutiny of evidence of PW.10 who is the star witness and also an eye witness and he is the gravamen of the incident 67 narrated in the complaint at Ex.P11 and merely because he has narrated in Ex.P11 but unless his evidence finds corroborated with the independent evidence let in by the prosecution, it cannot be given more credentiality to the evidence for arrival of conclusion by the trial Court for securing the conviction by the prosecution. Mere let in evidence by the prosecution by subjected to other witnesses and mere because of several documents inclusive of material objects got it marked, it cannot be said that the prosecution has proved the guilt of the accused beyond all reasonable doubt. But in the instant case the prosecution has let in evidence by examining several witnesses and also given more credence to the evidence to PW.10 who is the gravamen of the incident. But the accused is also gravamen of the accusation which is narrated in the theory of the charge sheet laid by the investigating officer and equally must be appreciated the evidence on the part of the prosecution and also on the part of the defence. But the 68 defence counsel has dismantled the evidence of PW.10 for having subjected to cross-examination and also incisive cross examination done and the same has been seen in his evidence. Merely there shall be evidence on the part of the prosecution in respect of PW.10 who is an eye witness, but unless his evidence is corroborated with other independent witnesses, it cannot be given any credentiality on the part of the prosecution that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

42. Whereas accused No.8 has taken the plea of alibi. In respect of plea of alibi is concerned that on the part of the defence side DW.1 and 2 have been subjected to examination and DW.3 who is arraigned as accused No.8 and he has been subjected to examination and got marked Exs.D1 to D4. But Ex.D1 it is the portion of the statement of PW.17 Masthaiah who is none other than the father of deceased - Ramesh and 69 PW.10. Ex.D2 is the pocket calendar of 2012. Ex.D3 is the copy of inquest mahazar and this inquest mahazar relating to deceased - Lingaraju was working as driver under the then MLA Ramaswamygowda. The said Lingaraju said to have died in an accident on Bangalore - Mangalore road near Narayanapura of Kudur Hobli, Magadi Taluku in the night of 24.04.2009 and the same was intimated to MLA Ramaswamygowda and he is said to have sent his brother, accused No.8 herein to the place of incident. Accused No.8, uncle of the deceased, Suresh and others said to have gone to the spot and shifted the dead body to Magadi General Hospital and stayed there in the night and on 25.04.2009, the CPI, Magadi Circle had been to the hospital and inquest was done and accused No.8 is said to have been present at the inquest and signed the inquest mahazar and his statement is also said to have been recorded at the time of drawing of inquest mahazar. Thus, it is the contention of accused No.8 that he was not in 70 Basavanamathikere from the evening of 24.04.2009 till the evening of 25.4.2009. In this regard the accused have adduced evidence and examined one Suresh as DW.1 and he is none other than the uncle of deceased - Lingaraju and he has stated in his evidence that on 24.04.2009 accused No.8 had been to the place of incident and accused No.8 and others had shifted the body to the hospital and remained in the hospital in the night and the post mortem was conducted between 8.00 a.m. to 10.00 a.m. on 25.04.2009 and the statement of accused No.8 was recorded by CPI, Magadi. The inquest mahazar is marked at Ex.D3. It is seen that in between the night of 24.04.2009 till after 3.00 p.m. on 25.04.2009, accused No.8 was not in Bsavanamathikere. He is the witness to the inquest mahazar in Cr.No.129/2009 of Kudur Police Station.

43. DW.2 - U.D.Krishna Kumar is the police inspector in Magadi Circle in the limit of Kudur Police 71 Station. But in Cr.No.129/2009 the offence under was Section 279 and 304-A of IPC, 1860 and this case was investigated by him on 24.04.2009. He got information about the accident and registered the case in Cr.No.129/2009

on that day itself at around 9.00 p.m. he visited the scene of crime and verified the dead body of Lingaraju and conducted inquest over the dead body in the autopsy of Magadi Government Hospital. It is in the presence of panch witnesses namely Suresh, Govinda and Muddulingaiah and they have subscribed their signature at Ex.D3 and that Ex.D3 has been produced on the part of the defence to prove the plea of alibi.

44. DW.3 - Padmaraju is arraigned as accused No.8 and he has been subjected to examination on the part of the defence side and he has stated in his side that his brother namely Ramaswamygowda was an MLA and the said Lingaraju was working as his driver. The said Lingaraju while driving motorbike had met with an accident and he died on 24.04.2009. The said Padmaraju was sitting near by temple of Basavanamattikere village. At 8.40 p.m. he got a information that said Lingaraju had died in a accident. Therefore, DW.3 had rushed to the place with his friend Lokesha and whereby the dead body of Lingaraju was shifted to Magadi Government Hospital and whereby CPI namely Krishna Kumar and other police were there. The inquest over the dead body of deceased as per Ex.D3 was conducted. This defence is taken by accused No.8 with regard to plea of alibi.

45. Whereas relating to concept of plea of alibi it is relevant to refer Section 11 of the Indian Evidence Act, 1872 - When facts not otherwise relevant become relevant - Facts not otherwise relevant are relevant - (i) if they are inconsistent with any fact in issue or relevant fact; 73 (ii) if by themselves or in connection with other facts they make the existence of non-existence of any fact in issue or relevant fact highly probable or improbable.

46. It is equally relevant to refer Section 103 of the Indian Evidence Act, 1872 Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. But the plea of alibi as taken by the accused and it is he who has to prove it and this was extensively addressed by the Honble Supreme Court in State of Haryana vs. Sher Singh reported in AIR 1981 SC1021 However, Section 103 and so also, Section 11 of the Indian Evidence Act, 1872 in respect of plea of alibi are said to

be wherein accused No.8 who was present during the course of 74 inquest held over the dead body of Lingaraju as on 25.04.2009 at Government Hospital, Magadi. In this regard, it is relevant to refer judgment of the Honble Supreme Court in Sharad Birdhi Chand Sarda vs State of Maharashtra reported in (1984) 4 SCC116 wherein it is held as under: We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh,(I) this Court made the following observations:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."

75 47. But in the instant case, PW.10 - Somashekar who is the gravamen of the incident narrated at Ex.P11 and more so, he is an eye witness on the part of the prosecution. Even this witness has been subjected to examination to prove the guilt of the accused persons. But nothing worthwhile has been facilitated by the prosecution to prove the guilt of the accused even the link in the chain relating to each one of the accused participated in the incident as according to the criminal conspiracy hatched to eliminate deceased - Ramesh with means of M.Os.1 to 4 and said to have assaulted mercilessly on the person of deceased - Ramesh and inflicted injuries over his person. But the prosecution did not facilitate the worthwhile evidence to prove the guilt of the accused persons. But at a cursory glance of evidence of PW.10 even though cross-examination has been incisively done. But there shall be some clouds of doubts and there shall be some camouflage and it is to 76 be said that there shall be somersault of the evidence on the part of the prosecution. Consequently, the clouds of doubt would arise in the mind of the Court. When the doubt arises, the benefit of such doubt should be extended in favour of the accused alone. But in the instant case, the trial Court

had appreciated the evidence on the part of prosecution and even on the part of defence side for having subjected to examine and thoroughly scrutinizing the evidence and analytically made an observation even to the fulcrum of the mahazar of spot mahazar at Ex.P7 and inclusive of several mahazars conducted by PW.33 who is an investigating officer. But PWs.2, 3 and 4 being the eye witnesses and they did not support the case of the prosecution and their evidence runs contrary to the evidence of PW.10 as where the criminal law was set into motion based upon his complaint as per Ex.P11 and registered the case by PW.31 of Amrutur Police Station and recorded FIR as per Ex.P28. 77

48. Whereas the evidence of the eyewitness is disbelieved, and it is found that the weapons recovered at the instance of accused and there remains hardly any circumstance against the accused to connect them against the crime. But the evidence must be clinching and clearly implicates the accused persons are causing for infliction of injuries on the injured but the eyewitness account should corroborate with the medical evidence. The eyewitness sharply contradicted with each other with regard to identity of the person and even dealt with fatal blow on the part deceased with deadly weapons that is M.Os. 1 to 4 but it was held by the trial Court that there was vital discrepancy and that discrepancy arise in the evidence of PW.10 coupled with the evidence of PW.17, PW.31 and PW.33. Thus, the trial Court has rightly come to the conclusion that the prosecution did not facilitate worthwhile evidence to prove the guilt of the accused by securing conviction. Whereas in the instant case, we have gone through the 78 evidence on the part of the prosecution in its entirety and even the evidence of PW.10 who is the gravamen of the incident narrated in his complaint at Ex.P11 and the substances stated in Ex.P28 of the FIR said to have been recorded by PW.31, based upon which the criminal law was set into motion. But the conduct of PW.10 is also important in the case of the prosecution. When the accused alleged to have assaulted the brother of PW.10 namely Ramesh, he did not made any endeavourance to rescue his brother from the clutches of the accused persons and the same can been seen in his evidence and also seen in the evidence of other witnesses who were subjected to examination on the part of the prosecution. But the evidence of PW.10 creates clouds of doubt in the mind of the Court and the trial Court had rightly come to the conclusion that the prosecution did not

establish the guilt of the accused beyond reasonable doubt. Consequently, rendered the acquittal judgment by referring to several reliances facilitated on 79 the defence side. The trial Court had rightly come to the conclusion by assigning sound reasons and also justifiable reasons. Therefore, under this appeal, it does not arise for call for interference as sought for by the appellant / complainant by urging various grounds. Even for revisiting the impugned judgment of acquittal rendered by the trial Court and re-appreciation of the entire evidence available on record but there is no consequences that the trial Court misdirected and misinterpreted the evidence of PW.10 and PW.17 inclusive of evidence of PWs.31 and 33. Therefore, in this appeal, it does not arise for call for interference as sought for by the appellant/complainant. The appeal suffers, from devoid of merits and the same deserves to be rejected. Accordingly, we are of the opinion that the appeal does not survive for consideration and the same deserves to be rejected. In view of the aforesaid reasons and findings, we proceed to pass the following:

80.

ORDER

The appeal preferred by the appellant / complainant under Section 372 of Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the trial Court in S.C.No.228/2009 dated 07.04.2014 is hereby confirmed. Bail bonds, if any, executed by the accused shall stand cancelled. Sd/- JUDGE Sd/- JUDGE RJ/DKB

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com