

**State Of Karnataka Vs. Mohan @ Mohan Kumar**

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**Court :** Karnataka

**Decided On :** Feb-16-2022

**Judge :** K.Somashekar and P.N.Desai

**Appeal No. :** CRL.A 206/2021

**Appellant :** State Of Karnataka

**Respondent :** Mohan @ Mohan Kumar

**Judgement :**

R11IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE16H DAY OF FEBRUARY, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE P.N.DESAI CRIMINAL APPEAL NO.206 OF 2021 BETWEEN: State of Karnataka By Inspector of Police Mulki Police Station Mangaluru Dakshina Kannada Rep. by State Public Prosecutor High Court Building Bengaluru - 560 001. ...Appellant (By Sri. Rahul Rai .K - HCGP) AND: Mohan @ Mohan Kumar Aged about 49 years S/o. Kutti Paddu Kunder R/at Door No.1-126 Hemalatha Yennegeni Mane Mulki Post, Kilpady Village Mangaluru Dakshina Kannda - 574142. ...Respondent (By Sri. Rajashekar .S - Advocate) 2 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 of acquittal dated 13.03.2020 passed in S.C.No.60/2019 by the VI-Addl. District and Sessions Judge & MACT, D.K., Mangaluru thereby acquitting the accused/respondent for the offence

punishable under Sections 354, 302 and 201 of IPC; ii) set aside the judgment and order of acquittal dated 13.03.2020 passed in S.C.No.60/2019 by the VI- Addl. District and Sessions Judge & MACT, D.K., Mangaluru thereby acquitting the accused/respondent for the offence punishable under Sections 354, 302 and 201 of IPC; and iii) convict and sentence the respondent / accused for the offence punishable under Sections 354, 302 and 201 of IPC. This criminal appeal coming on for further argument this day, K. Somashekar .J delivered the following:

## **JUDGMENT**

This appeal is directed against the judgment of acquittal rendered by the trial Court in S.C.No.60/2019 dated 13.03.2020 whereby rendering acquittal judgment 3 for the offence punishable under Sections 354, 302 and 201 of IPC.

2. Whereas under this appeal, appellant / State is seeking intervention by consideration of grounds as urged in this appeal and consequently, set-aside the acquittal judgment rendered by the trial Court and to convict the accused of the offences which lugged against him.

3. Heard learned HCGP for appellant / State namely Sri Rahul Rai.K and so also, learned counsel Sri Rajashekar.S for respondent/accused who are present before the court physically. Perused the judgment of acquittal rendered by the trial Court in S.C.No.60/2019 consisting the evidence of PWs.1 to 18 and so also, documents at Exs.P1 to P33 inclusive of M.O.1 to 14 and so also, on the part of defence side marking of documents as per Exs.D1 to D3.

4. Factual matrix of the appeal is as under:

4. It is transpired in the case of the prosecution that the accused namely Mohan @ Mohan Kumar was working at MRPL Company and he knew the deceased Smt.Radha. He had promised to get job to her daughter Shradda and he had asked deceased Radha to get the resume of Shradda. Accordingly, deceased Radha called her daughter Shradda to forward her resume through mail on 31.10.2018. Accordingly, the said Shradda R.Kundar had sent her resume letter through mail to the Cyber Centre and subsequently, deceased Radha had

informed in her home as well as to her daughter that she will take out the print from the cyber centre and thereafter, will go to the house of accused to hand over the resume. Accordingly, deceased Radha had left the home on 31.10.2018 at about 5.30 p.m. and subsequently, she did not return to home. When her daughter Shradda had called her over phone, it was not reachable. Therefore, she called her aunt by name Pushpa. Even her maternal aunt had informed Shradda 5 that her sister Radha has not returned home. Therefore, she had called accused Mohan to his mobile number. But accused informed her that Radha did not come to meet him and he do not know where she is and thereafter, Shradda had called her relatives and informed that her mother had not returned home. Thereafter, the relatives of the deceased Radha as well as the other members went in search of Radha and even they went near the house of accused. The accused had also accompanied them to search Radha. In that regard the relative of Radha went to the police station and informed the police regarding missing of Radha. But on the next day on 01.11.2018 in the morning hours they found a body of female lying in the well situated behind the house of accused. The said body was taken out from the well which was situated nearby the house of accused.

5. It is further stated that subsequent to taking out the body of deceased Radha from well, the body was 6 shifted to mortuary for conducting post mortem over the dead body. Subsequently, daughter of deceased - Radha namely Shradda and also husband of deceased who were at Bengaluru returned to their village and later the daughter of Radha lodged the complaint against the accused. In pursuance of the complaint made by Shradda, who is none other than the daughter of deceased - Radha, criminal law was set into motion and the case was taken up for investigation by the investigating agency and investigation has been done and during the course of investigation recorded the statement of witnesses and also drew the mahazar at Ex.P4 which bears the signatures of PW.10 and PW.16 and also drew the seizure mahazar at Ex.P6 and it bears the signature of PW.10 and 16. So also, the mahazar at Ex.P8 which bears the signature of PW.11 and 16. Ex.P16 is the FSL report and Ex.P18 is the certificate which bears the signature of PW.15. In addition to that P.M.report was also issued as per Ex.P21 in respect of 7 conducting autopsy over the dead body of Radha. So also, the sketch as per Ex.P9 which bears the signature of PW.11 and inclusive of opinion

report as per Ex.P30. Ex.P24 is the call details and customer applications forms pertaining to mobile No.9008456250 and Ex.P26 is the call details and customers application forms pertaining to mobile No.9902181665. These are all the documents which secured by the IO and complied the stipulate condition as required under Section 173(2) of Cr.P.C. and laid the charge sheet against the accused before the committal court having jurisdiction.

6. Subsequent to laying of charge sheet by the investigating officer that the committal Magistrate i.e., the Civil Judge and JMFC, Moodabidre passed an order under Section 209 of Cr.P.C. by compliance of Sections 207 and 208 of Cr.P.C. Accordingly, the case was committed to the Court of Sessions for trial. Subsequent to committing the case by the committal 8 Magistrate that the case in S.C.No.60/2019 has been assigned and heard learned Public Prosecutor and defence counsel on charges and having found prima facie materials, framed the charge against the accused for the offences punishable under Sections 354, 302 and 201 of IPC whereby the accused did not pleaded guilty but claimed to be tried. Accordingly, plea of the accused was recorded separately. Subsequent to framing of charge by the trial Court whereby the prosecution has let in evidence of PWs.1 to 18 and so also, got marked several documents at Exs.P1 to P33 inclusive of M.O.1 to 14 and so also, contradictory statement of PW.5 as per Ex.D3 and photos of accused No.1 as per Exs.D1 and D2.

7. Subsequent to closure of evidence of prosecution that the accused was examined as under Section 313 of Cr.P.C. for enabling to answer to the incriminating evidence appearing against him on the part of the prosecution whereby the accused denied the 9 truth of the case of the prosecution witnesses adduced so far. Accordingly, it was recorded. Subsequent to recording the statement under Section 313 Cr.P.C. whereby the accused did not enter into any defence evidence as contemplated under Section 233 of Cr.P.C., but documents were got marked as per Exs.D1, D2 and D3. Subsequent to closure of evidence on the part of the prosecution and even on the defence side and also by following relevant provisions of Code of Criminal Procedure whereby the trial Court heard arguments advanced by the learned Public Prosecutor and so also, counter arguments advanced by the defence counsel and on close scrutiny of the

evidence and so also, the averments made at Ex.P1 - complaint made by PW.1 - Shradda and so also, fulcrum of mahazars at Exs.P4, P6 and P8 inclusive of contents at Ex.P2 - inquest mahazar over the dead body of the deceased and also contents at Ex.P21 - P.M.Report relating to the dead body of Radha inclusive of call details information at Exs.P24, 25, 26, 10 27 inclusive of RFSL report at Ex.P29 as well as final opinion report at Ex.P30. But the prosecution did not let in convincing as well as adequate evidence for securing conviction and consequently, the trial Court rendered the acquittal judgment relating to the offence under Sections 354, 302 and 201 of IPC which incorporated in the operative portions of the order. It is this judgment which is challenged under this appeal by urging various grounds.

8. Learned HCGP for State namely Sri Rahul Rai.K. has taken us through the evidence of PW.5 - Auto Rickshaw driver namely Harish and so also, evidence of PW.1 who is the complainant and none other than the daughter of deceased - Radha and PW.2 - Pushpa who is the sister of deceased. But they have stated in their evidence on the part of the prosecution relating to the acquaintance of deceased - Radha with accused. But on the date of incident deceased - Radha 11 had informed to her daughter that she will proceed to the house of accused to give resume since the accused had assured her that he will get a job to her daughter. These are all the evidence that has been brought on record on the part of the prosecution even though on the aforesaid fateful day at around 8.00 p.m. she had telephoned to deceased - Radha, but it was not reachable. As such she became panic and called her aunt and enquired about her mother. Her family members made search of deceased - Radha but could not trace her. But the dead body of female was found in the well which was situated behind the house of accused. The evidence of PW.1 in respect of Ex.P1 of the complaint which has been corroborated by evidence of PW.2 who is none other than the sister of deceased and aunt of PW.1 - Shradda. They have stated in their evidence that on 31.10.2018 in between 5.00 p.m. to 5.30 p.m. deceased - Radha had gone to Mulki Cyber Centre to generate the resume of complainant - PW.1 12 informing PW.2 and the deceased called PW.2 at about 6 p.m. and informed that she was near the house of accused. Further PW.2 has stated that when she called the deceased at 7 p.m. the phone call was not reachable. Further, the evidence of

PW.1 finds corroborated relating to the enquiry about deceased - Radha and she has specifically stated in her evidence that she had called the relatives and in the night along with the relatives went near the house of accused in search of missing Radha. But the body of female was found in the well near the house of the accused. Therefore, on suspicion in the later part the complaint has been filed by PW.1. In pursuance of her complaint, criminal law set into motion and whereby the dead body of Radha had been sent to the mortuary and conducted autopsy over the dead body. These are all the evidence let in by the prosecution to prove the guilt of the accused. But the trial Court did not appreciate the evidence in a proper perspective manner. Therefore, 13 under this appeal it requires for re-appreciation of the evidence of PWs.1, 2, 3 and 4 who are the material witnesses and their evidence is suffice to held that the prosecution has proved the guilt of the accused whereby he has committed murder of deceased - Radha more particularly the conduct, features of the accused was proved by the prosecution by facilitating the worthwhile evidence by subjected to examination of those witnesses.

9. The second limb of the arguments advanced by learned HCGP by referring to the evidence of PW.5 - Harish who is the auto rickshaw driver that he had seen the deceased at around 6.00 to 6.15 p.m. when he was going by auto and stopped the auto and saw accused was talking with Radha and he has stated in his evidence that when he was returning back after dropping the passenger at about 6.40 - 6.45 p.m. deceased was talking with the accused near the vacant 14 house. Further, he has stated that the accused had held the hand of deceased at that point of time. Thereafter, he came to know about the death of deceased on the next day. Thus, PW.5 has been examined relating to the concept of last seen theory.

10. Further, it is contended that PWs.6 and 7 are the circumstantial witnesses who have stated in their evidence to prove the guilt of the accused. However, the trial Court did not give more credentiality to their evidence. PW.8 is the owner of the Mulki Cyber Centre and also supported the case of the prosecution. PW.9 is the driver of the ambulance. In support of overwhelming witnesses and positive evidence in favour of the prosecution, the trial Court committed error in acquitting the accused by rendering the acquittal judgment which is challenged under this

appeal by urging various grounds. The grounds urged in this 15 appeal is required to be considered, if not, there shall be some substantial miscarriage of justice.

11. Lastly, learned HCGP for State emphatically submits by referring to the evidence of PW.5 - Harish who is a autorickshaw driver in respect of last seen theory which has been established by the prosecution and whereby the accused had held the hands of deceased - Radha on the fateful day and there is no dispute that he is an independent witness and more so, he is not an interested witnesses but his evidence has not been considered by the trial Court even though it ought to have given more credentiality to the said evidence on the part of the prosecution relating to the last seen theory. His evidence has been brushed aside by the trial Court. Therefore, under this appeal it requires for re-appreciation of the evidence and so also, revisiting the acquittal judgment rendered by the trial Court. 16

12. Insofar as evidence of PW.8 who was running a cyber centre, he has not produced any documents to show that he is running cyber centre and his statement came to be rejected by the trial Court which requires interference by this Court. The deceased before her death, was seen with the accused and the same has been proved by the prosecution. The trial Court based on assumptions and presumptions that so many facts which was not real held against the prosecution without there being any contrary evidence on the side of the accused. Even the trial Court has not taken into consideration of the presumption as under Section 106 of the Indian Evidence Act, 1872. These are all the contentions made by the learned HCGP for State and seeking for consideration of the grounds as urged in this appeal and consequently, seeking for setting aside the acquittal judgment and to convict the accused for the charges leveled against him. 17

13. Learned counsel Sri Rajashekar.S. for respondent / accused has countered to the arguments advanced by learned HCGP in this appeal. But it is the domain vested with the prosecution to prove the guilt of the accused by facilitating the worthwhile evidence to secure the conviction. Even the trial Court on perusal of the entire allegations as well as the materials which were placed on record by subjecting to examination of several witnesses such as PWs.1 to 18. But the vital witnesses are PW.1 -Shradda R. Kundar who is none other than the daughter of

deceased- Radha and based upon her complaint at Ex.P1 criminal law was set into motion. PW.2 - Pushpa is the sister of the deceased and PW.5 - Harish is the autorickshaw driver relating to the concept of last seen theory. But the entire evidence let in by the prosecution even on perusal of the material evidence insofar as evidence of PWs.1 to 4 inclusive of evidence of PW.5 and evidence of PWs.6 and 7 relating 18 to circumstantial evidence in nature. But proving of facts and proof of allegation made against the accused, it is the domain vested with the prosecution as it is the settled position of law by rendering the judgment and even crystallize the principle of law of appreciation of evidence in criminal prosecution initiated against the accused based on the circumstantial evidence relating to proving of the case. The same has been made observation and also considered regarding to what is the circumstances in the case it is in detail stated in the impugned judgment of acquittal at para - 12.

14. The prosecution has relied on the circumstantial evidence relating to deceased - Radha who is alleged to have informed at her home as well as her daughter PW.1 - Shradda by saying that she is proceeding to meet accused at his home relating to furnishing the resume after obtaining the print from the cyber centre. But relating to proceeding by Radha and informing the same to PW.1 and also called upon 19 accused - Mohan and even PW.2 - Pushpa and even informed that she will return back to home after handing over resume to accused. These are all the circumstantial nature of theory put forth by the prosecution and the trial Court has considered in the acquittal judgment. But the prosecution in order to prove the guilt of the accused relating to death of Radha is not a natural death and it is due to drowning has got marked Ex.P21 P.M.Report which shows that Viscera has been collected and has been sent to chemical examination and on the basis of the viscera examination report i.e., Ex.P29, the Doctor has given opinion as per Ex.P30 stating that death is due to drowning and due to complications secondary to drowning.

15. The specific case of the prosecution is that on the date of alleged incident PW.1 alleged to have sent resume to the Cyber Centre, through email and in turn the said email was downloaded by PW.8 - Shivaprakash 20 Shetty and handed over the same to deceased - Radha and she took the print out of the resume and

left the Cyber centre of PW.8 informing him that she is going to meet accused - Mohan for the purpose of seeking job to her daughter. Even made attempt for last seen theory has been established by the prosecution, but mere because examination of PW.5 - Harish that on 31.10.2018 in between 5.30 to 6 p.m that deceased - Radha had visited the cyber centre as according to the evidence of PW.8. Mere because it is stated in the evidence on the part of the prosecution by subjected to examination of PW.5 relating to the last seen theory, but unless his evidence finds corroborated with the evidence of other independent witnesses or even evidence of PWs.1 and 8. But the lacuna and latches gives raise to a greater suspicion in the mind of the court regarding the reliability of the evidence of PW.1 and 8. Further M.O.1 does not disclose anything to say that the print out of the said document was taken out at a particular 21 time and there is no sign of anything on M.O.1 - resume consisting three pages to say that it was sent through on email. Even PW.8 has stated in his evidence whereby the investigating officer even collected the material documents and he has not at all verified or made any enquiry whether any such email was available in the mail box of PW.8 and even the investigating officer has not taken care to collect the email particulars of PW.1 - Shradda who is no other than the daughter of deceased - Radha. This lacuna and the doubtful circumstances has been seen in the impugned judgment in detail akin to the evidence of PW.8 and so also, PW.16 being the investigating officer. Mere because the evidence of PW.8 relating to M.O.1, it cannot be given any credentiality on the part of the prosecution for consideration because the entire case has been revolving around the evidence of PW.1 - Shradda who is the daughter of deceased - Radha and so also, evidence of PW.2 - Pushpa who is the sister of deceased - Radha. Their evidence runs 22 contrary to the evidence of PW.16 being the investigating officer and whereby the prosecution has to establish the fact relating to the death of deceased - Radha as alleged in the complaint at Ex.P1 and even the death of deceased - Radha whereby a body of female was found in the well nearby the house of accused. But the prosecution has failed to establish the guilt of the accused with beyond reasonable doubt by facilitating worthwhile evidence.

16. The trial Court had given concentration on M.O.1 relating to resume consisting three sheets, but the genuinity of M.O.1 resume itself was creating doubt in the

mind of the Court in respect of theory of the prosecution. Mere because laying of the charge sheet against the accused by the investigating officer, even the resume at M.O.1 was found and even the dead body was found in a plastic bag in a well near the house of the accused. Even while lifting the dead body of Radha 23 which was found in the well, was floating in the water. But the case of the prosecution that the plastic bag was containing the hand purse and was containing one photo and two currency notes of Rs.100 and Rs.10 and three resume letters. Insofar as M.O.1 - resume consisting three pages even at a cursory glance and close scrutiny in terms of perusal, there is no sign that the said M.O.1 resume consisting three sheets has been taken up from the water from that well as where the dead body of female was floating. The case of the prosecution that deceased Radha had drown in the well around 7.00 to 8.00 p.m. on 31.10.2018 and the body was found in the morning i.e. on 01.11.2018 at about 8.00 a.m. For almost 12 hours the said resume was alleged to have been lying in the water and the alleged resume is a print out on a plain white sheet. The question is whether the said white paper will be intact even after 12 hours if it is taken out from water, definitely it gets wet and turn into pieces i.e., torn. But 24 on perusal of M.O.1, there is no sign that it was taken out from the water, it is just as if it is folded and kept in some purse. These are all the observations made by the trial Court by appreciation of evidence of PWs.1, 2 and 5 who are the vital witnesses on the part of the prosecution relating to last seen theory of deceased - Radha and accused. Moreover, it is the case of the prosecution that deceased - Radha on 31.10.2018 has left the cyber centre with resume in order to hand over the same to accused - Mohan as according to the terms of some correspondence in between them to get a job to her daughter PW.1 - Shradda. At a cursory glance of evidence of PW.1 and even the allegations made at Ex.P1 and inclusive of evidence of PW.2 and PW.5, 6 and 7 who are the witnesses on the part of the prosecution relating to circumstantial in nature and so also, death of deceased, but certainly the deceased would have handed over the resume to the accused and it would not have been available with the dead body of 25 deceased - Radha. Even assuming that she had carried the resume with her, the fact that it has been found with her dead body in a plastic bag along with a purse indicates that she had not met the accused, and there is a suspicion to that effect. Therefore, the prosecution case in the evidence of PW.5 in

respect of last seen theory play a vital role in a case based upon circumstantial evidence. But in the instant case that on the alleged date of incident as narrated at Ex.P1 and even death of deceased - Radha and even she had informed that she will proceed to meet accused - Mohan in order to hand over M.O.1 - resume consisting three sheets relating to her daughter PW.1 and there was some talking in between Radha and PW.1 over the phone and that she was proceeding to meet accused - Mohan. But no one has seen deceased meeting the accused except PW.5 being an autorickshaw driver and he has stated that he saw accused was standing along with Radha and they were talking with each, during 26 that time it was around 6.45 p.m. and accused Mohan by holding Radhas hand was pulling. Even seeing analytically the evidence of PWs.1, 2 and 5 and at a cursory glance of their evidence relating to the incident narrated in a complaint at Ex.P1 the incident took place on 31.10.2018 and PW.5 - being autorickshaw driver was carrying passenger from Karnad Auto stand, during that time it was 6.00 to 6.15 p.m. and he met with deceased - Radha near Gandhi Maidan road wherein she was proceeding by walk on the road and he stopped his auto-rickshaw and asked her whether she will come in the auto-rickshaw. But at a cursory glance of evidence of PW.1 in respect of allegation made at Ex.P1 and who is a gravamen of incident and so also vital in nature on the part of the prosecution as where PW.5 relating to last seen theory of deceased and the accused claimed that he had informed. But the statement do not reflect anything to say in respect of acquaintance of the deceased - Radha and accused. These are all the 27 evidence that has been rightly appreciated by the trial Court. Therefore, under this appeal, it does not arise for call for interference. These are all the contentions made by learned counsel for respondent and seeking for dismissal of the appeal being devoid of merits.

17. Lastly, counsel for respondent submits that there is delay in filing of complaint. The offences under Section 354 in respect of outraging the modesty of woman, offence under Section 302 relating to murder and Section 201 in respect of causing disappearance of evidence of offence, or giving false information to screen offender. But delay in filing the complaint by the complainant - PW.1 - Shradda who is the gravamen of the incident and she has filed the complaint at Ex.P1 and she has specifically stated in her evidence that on 01.11.2018 that she

had filed a complaint as per Ex.P1 after returning from Bangalore where she was residing. Ex.P1 is the complaint which is filed by her and based 28 upon her complaint criminal law was set into motion and the investigating officer took up the case for investigation. But there is no evidence even before the trial Court to say that the accused is known to the family members of deceased - Radha and PW.1 had filed complaint as per Ex.P1 and she is suppressing the genuinity of facts and also averments made against the accused. But at a cursory glance of her cross-examination and incisive cross-examination of PW.1 and PW.2 inclusive of cross-examination of PW.5 - Harish who is driver of autorickshaw has been alleged to put forth by the prosecution. But PW.6 and 7 being the circumstantial witnesses but claiming that the accused as well as deceased - Radha were acquainted with each other. Even at a cursory glance of cross- examination of PW.1 and Ex.D1 and D2 even it has been confronted that she has admitted that said photos are relating to marriage function of accused. In the said photographs it is evident that PW.1 has actively 29 participated and in fact, she herself putting mehendi on the hands of the accused and even in Ex.D2 deceased - Radha is holding the hands of the accused. From this it is established that the accused and deceased family had good proximity and even PW.2 who is no other than the sister of the deceased has admitted during the course of her cross-examination that she know the accused since childhood and further in her evidence one thing can be made out that since their childhood both deceased and accused were having good friendship. Even the evidence of PW.1 and 2 coupled with the evidence of PW.6 and 7, but their evidence do not inspire confidence in the mind of the Court and consequently rendering the acquittal judgment. Therefore, under this appeal it does not arise for call for interference and there is no warranting circumstances to revisit the judgment rendered by the trial Court and so also, re-appreciation of evidence as sought for. On this premise learned counsel for respondent / accused seeking for dismissal of the 30 appeal being devoid of merits by confirming the acquittal judgment rendered by the trial Court.

18. It is in this context of the contention made by learned HCGP for State and so also, counter arguments in detail emphatically submitted by learned counsel for respondent / accused by referring the evidence of PW.1 insofar as allegation made in Ex.P1 - complaint and based upon her complaint criminal law was set into

motion by recording FIR and thereafter the investigating officer took up the case for investigation and laid the charge sheet against the accused by following the requisite condition as under Section 173(2) of Cr.P.C.

19. It is relevant to refer Section 300 of IPC, 1860 even though it is the definition Section but punishment under Section 302 of IPC. But in Exception No.1 - When culpable homicide is not murder - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden 31 provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos: First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. Thirdly - That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. 32

20. Whereas in the instant case, the concept of Section 300 of IPC and so also, Exception - 2 even relating to culpable homicide is not murder if the offender, in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against who he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Exception No.3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight 33 in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation - It is immaterial in such cases which party offers the

provocation or commits the first assault. Exception 5 - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent, it is referred for better appreciation of evidence as well as exhibited documents insofar as heinous offence.

21. It is relevant to refer the concept of culpable homicide and murder. Culpable homicide is the genus and murder is its species and all murders are culpable homicides but all culpable homicides are not murders. This issue has been extensively addressed by the Honble Supreme Court reported in a decision of Rampal Singh v. State of Uttar Pradesh (2012) 8 SCC289 34 22. The presumption regarding intention or knowledge. This is an important elements and so also, ingredients relating to intention or knowledge which requires to be established by the prosecution even by facilitating worthwhile evidence to the prove the guilt of the accused, which is the domain vested with the prosecution. But in the instant case, PW.1 - Shradda who is no other than the daughter of deceased and based upon her complaint, criminal law was set into motion by recording FIR by the investigating agency and thereafter laying of the charge sheet and even during the course of investigation, PW.2 who is no other than the sister of deceased had also given evidence on the part of the prosecution. At a cursory glance of evidence of PWs.1 and 2 coupled with the evidence of PWs.6 and 7 and their evidence founds to be inconsistent, consequently, it does not corroborate with any independent evidence on the part of the prosecution can inferred. But the last seen theory it is stated by the 35 prosecution and also contended by basing upon the evidence of PW.5 - Harish who is a autorickshaw driver he has seen the acquaintance of deceased - Radha with accused. But the evidence of PW.5 has not been corroborated with any other independent evidence on the part of the prosecution to prove the guilt of the accused, then there is no credentiality of his evidence.

23. It is relevant to state in respect of motive factor. It is not essential for the prosecution to establish motive factor against the accused in all cases, but at some time it cannot be given to gainsaid that without adequate motive speaking normally, none is expected to take life of another human being.

24. But the motive behind the crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assigning the evidence. But the circumstances proving the guilt of the accused are however not weakened at all 36 by the fact that the motive has not been established, but clouds of doubt arise. The concept of mensrea and also actus reus is also important elements on the part of the prosecution. In the instant case, PWs.6 and 7 have been subjected to examination and they are the circumstantial witnesses. But the motive behind the crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assigning the evidence. But the circumstances proving the guilt of the accused are however not weakened at all by the fact that the motive has not been established. It often happens that only the culprit himself knows what moved him to certain course of action. These are all the important elements on the part of the prosecution to prove the guilt of the accused. It is the domain vested with the prosecution to facilitate worthwhile evidence. But in the instant case, there is no strong evidence facilitated by the prosecution even subjected to material witnesses such 37 as PW.1 to 5 inclusive of PWs.6 and 7 have been examined. PW.16 being the investigating officer who has secured the material documents such as call details and the same was got it marked. Ex.P21 is the post mortem report relating to conducting autopsy over the dead body of the deceased but with the consent on the part of the prosecution and defence counsel, it has been got it marked to medical evidence it requires to be considered even for the offences under the Indian Penal code and it must be corroborated with some sort of testimony on the part of the prosecution to prove some sort of injuries even inflicted over the person and as a result of such injuries the deceased has lost the breath. But in the instant case drowning of a body of a female and it was floating in a well situated nearby the house of accused. But the accused was facing of trial relating to heinous offence of Section 302 of IPC and even offence under Section 354 of IPC. Section 354 of IPC relating to outraging the modesty of a woman. But 38 mere recovery of the dead body of the deceased from the well situated near the house of accused and unless there is some strong evidence connecting the accused relating to the murder and even for causing for death of deceased, it is not enough to fasten the guilt upon the accused, although it may raise some

suspicion against him. But suspicion, however strong it may be cannot be valid substitute for proof. The chain of circumstances which has been established on the basis of reliable evidence the credibility of which has not in any manner being impeached by cross-examination and which evidence gets support from the medical evidence that, the death occurred on the account of some sort of injuries inflicted over the dead body and the Doctor did not subjected to examination on the part of prosecution to prove the guilt of the accused in the instant case. The same has been seen in the evidence of prosecution itself. It is relevant to refer the judgment of Honble Supreme Court reported in Sharad Birdhi Chand Sarda 39 vs State of Maharashtra reported in (1984) 4 SCC116 wherein it is extensively addressed the issues insofar as Indian Evidence Act, 1872 and so also, circumstantial evidence and even benefit of doubt in detail. In para 162 it is held as under: Moreover, in M.G.agarwal case this Court while reiterating the principles enunciated in Hanumant case observed thus: If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. In Shankarlal this Court reiterated the same view thus : [ SCC para 31, p.44: SCC (Cri) p. 322]. In para 163, the Honble Supreme Court 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:

40. 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.

25. Insofar as circumstantial evidence - cardinal principles for conviction on the basis of, restated. Falsity of defence plea if a circumstance against the accused. But it is held that on facts, circumstances not sufficient to conclusively establish

the guilt of the accused - circumstances in the light of the facts of the case - circumstances not put to the accused under Section 313 of Cr.P.C. cannot be held against him.

26. In the instant case, even though challenging the acquittal judgment rendered by the trial Court by urging various grounds and even the concept of Section 313 of Cr.P.C. recording of incriminating statement, it is 41 culled out in the evidence put forth by the prosecution. But circumstantial evidence in criminal trial it should be a vital role if there are some infirmities in the prosecution case even though cannot be cured by any such additional link. But circumstantial evidence in respect of last seen together - where it was natural for the deceased to be with the accused at the material time, other possibilities must be excluded before an adverse inference can be drawn. But the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved and there must be a chain of evidence so complete as not to leave any reasonable ground for the 42 conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. This issue was also extensively addressed by the Honble Supreme Court by rendering the judgment which has been stated supra. It is vital that any circumstance adverse to the accused must be put to him under Section 313 of Cr.P.C. Otherwise it must be completely excluded from consideration because the appellant did not have any chance to explain them. Moreover, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. 43

27. But in the instant case PW.1 is the daughter of deceased - Radha and she has given complaint as per Ex.P1 and based upon her complaint, criminal law was set into motion and subsequent to registration of crime, the dead body of deceased - Radha was sent to mortuary to conduct post mortem over the dead body. Accordingly, the post mortem was conducted and report came to be issued. But the Doctor who issued postmortem report was not subjected to examination even relating to marking of postmortem report at Ex.P21. This aspect was also considered by the trial Court by analyzing the evidence of PW.1 to PW.5 inclusive of evidence of PWs.6 and 7 coupled with the evidence of PW.16 being the investigating officer who laid the charge sheet against the accused. But in a totality of evidence of prosecution and even the totality of incisive cross-examination of the material witness of PW.s1 and 2 who are the daughter and sister of 44 deceased - Radha and even though they are the close family members of deceased - Radha, their evidence is not supported by any other independent witnesses on the part of the prosecution to prove the guilt of the accused that the accused caused the death of deceased as where the dead body of deceased was floating in the well which was situated nearby the house of the accused. Mere because the dead body was found in the well situated near the house of accused and even proceeded further for autopsy over the dead body and even subjected to recording the evidence of PW.2 - Pushpa and criminal law was set into motion by recording FIR and even drew the inquest mahazar over the dead body and conducted the mahazar in the presence of panch witnesses, but no worthwhile evidence has been facilitated by the prosecution to prove the guilt of the accused. The same has been made an observation by the trial Court and also arrived at a conclusion that the prosecution has miserably failed to prove the guilt of the accused that he has caused for the death of the deceased.

28. In criminal justice delivery system it is the domain vested with the prosecution even it is equally the domain vested with the trial Court to appreciate the evidence as under Section 3 of Indian Evidence Act, 1872. But the prosecution should establish the guilt of the accused by facilitating positive, cogent and consistent evidence to probabalise that accused had committed murder of deceased, if not produced the worthwhile evidence, naturally the doubt would arise in the mind of the Court, and the benefit of doubt shall be extended to the accused alone and it is

the doctrine of criminal delivery justice system. In the instant case, the trial Court had analyzed the evidence and on close scrutiny had come to the conclusion that the prosecution has not proved the guilt of the accused by facilitating worthwhile evidence. However, the 46 prosecution has not proved the guilt of the accused with beyond all reasonable doubt and when there is suspicion in the case of prosecution theory and when the prosecution has not proved even the circumstances with beyond all reasonable doubt, it is to be held that the accused is not guilty of the offence and moreover, in the instant case and so also, contrary to the call details of the accused as well as evidence of PW.2 - Pushpa, sister of deceased - Radha had shown that the accused and deceased were in good terms from the child hood. Therefore, the evidence of the prosecution has been taken into consideration by the trial Court and has rightly come to the conclusion that the prosecution has failed to prove the guilt of the accused with beyond all reasonable doubt. Consequently, rendered the acquittal judgment. However, under this appeal even though we have re-appreciated the evidence and re-visited the judgment of trial Court, but the grounds urged in this appeal there is no substance and any bone of 47 contention to revisit the impugned judgment rendered by the trial Court as sought for. In terms of the aforesaid reasons and findings, we are of the opinion that the appeal deserves to be rejected being devoid of merits. Accordingly, we proceed to pass the following:

#### ORDER

The appeal preferred by the appellant / State under Section 378 (1) and (3) of Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the trial Court in S.C.No.60/2019 dated 13.03.2020 is hereby confirmed. Bail bond, if any, executed by the accused shall stands cancelled. Sd/- JUDGE Sd/- JUDGE  
DKB