

Sharada Vs. State Of Karnataka

Sharada Vs. State Of Karnataka

SooperKanoon Citation : sooperkanoon.com/1234360

Court : Karnataka

Decided On : Dec-16-2022

Judge : B.Veerappa and K S Hemalekha

Appeal No. : CRL.A 1450/2017

Appellant : Sharada

Respondent : State Of Karnataka

Advocate for Pet/Ap. : Sri. Sachin B.S

Judgement :

- 1 - CRL.A No.1450 of 2017 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE16H DAY OF DECEMBER, 2022 PRESENT THE HONBLE MR. JUSTICE B.VEERAPPA AND THE HONBLE MRS. JUSTICE K.S. HEMALEKHA CRIMINAL APPEAL NO.1450 OF 2017 BETWEEN: SHARADA, W/O. LATE BOREGOWDA, AGED ABOUT37YEARS, R/O. ARAVATTIGE KOPPALU VILLAGE, T. NARASIPURA - 575 001. ... APPELLANT (BY SRI AJAY PRABHU M., ADVOCATE FOR SRI SACHIN B.S., ADVOCATE) AND: STATE OF KARNATAKA, REPRESENTED BY BANNUR POLICE STATION REPRESENTED BY SPP HIGH COURT OF KARNATAKA, BENGALURU - 560 001. ... RESPONDENT (BY SRI H.S. SHANKAR, HCGP) **** THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) CR.P.C. BY THE ADVOCATE FOR THE APPELLANT/ACCUSED PRAYING TO SET ASIDE THE IMPUGNED

JUDGMENT

DATED 23.03.2017 AND CONVICTION SENTENCE DATED 25.03.2017 PASSED BY THE III ADDITIONAL SESSIONS JUDGE, MYSURU IN S.C.NO.211/2013 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S302 AND 201 OF IPC.-. 2 - CRL.A No.1450 of 2017 THIS CRIMINAL APPEAL COMING ON FOR FURTHER DICTATION THIS DAY, B.VEERAPPA J., DELIVERED THE FOLLOWING:

JUDGMENT

The accused-Smt. Sharada, who is languishing in jail for more than nine years seven months has filed the present criminal appeal against the impugned judgment of conviction dated 23.03.2017 and order of sentence dated 25.03.2017 passed by the III Additional District and Sessions Judge, Mysuru in SC No.211/2013 convicting the accused for imprisonment for life with a fine of Rs.5,000/- and in default, further to undergo simple imprisonment for a period of two months for the offence punishable under Section 302 of the Indian Penal Code and rigorous imprisonment for a period of four years with fine of Rs.3,000/- and in default, further to undergo simple imprisonment for a period of one month for the offence punishable under Section 201 of IPC. I. FACTS OF THE CASE² It is the case of the prosecution that there was an illicit relationship between the accused Smt. Sharada and the deceased Ningaraju. The deceased was married and several panchayaths were held and in the panchayath, the deceased promised that he would not visit the house of the accused.-. 3 - CRL.A No.1450 of 2017 Enraged by this, the accused was often picking up quarrel with the wife of the deceased and threatened to see the wife of the deceased become a widow.

3. It is further case of the prosecution that, P.W.1 lodged a complaint before the jurisdictional police on 18.03.2013 at about 2.00 p.m. stating that he is the member of Grama Panchayath, that on 18.03.2013 at about 1.00 p.m. when he was going from Aravattige Koppal Village to the school of Kodagahalli village on the footpath next to Sri. Mahadeshwara Temple i.e., in the farm of Veerabhadre Gowda in Kodagahalli Village, he got some foul smell from the bushes and he saw a mans lower portion of the body and that some miscreants killed a person somewhere

and in order to destroy the evidence of the same, have thrown the dead body. Thereby, he lodged a complaint as per Ex.P.1 at about 2.00 p.m. and accordingly, on the same day, the jurisdictional police registered a case in Crime No.64/2013 for the offence punishable under Sections 302 and 201 of the IPC against unknown persons. On the same day, another complaint as per Ex.P.3 was lodged by P.W.2-brother of the deceased at 6.30 p.m. stating that himself and the deceased were two children to - 4 - CRL.A No.1450 of 2017 his father. He was the first son and the deceased Ningaraju was the second son to his father. He was doing tractor driver job and the deceased was married to one Rathna. On 13.03.2013 at about 9.00 p.m. deceased Ningaraju kept his phone in the house and had gone out. But he does not know where he went. Even on the next day morning, the deceased Ningaraju did not return to the house. Thereby, they searched for him and enquired with the relatives and did not lodge any complaint. On 18.03.2013 somebody informed that unknown body was lying near pathway of Mahadeshwara Temple. Thereby, he went to the spot with suspicion that it may be his brothers body. The mobile phone of his brother is 9008162950 and deceased received one phone call from 9008771529, which belongs to one Madevi, daughter of father-in-law. Thereby, he sought to find out the missing brother Ningaraju, aged about 28 years, height: five feet. Accordingly, the jurisdictional police registered a case in Crime No.65/2013 on 18.03.2013 at about 6.30 p.m.

4. After registration of the case, police visited the spot and conducted the spot mahazar. When the police were at the spot, brother of the deceased, P.W.2-Veerabhadra, identified - 5 - CRL.A No.1450 of 2017 the dead body as that of his brother. Immediately, he went to the police station and lodged the complaint as per Ex.P.3, which resulted in registration of FIR in Crime No.65/2013. Thereafter, the police called the dog squad to the spot and started the investigation. On 25.03.2013, police arrested the accused from Arekere bus stand at 8.30 am. On the same day at about 10.30 am, police also arrested Sagar-son of the accused. Since said Sagar was a juvenile, he was considered as a child in conflict with law and was produced before the Juvenile Justice Board.

5. It is further case of the prosecution that, the accused gave her voluntary statement that deceased had come to her house at 2.00 am on the intervening

night of 13.03.2013 and 14.03.2013 and called her to sleep with him. At that time he was heavily under the influence of alcohol. The accused was enraged because she felt that the deceased is coming to her only for the said purpose even though he had promised before the Panchayath that he will not visit her again. Being enraged by the same, the accused picked up an axe handle and hit the deceased on his head from behind when he was sitting on the chair, as a result of which, the deceased died at the spot.- 6 - CRL.A No.1450 of 2017 6. It is further case of the prosecution that the accused pulled the dead body to the cattle shed which was within her house and hide the dead body inside the hay. On the next day at about 3.30 pm, accused removed the clothes from the dead body and cut the dead body at the waist into two parts i.e., upper body and lower body. Thereafter, she again cut the dead body at the neck and separated the head from the body. The accused packed the lower portion of the dead body into a fertilizer bag, which was in the house and packed the upper portion of the body up to neck and the head in separate plastic bags. Further, the accused put the knife used to cut the dead body inside the plastic cover along with upper portion of the body and washed away the blood stains. Later, when Sagar-son of the accused returned home from school, together they kept the upper portion of the dead body and head which had been packed in plastic bags on the cycle and took them to Molasses tank of distillery in Gendehosahalli village and dumped them into molasses tank. Afterwards, at about 8.30 pm, accused and her son took the clothes of the deceased and also the lower portion of the body and dumped it in the open space between Mahadeshwara Temple and School building in - 7 - CRL.A No.1450 of 2017 the village i.e., Aravatige Koppalu village. On the basis of the disclosure made by the accused, police discovered the upper portion of the body and head from the Molasses tank. On the basis of the disclosure made by the accused, police seized the chair on which the deceased was sitting at the time of his death and the axe handle used to commit the crime and the bicycle which was used to transport the dead body. At the time of seizure of the said articles from the house of the accused, the Investigating Officer had intimated the officials of RFSL who had come to the spot and took the mud sample from the spot shown by the accused where she had cut the dead body. The mud sample was sent to FSL for opinion and the opinion was given that the mud contains traces of human blood

and the axe handle seized from the house of the accused also contained traces of human blood. During the course of investigation, police collected blood samples from father and mother of the deceased and sent the same along with the skull with mandible from upper portion of body recovered at molasses tank and femur bone of lower portion of body found near Mahadeshwara temple, to Forensic Science Laboratory, Bengaluru, for DNA report. The DNA report was given confirming that father and - 8 - CRL.A No.1450 of 2017 mother of the deceased are "included from being the biological parents of the individual to whom the said skull with mandible and femur belonged to". Accordingly, the jurisdictional police filed the charge sheet against the accused.

7. Since the case was triable by the Sessions Judge, the matter was committed to the Court of Sessions, who secured the presence of the accused and framed the Charge on 28.07.2014 for the offences punishable under Sections 302 and 201 of the Indian Penal Code. The Charge was read over and explained to the accused in the language known to her who pleaded not guilty and claimed to be tried.

8. In order to prove its case, prosecution in all examined 27 witnesses as P.Ws.1 to 27 and marked the documents Exs.P.1 to P.51 and material objects M.Os.1 to 22. In the cross examination of the prosecution witnesses, the defense marked the documents Exs.D.1 to D.5. After completion of the evidence of prosecution witnesses, the statement of the accused as contemplated under the provisions of Section 313 of the Code of Criminal Procedure was recorded. The accused denied all the incriminating circumstances adduced - 9 - CRL.A No.1450 of 2017 against her by the prosecution witnesses. However, to question No.66 to the effect that "Do you want to say anything else or do you wish to give statement?.", the accused deposed that, "There is no relation between me and Ningaraju. Ningaraju's brother Veerabhadra had dispute with Ningaraju regarding property and therefore, I have been falsely implicated in the case. During life time of Ningaraju, Veerabhadra used to come to my house and trouble and he used to quarrel with me to give a site next to my house to him and also quarrel saying only Ningaraju is coming to my house, although there was no relation between me and Ningaraju, the police arrested me in my house and not in Arekere bus stand.

9. Based on the aforesaid material on record, the learned Sessions Judge proceeded to frame the following points for consideration:

"1. Whether the prosecution has proved beyond doubt that the parts of the dead body discovered are that of deceased Ningaraju?.

2. Whether prosecution has further proved beyond doubt that, the death of said Ningaraju was homicidal in nature?. - 10 - CRL.A No.1450 of 2017 3. Whether the prosecution has proved beyond doubt that accused caused the death of Ningaraju?.

4. If point No.3 is answered in the affirmative, whether the act of accused in causing death of Ningaraju amounts to murder punishable under Section 302 of IPC or amounts to culpable homicide not amounting to murder punishable under Section 304 of IPC?.

5. Whether the prosecution has proved beyond doubt that, the accused caused disappearance of evidence with intention to screen herself from legal punishment and thereby, guilty of offence under Section 201 of IPC?.

10. Considering both oral and documentary evidence on record, the learned Sessions Judge recorded a finding that the prosecution proved beyond doubt that the parts of the dead body discovered were that of deceased Ningaraju and his death was homicidal in nature. Further, the accused caused the death of Ningaraju and thereby committed an offence punishable under Section 302 of the Indian Penal Code and also that the accused caused disappearance of evidence with - 11 - CRL.A No.1450 of 2017 intention to screen herself from legal punishment and thereby guilty of offence punishable under Section 201 of the Indian Penal Code. Accordingly, the learned Sessions Judge, by the impugned judgment of conviction and order of sentence, sentenced the accused to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of two months for the offence punishable under Section 302 of the Indian Penal Code, and to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of one month for the offence punishable under Section 201 of the Indian Penal Code.

11. It is relevant to state at this stage that Sagar, son of the accused was aged about 18 years as on the date of the incident and therefore, he was produced before the Juvenile Justice Court. The Juvenile Justice Court, considering both oral and documentary evidence on record including the evidence of P.Ws.1 to 7 and material documents-Exs.P.1 to 6, came to the conclusion that the prosecution failed to prove beyond reasonable doubt that on 14.03.2013 between 5.30 pm to 8.30 pm, the juvenile assisted his mother in transporting the parts of - 12 - CRL.A No.1450 of 2017 the dead body of Ningaraju who was murdered by Sharada-mother of the juvenile, with an intention to cause disappearance of evidence. Accordingly, by the judgment dated 03.11.2017 in J.C.No.33/2014, the Juvenile Justice Board, Mysuru, acquitted the juvenile in conflict with law and not found guilty of the offence punishable under Section 201 of the Indian Penal Code. The said judgment of acquittal has reached finality.

12. We have heard the learned counsel for the parties. II. Arguments advanced by the Learned Counsel for the appellant 13. Sri Ajay Prabhu, learned counsel for Sri Sachin B.S., learned counsel for the appellant/accused, contended with vehemence that the impugned judgment of conviction and order of sentence passed by the learned Sessions Judge convicting the appellant/accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code is erroneous and liable to be set-aside. He further contended that the entire case of the prosecution is based on the - 13 - CRL.A No.1450 of 2017 circumstantial evidence, and the five circumstances relied upon by the prosecution to prove its case are:

"(i) Illicit relationship between the accused and the deceased; (ii) recovery of half upper portion of the body at molasses tank at the instance of the accused, as deposed by P.Ws.5 and 6 under Ex.P.8-mahazar, (iii) Recovery of M.O.2-axe handle, M.O.3-rope, M.O.11-chair, M.O.12-cycle and M.O.21- sample mud, under Ex.P.9-spot mahazar, as elicited in the evidence of P.Ws.5 and 6. (iv) Evidence of P.W.15-Boregowda who has seen the son of the accused going in bicycle-M.O.12. (v) Call Details Register of the deceased and the accused.

14. Learned counsel for the appellant/accused contended that the learned Sessions Judge failed to appreciate that there is no evidence identifying the blood group found on the axe handle and mud, except that the blood is of human origin. From the report of the FSL, it is clear that the blood - 14 - CRL.A No.1450 of 2017 group could not be detected because the tests were inconclusive. Under such circumstances, the impugned judgment is liable to be set-aside.

15. Learned counsel further contended that the learned Sessions Judge failed to notice that the alleged motive for the incident is that the deceased had developed illicit relationship with the accused and, wife of the deceased had objected for the same. The said aspect has not been established by the prosecution. The deceased was accused in a murder case which was pending in Srirangapatna Court and the molasses tank is also situated at Srirangapatna. Hence, the deceased might have been murdered by some body and the benefit of doubt has to be given to the accused. Further, the learned Sessions Judge failed to notice that P.Ws.5 and 6 have deposed that on 25.03.2013, the accused took the police to molasses tank and showed the molasses tank and the place where the upper portion of the dead body was found. But, P.W.5 has also stated that on 24.03.2013, the accused had taken the police to molasses tank. The said discrepancy is vital to the case of the defence. The said aspect has not been considered by the learned Sessions Judge.-. 15 - CRL.A No.1450 of 2017 16. Learned counsel for the appellant/accused further contended that the learned Sessions Judge proceeded to convict the accused only on the basis of presumption and assumption which is impermissible under law. He further contended that the son of the accused who was charged with the offence punishable under Section 201 of the Indian Penal Code has been acquitted by the Juvenile Justice board and the said order has reached finality. Therefore, learned counsel sought to allow the present Criminal Appeal.

17. In support of his contentions, learned counsel sought to rely upon the following dictums of the Hon'ble Supreme Court: (i) Nagendra Sah vs. The State of Bihar reported in 2021 0 Supreme (SC) 575, paragraphs 47 to 49, (ii) Subramanya vs. State of Karnataka reported in 2022 0 Supreme(SC) 1046 paragraphs 76 to 78.-. 16 - CRL.A No.1450 of 2017 III Arguments advanced by the HCGP for the State

18. Per contra, Sri H.S.Shankar, learned High Court Government Pleader, while justifying the impugned judgment of conviction and order of sentence, contended that there is no dispute with regard to the fact that the deceased had illicit relationship with the accused. He contended that out of five circumstances made out, as stated supra, the prosecution has proved three circumstances. The material on record clearly depicts that the accused is involved in homicidal death of the deceased and therefore, sought to dismiss the Criminal Appeal. IV Point for determination 19. In view of the aforesaid rival contentions urged by learned Counsel for the parties, the only point that arises for our consideration is:

"Whether the accused has made out a case to interfere with the impugned Judgment of conviction, convicting accused for the offences punishable under Sections 302, and 201 of IPC in the peculiar facts and circumstances of the present case?.

20. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and - 17 - CRL.A No.1450 of 2017 perused the entire material on record, including the original records, carefully. V Consideration 21. A careful perusal of the complaint-Ex.P.1 lodged by P.W.1-Mariswamy depicts that the complaint was lodged on 18.03.2013 against unknown persons. On the same day P.W.2-Veerabhadra, brother of the deceased came to know that the lower portion of the body of the deceased was found near Mahadeshwara temple, he went to the spot with a suspicion that it might be of his brother. After seeing the dead body, he confirmed that the body is that of his brother and lodged the complaint on the same day at 6.30 pm. Both the complaints does not whisper any thing against the accused. Though it is alleged that the deceased was missing from 13.03.2013 as stated by P.W.2, very strangely, the complaint was lodged on 18.03.2013. P.W.2 has seen the lower part of the dead body after five days from the date of the alleged missing of the deceased from the house. Admittedly, absolutely there is no explanation offered by the prosecution for delay of five days in lodging the complaint.-. 18 - CRL.A No.1450 of 2017 22. Ex.P.1-complaint lodged by P.W.1-Mariswamy, villager is against some unknown person and Ex.P.3-missing complaint is filed by the brother of the deceased on 18.03.2013 at 6.30 pm. There are no eye witnesses to the incident to prove that the incident

occurred in the house of the accused on the unfortunate day. Thereby, the entire case of the prosecution is based on the circumstantial evidence.

23. In order to prove the circumstantial evidence, the prosecution has to prove beyond reasonable doubt the five golden principles called as panchasheela, as held by the Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra reported in (1984)4 SCC116 which reads as under: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji - 19 - CRL.A No.1450 of 2017 Sahabrao Bobade and Another vs. State of Maharashtra where the following observations were made: Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions. (2) 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. (3) The circumstances should be of a conclusive nature and tendency. (4) They should exclude every possible hypothesis except the one to be proved. (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the 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."

- 20 - CRL.A No.1450 of 2017 24. In the present case, the learned Sessions Judge proceeded to convict the accused based on the five circumstances. (i) Illicit relationship between the accused and the deceased; (ii) recovery of half upper portion of the body at molasses tank at the instance of the accused, as deposed by P.Ws.5 and 6 under Ex.P.8-mahazar, (iii) Recovery of M.O.2-axe handle, M.O.3-rope, M.O.11-chair, M.O.12-cycle and M.O.21- sample mud, under Ex.P.9-spot mahazar, as elicited in the evidence of P.Ws.5 and 6. (iv) Evidence of P.W.15-Boregowda who has seen the son of the accused going in bicycle-M.O.12. (v) Call Details Register of the deceased and the accused.

25. While considering the aforesaid material on record, the learned Sessions Judge proceeded to convict the accused based on circumstances (i) to (iii) stated supra. Admittedly, circumstances (iv) and (v) have not been proved by the prosecution. The evidence of P.W.15 who has seen the son of the accused going on bicycle, and the call detail register of the accused and deceased is not proved. The adverse finding - 21 - CRL.A No.1450 of 2017 recorded by the learned Sessions Judge has not been challenged by the prosecution.

26. In order to re-appreciate the aforesaid three circumstances under which the learned Sessions Judge convicted the accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code and this Court being the appellate Court, in order to reconsider the entire material on record, it is relevant to consider the evidence of the prosecution witnesses and the documents relied upon by the learned counsel for the parties. (i) P.W.1-Mariswamy, member of the Grama Panchayath, deposed that on 18.03.2013, he was going from Aravattige Koppalu to Kodagahalli by walk. On the way, in the place between Mahadeshwara Swamy temple and the school, he noticed some foul smell. There he saw the human legs. When he went near, he saw the body of a human from waist till feet. The remaining portion of the body was not found. The said legs were in a plastic bag. The fingers were visible. Accordingly, P.W.1 informed the police and the police registered a case. Ex.P.1 is the complaint and mahazar was drawn. He has not whispered anything about the involvement of the accused or illicit relationship - 22 - CRL.A No.1450 of 2017 between the accused and deceased or the quarrel between accused and Nagarathna-wife of the deceased. He further deposed in the cross-examination that deceased Ningaraju belongs to his community. Except what is stated in the examination-in-chief, he did not know anything and is not aware about the deceased Ningaraju or his wife. Except knowing the name of the accused he does not know anything about her and he knows her son. He knows the brother of the deceased, but does not know his name. He deposed that based on the foul smell, he lodged the complaint to the police. He further admitted that he has seen the sketch prepared-Ex.P.2 and he is not aware who prepared the sketch and has seen the sketch for the first time before the Court. (ii) PW.2 - Veerabhadra, who is the brother of the deceased, lodged a complaint on 18/03/2013 at 6.30 p.m. as per Ex.P-3. He admitted that the deceased Ningaraju

and himself are brothers and the deceased Ningaraju is married and he has been killed. He further stated that on 18/03/2013 at about 2.00 p.m., he came to know that near Mahadeshwara Temple of his village in the land of one Veerabhadraswamy, the lower part of the human body was found. Accordingly, he went to - 23 - CRL.A No.1450 of 2017 the spot and saw the legs in a plastic bag and only the lower portion was visible, wherein four toes were missing. He further stated that on 13/03/2013 at 8.30 p.m., his brother Ningaraju left the house, but he had left his mobile at home and they thought that Ningaraju had been somewhere, but he did not return home and only on 18/03/2013 he saw the legs and the four toes were missing in the leg. After seeing the little toe, he thought that it might be of his brothers. Accordingly, he lodged a complaint between 5.30 p.m. and 6.00 p.m. in Bannur Police Station. Even before lodging the complaint, the police came to the spot where the legs of the deceased were found. Accordingly, the police drew the spot mahazar and when enquired, the complainant - PW.2 stated that the legs were of his brother and thereafter he went to the police station and lodged a complaint as per Ex.P-3 and Ex.P-3(a) is his signature. He deposed that he had forgotten the mobile number of his brother Ningaraju and the police have read out as it was written in the complaint. He further deposed that the accused - Sharada, who was before the Court had illicit relationship with his brother and based on the suspicion, he lodged the complaint. Accordingly, the police had taken the accused to Khodays Factory in Gendehosa Halli, where the accused was - 24 - CRL.A No.1450 of 2017 shown a dead body in molasses tank. When they lifted the dead body, it was fully decomposed and he had not gone along with the police. He went only after the body was lifted from molasses tank and he identified the dead body which was of his brothers. Thereafter, on 25/03/2013, the police took the accused to Khodays Factory, but in Ex.P-3, there is no such suspicion of illicit relationship between the deceased and the accused. Thereby, there is an improvement in the evidence of PW.2 in the examination-in-chief as well as in the cross-examination. He further deposed in the cross-examination that in the month of March, 2013, his cousin sister - Mahadevamma - PW.4 came to her mother's house at Aravattige Koppalu Village for delivery and thereby, in the examination-in-chief, PW.2 stated that they were two brothers i.e., himself and the deceased Ningaraju and thereby, the evidence of PW.2 creates doubt. He further admitted in the cross-examination

that MO.1- mobile belonged to his brother deceased Ningaraju. He further admitted in the cross-examination that, except missing complaint before the police, he has not given any other statement. He further stated that the place where the legs of the deceased were found, was a regular route/pathway through which people would move around including children and the people used rear cattle also. He further stated - 25 - CRL.A No.1450 of 2017 that his brother left the house on 13/03/2013 and when Ningaraju did not return home, his father intimated the same to him on 15/03/2013 and that after the marriage of his brother, PW.2 left the house and he was not in the village. He further admitted that there was a criminal case pending against the deceased in Srirangapatna Court and he was not aware whether on 13/03/2013, his brother went to attend the case, but his brother has not returned home on the said date and he came to know about the incident only on 15/03/2013 as his father intimated him over telephone that on 13/03/2013 Ningaraju left the house between 8.30 p.m. and 9.00 p.m. leaving the mobile at home and did not return back and he has not stated anything about the motive of murder by the accused. (iii) PW.3 - Vijayakumar deposed that, while he was passing through Aravattige Koppalu and Kodigehalli Village, he saw the lower part of a human body in a plastic bag tied with rope and the remaining portion of the body was not there. When the plastic bag was opened, the skin over the thigh portion was peeled off and in the left leg, the 3rd and 4th toes were also removed from the leg and the same were not available on the spot and the other toes were also missing. When he saw the dead body about two-three days back, he thought that somebody - 26 - CRL.A No.1450 of 2017 had killed someone and thrown and that he could not identify the dead body. In the cross- examination, he admitted that he could not identify half portion of the dead body is of whom. He has not whispered a word about the illicit relationship between the accused and the deceased or was there any quarrel between the wife of the deceased- Nagarathna and the accused. (iv) PW.4 - Mahadevamma deposed that the deceased is the maternal uncle and his wife is Nagarathna. About two years back, when she had come for delivery to her fathers house at Aravattige Koppalu, on 13/03/2013, at around 9.00 p.m., deceased Ningaraju left the mobile at home and had been out and his wife - Nagarathna intimated that Ningaraju did not return home that night and even on the next day morning he had not returned. She further deposed that,

her fathers house and Ningarajus house is one and the same and that even after three days, Ningaraju did not return home. Nagarathna gave her husbands mobile to Mahadevamma and told her to receive if any call comes in and went to her native place. Thereafter, after three days, this witness received a call on the mobile of Ningaraju and they asked her as to who she was and PW.4 replied that she was Ningarajus elder sister and PW.4 was informed that Ningaraju was in Ramanagar. PW.4 asked the person who - 27 - CRL.A No.1450 of 2017 spoke to her over mobile as to why did her brother- Ningaraju go to Ramanagar. She replied that Ningaraju was her husbands friend and she requested the deceased to provide her a job in his quarry as her husband had huge debt and she was unable to repay the debt. PW.4 questioned her as to who gave the mobile number to her, so she replied that when she was sweeping the room, a slip with the mobile number fell from the pocket of Ningaraju. PW.4 asked her to give the phone to Ningaraju, but she replied that he had gone to work. PW.4 asked her name, so she replied that her name is Jyothi and cut the call. PW.4 further deposed that on 18/03/2013 at around 8.30 a.m. to 9.00 a.m., someone came and informed PW.4 that the lower half portion of the human body tied in a plastic bag was thrown near Mahadeshwara Temple. The elder brother of PW.4-Mahadevamma went to the spot and saw that somebodys legs were there in the plastic bag, but he did not know whose legs were that. PW.4 deposed that she knows the accused and she is residing in the same village and she does not know as to what was the relationship between the accused and the deceased Ningaraaju. PW.4 deposed that when she came for delivery, Ningarajus wife Nagarathna told her that Ningaraju often used to go to the house of the accused and that after delivery, she went back to - 28 - CRL.A No.1450 of 2017 her matrimonial home. In the cross-examination she has stated that except on 18/03/2013, she had not received any phone call, both in the examination-in-chief as well as in the cross- examination. She denied that she has not whispered anything about the illicit relationship of the accused and the deceased nor any panchayat was held. (v) PW.5 - Ramesha who is also PW.3 in Juvenile Case No.33/2014, on the file of Juvenile Justice Board at Mysuru, in respect of B.Sagar - Juvenile, son of the accused, who deposed that he knows the accused and she is the resident of Aravattige Koppalu Village and her husband had died. The deceased Ningaraju was also the resident of the same village and

his wife is Nagarathna. Ningaraju used to go to the house of the accused. There used to be quarrel between the accused and Nagarathna - wife of the deceased and this witness used to advise them. He came to know that about two and a half years ago, near Mahadeshwara Temple in the empty land of Veerabhadrappe, some legs were lying and it was intimated by the school children. He went to the spot at around 11.30 a.m. - 12.00 noon and found the lower portion of the human body and near that there was a plastic bag and police conducted inquest panchnama as per Ex.P-8 and the signature is marked as Ex.P-8(a). Thereafter, the police lifted - 29 - CRL.A No.1450 of 2017 the remaining portion from the molasses tank and took the accused along with them. The accused showed the police where she killed the deceased and the police have drawn the mahazar as per Ex.P-9 and recovered an axe, one plastic chair, a cycle and the rope tied to cycle from the spot and they are identified as MOs.2 and 3. In the cross - examination, he has denied that the wife of the deceased Ningaraju had enmity against the accused - Sharada, but volunteers that Sharada had enmity against Nagarathna-wife of the deceased as Nagarathnas husband - deceased Ningaraju used to go to the house of the accused - Sharada and PW.5 stated before the police that he came to know the same through Nagarathna - wife of the deceased and the marriage between Nagarathna and Ningaraju took place one year eight months prior to the incident. PW.2- Veerabhadra is his brother. Both in the examination-in-chief and in the cross-examination, he has not whispered anything about the illicit relationship between the accused and the deceased. (vi) PW.6 - Puttaraju who deposed that he knows the deceased Ningaraju and the accused - Sharada and her son Sagar. Ningaraju used to go to the house of the accused when her husband was alive and he continued to go to her house even after his - 30 - CRL.A No.1450 of 2017 death. He further stated that there was illicit relationship between the accused and the deceased and the deceased got married, but he does not know the name of the wife of the deceased Ningaraju. Even after his marriage, deceased Ningaraju used to go to the house of the accused and the relationship between the accused and the wife of the deceased Ningaraju was cordial. The accused used to abuse Ningarajus wife saying that she will make her widow and killed Ningaraju. He further stated that when he was passing Mahadeshwara Temple, near the land of Veerabhadrappe, he found two

legs tied in a plastic bag and the photographs of the same are marked as Ex.P-2 to P-4 and he assumed that it was the legs of Ningaraju. The deceased Ningaraju was not living with their parents and they used to ask this witness whether he has seen Ningaraju and he replied that he did not see him. According to the police, they have prepared sketch as per Ex.P-2. He further deposed that after receiving call on the mobile of Ningaraju, the legs were found and the accused, who is present before the Court called on the mobile of deceased Ningaraju and the call was received by PW.4 - Mahadevi and she gave the mobile to this witness. PW.6 spoke to the person who made call and recognised that it was the voice of the accused and she falsely informed that - 31 - CRL.A No.1450 of 2017 Ningaraju had borrowed loan where he was working in the quarry of her husband in Ramanagar. According to the police, they brought the accused to the police station and later released her from the police station. Thereafter, on suspicion, again brought the accused and her son to the police station and this witness deposed that the accused called him to accompany her to the police station. Accordingly, he went to the police station along with one Balachandra, Chetan and Ramesh. Accordingly, police took the accused- Sharada to the police station. The accused informed the police that except the head, she had cut the hands, and upper portion of the body into pieces and tied in a urea bag along with knife and threw it in the molasses tank of a distillery factory in Srirangapattana Taluk, Gendehosa Halli. The police enquired the accused as to how did she bring the body of the deceased Ningaraju and she replied that she had kept the cut body in her house and she brought it to the spot on the cycle of Sagar keeping in between the clothes which she would bring it for washing and she carried the head of Ningaraju in a black cover which had handle. The police lifted the body of Ningaraju. When a specific question was asked to this witness, whether he knows about the illicit relationship between the deceased and the accused, he replied that - 32 - CRL.A No.1450 of 2017 personally he does not know, but he has heard about this from the villagers since 5 to 6 years. He deposed that he has seen Ningaraju going to the house of the accused, but he was not aware for what reason he was going to her house. He deposed that he never asked Ningaraju and the accused as to why the deceased Ningaraju visits the house of the accused. He denied that there used to be frequent quarrel between the deceased and Veerabhadra in respect of land.

Thereby, though in the examination-in-chief he has deposed that there was illicit relationship between the accused and the deceased, but in the cross- examination he deposed that he has no personal knowledge about their relationship. But he has given statement based on the others statement. (vii) PW.7 - Nagarathna is none other than the wife of the deceased Ningaraju deposed that on 10/06/2011 she got married to the deceased Ningaraju and were residing in Aravattige Koppalu Village along with her husband. She knows the accused - Sharada and she is having two children one male and female. The witness stated that accused and the deceased were living like husband and wife. Till this witness became pregnant, the relationship between her husband and herself was cordial and thereafter there used to be frequent quarrel between herself and the deceased - 33 - CRL.A No.1450 of 2017 Ningaraju. After she conceived, her husband stopped going to the house of the accused - Sharada frequently. The accused used to abuse PW.7 and used to burn her clothes and called her father and intimated that his daughter (Nagarathna) has committed suicide. Then her mother came along with the persons who arranged their marriage and a panchayat was held and the panchayatdars instructed her husband Ningaraju not to go to the house of Sharada - accused. Thereby, the accused developed enmity against this witness. In the evening at 7.30 p.m., on 13/03/2013, her husband went to attend a wedding and did not return. At that time, she was in her husbands house at Aravattige Koppalu. She waited for three days and thereafter, she called her father on mobile and her father came and took her to their native place and her brother went in search of her husband, but he could not find him. At that time, her brother-in-law was called over phone and after three days, her brother-in-law informed her that near Mahadeva Temple a leg was found. Thereafter, the accused called her cousin sister - Mahadevi and informed her that Ningaraju had gone on work to some other place and Mahadevi recorded that call. She deposed that the son of the accused informed the villagers that his mother - Sharada had put the legs of her husband near - 34 - CRL.A No.1450 of 2017 Mahadeva Temple and the remaining portion of the body of Ningaraaju was thrown in the molasses tank and she came to know about this from her brother-in-law. After 2 to 3 days of missing her husband, PW.7 went to her maternal house and came back after 15 to 20 days to her matrimonial house. She further admitted in the cross- examination that one

month after her marriage, PW.2-Veerabhadra went to Bengaluru along with family and they never came back to the village. PW.7 who is the wife of the deceased has averred about the illicit relationship between the accused and the deceased and the very quarrel between the accused and the deceased and she deposed that listening to her brother-in-law she has not given any false witness before the police. (viii) PW.8 - Gangadhara deposed that he is from the same village where the accused and deceased reside and that he does not know about the relationship between them and he has not met the parents of Nagarathna - wife of the deceased and he turned hostile. (ix) PW.9 - Puttegowda deposed that the accused is his neighbour and he knows her son Sagar and the deceased Ningaraju as well as his wife Nagarathna. He does not know about the relationship between the accused and the deceased. He deposed that - 35 - CRL.A No.1450 of 2017 Ningaraju used to talk to Sharada on the street and he does not know the reason for the death of Ningaraju and he had not seen the dead body or the objects shown in the photographs Exs.P-4 to P- 6 and that he has not given any statement to the police. He deposed that since police asked him to sign the document, he signed it. Thereby, he turned hostile. (x) PW.10 - Suresh who is also a villager of Aravattige Koppalu deposed that he knows the accused and his wife Nagarathna and after the murder of Ningaraju, he came to know that the deceased used to visit the house of the accused-Sharada and there used to be quarrel between the accused - Sharaada and Nagarathna - wife of the deceased. The school children intimated that near Kodagalli, the lower portion of the dead body of a person was in a plastic bag and school children saw it and he went to the spot and saw it. This witness identified the portion of the dead body in the photographs at Exs.P-4 to P-6 and deposed that he did not know the accused - Sharada and he did not know as to who informed the police about the murder of Ningaraju. This witness identified the photographs at Exs.P-14 to P-20 taken at the time of recovery of the upper portion of the dead body from the molasses tank and did not know who murdered Ningaraju. The witness again deposed that the - 36 - CRL.A No.1450 of 2017 accused - Sharada informed the police about the throwing of dead body in molasses tank. He identified MOs.5, 7 and 13. In the cross-examination, he admitted that his house and the house of the accused are in different streets and deposed that he did not know or seen personally the quarrel

between Nagarathna - wife of the deceased Ningaraju and the accused - Sharada and he came to know about the same from others. The witness volunteers that he is a distant relative of Ningaraju. He further deposed that when he reached the spot, lower portion of the dead body (legs) were found outside the plastic bag. He further admitted that the stray dogs might have brought the legs outside the plastic bag, which was his suspicion and not personal knowledge. About 50 to 60 people had gathered at the spot and the police have taken signature of PW.10 and he deposed that he saw the photographs at Exs.P-4 to P-6 and P-14 to P-20 for the first time in the Court and he saw the lower portion of the dead body and upper portion of the dead body on the same day. He deposed that he saw the accused near the molasses tank at the time of recovery of upper portion of the dead body. The witness volunteered that since the police told that they will recover the dead body, he went near the molasses tank. He - 37 - CRL.A No.1450 of 2017 deposed that he is seeing MOs.5, 7 and 13 for the first time in the Court. (xi) PW.11 - Dollegowda deposed that the deceased Ningaraju is his son-in-law and Nagarathna is his daughter and they got married five years back and he does not know the accused who is present before the Court. The witness deposed that prior to Ningaraju's death, he got a phone call from a lady and she told that her name is Sharada and his daughter has hung herself, so they immediately went to the house of Ningaraju, wherein he saw his daughter Nagarathna was safe and when they told her about the phone call, she told that it is false information. When they spoke to the elders, the accused-Sharada told him that she has become a widow and she will make his daughter also widow and she also told that she will get tied mangal suthra from Ningaraju. The village elders advised Ningaraju and the accused Sharada and went back and after a week, Nagarathna - daughter of this witness called him and told that her husband Ningaraju did not return from work and after three days the lower part of the dead body consisting of legs was found near Mahadeshwara Temple. When he went and saw, he found that it was the lower part of the body of his son-in-law. He identified the photographs of the same at Exs.P-4 to P-6 and after the arrest of Sharada and her son, they - 38 - CRL.A No.1450 of 2017 showed the upper part of the body of Ningaraju in the Molasses Tank near Hosahally factory and he was present at that time, wherein the police recovered abdominal portion of the dead body and head, which was separated.

The photographs Exs.P-14 to P-20 were shown to the witness and he identified the object seen at Ex.P-15 as the head and abdominal portion of the dead body was found on that day. He admitted in the cross-examination that he has not given any statement to the police stating that he only heard people talking about the finding of lower portion of a dead body and he did not go there. He further deposed in the examination-in-chief that he got a phone call from a lady stating that his daughter has hung herself and that he has not given any statement before the police to that effect. In the entire examination-in- chief and in cross-examination, PW.1 has not whispered anything about the illicit relationship between the accused and the deceased. (xii) PW.12 - Eeraiah, the father of the deceased deposed that he had two sons namely, Veerabhadra and Ningaraju and Ningarajus wife Nagarathna is his daughter- in-law. They got married about two years prior to the death of his son Ningaraju. He deposed that he knows the accused Sharada, who is present before the Court and she lives in the same street of his house and - 39 - CRL.A No.1450 of 2017 Ningaraju used to talk to her and since he used to drive tractor, he would be away from the house for days together and on that day, he did not return home for about 2 to 3 days and on suspicion, this witness gave a complaint. There was no contact between his daughter-in-law and the accused. He deposed that just few days before Ningaraju was murdered, the accused quarreled with his daughter-in-law - Nagarathna and at that time, they conducted panchayat. He deposed that he does not know as to why the accused quarreled with her daughter-in-law. Later, the school children found the legs of the dead body near the Temple. They went to the spot and saw the same, the police also came to the spot and drew the mahazar. He deposed that Ningaraju was dead and he was murdered by the accused - Sharada by cutting his body into pieces. The head and upper portion of the dead body were tied in a sack and thrown into a molassess tank of a factory. The police have not taken any statement from him and the police have also not enquired with him. The police came to the house of the accused-Sharada and drawn the mahazar and they did not speak to this witness. This witness deposed that the police have not taken him or his wife to the hospital nor did he sign mahazar and even his wife did not sign the said mahazar, but both of them affixed LTM. He - 40 - CRL.A No.1450 of 2017 deposed that he saw the photographs of the head and upper portion of the

body found in molasses tank at Ex.P-15 and the photographs of lower portion of the body found near the Temple, which was already marked at Exs.P-4 to P-6 and to that extent he turned hostile. He further stated in the cross-examination that PW.2 - Veerabhadra is the elder son and was living in Bengaluru and later shifted to Mysuru. This witness denied that after they came back, there used to be quarrel between Veerabhadra and Ningaraju. He deposed that he had 20 guntas of land and he denied that Veerabhadra used to quarrel with PW.12 demanding to give him 20 guntas of land. In his cross-examination, he further deposed that Ningaraju used to visit Srirangapatna frequently in connection with a murder case registered against him and on the day Ningaraju disappeared, he had been to Srirangapatna in a murder case in which he was a witness. He stated that he has not given any statement before the police. It is admitted by him that he is seeing the photographs for the first time in the Court and he denied that he saw the parts of the dead body. PW.2 who is the father of the deceased has not whispered anything about the illicit relationship between the accused and the deceased nor was there any quarrel between Nagarathna and the accused.-. 41 - CRL.A No.1450 of 2017 (xiii) PW.13 - Madamma, mother of the deceased deposed that she had two children namely, Ninga and Veerabhadra and Nagarathna is her daughter- in-law wife of Ningaraju and he got married to Nagarathna two and a half years prior to his murder. The witness deposed that she knows the accused Sharada. Ningaraju used to help accused - Sharada in getting things for her and that the accused used to abuse her daughter-in-law - Nagarathna and she did not know as to why she used to do that and once she made call telling that her daughter-in-law has hung herself and only Nagarathnas mother came to see. The accused - Sharada murdered her son Ningaraju by cutting his body into pieces and three days after the legs of the dead body were found, the head was found in molasses tank. This witness was not taken to any Court and again deposed that she was taken to T.Narasipura Court where her blood sample and LTM were collected. In the cross-examination, she has deposed that her daughter-in-law had ill-will towards the accused because the accused used to come and quarrel with her and the accused had telephoned to her daughter-in-law Nagarathna. The witness deposed that she had not seen accused murdering Ningaraju and her son Veerabhadra told her that the accused - Sharada murdered her son Ningaraju and they were all staying together. On - 42 -

CRL.A No.1450 of 2017 the day Ningaraju went missing, he had gone to Srirangapatna and came back and took bath and denied that Ningaraju did not return from Srirangapatna. She denied that she is falsely deposing that the accused murdered her son Ningaraju. In the entire examination-in-chief and cross-examination, she has not whispered anything about the illicit relationship between the accused and the deceased. (xiv) P.W.14-S. Ramaswamy, Bevinahally village, who is mahazar witness deposed that Circle Inspector of T. Narasipura Taluk had never called him and in his presence, no articles were seized. When he went to Bannur Police Station in 2013 in order to lodge a complaint, the police kept two boxes in front of him and said that said boxes are being sent to FSL and asked him to sign the mahazar at Ex.P.24. Accordingly, he signed the document and same is marked as Ex.P.24(a). In the cross-examination, he has stated that when he saw the boxes, it was not packed. (xv) P.W.15-Boregowda, Agriculturist, Kodgally Village deposed that he knows deceased Ningaraju and the accused, who is present before the Court and said that her name is Sharada, resident of Aravattege Koppalu Village. He knows the deceased as the deceased frequently used to visit Aravattege - 43 - CRL.A No.1450 of 2017 Koppalu Village. About two years back, the villagers of Aravattege Koppalu Village were speaking that the accused had illicit relationship with the deceased Ningaraju and also speaking that the deceased Ningaraju had gone missing. He used to visit Sri. Male Madeshwara Temple in between Kodagally and Aravattege Koppalu Village and deposed that when he was going to temple, there was a pathway leading to High School and he has seen the lower portion of the human dead body inside a sack. By that time, due to smell emanating from sack, one Mariswamy had lodged a complaint. He further deposed that he has seen the photographs of the lower body as per Exs.P.4 to 6. He further deposed that Circle Inspector came to the spot and prepared the mahazar at about 3.00 p.m. to 4.00 p.m. as per Ex.P.25 and he has signed the mahazar as per Ex.P.25 (a). He also deposed that he knows son of the accused. He further deposed that before the said lower portion of the dead body was found, he had gone to temple in the evening and at that time, the accused and Sagar, who is son of the accused was carrying a sack on a bicycle and going towards Gandehoshalli, which road leads to Sugar Factory. He identified the sack in which the lower portion of the dead body was found as well as the bicycle,

which were marked as M.O.13 and M.O.12 respectively.-. 44 - CRL.A No.1450 of 2017 In the cross-examination, he deposed that the police recorded the statement at the time of spot mahazar and the police enquired him with regard to the dead body, firstly he said he does not know. But later, on suspicion, he told that it may be dead body of Ningaraju. He further deposed that on 18.03.2013 the police had taken the accused into custody on the date of the lower portion of the dead body was found. He has not given any statement that the police had brought the accused to the said spot in their custody. He further stated that first when he saw the sack containing lower portion of the dead body, the lower portion of the decayed body was inside the sack and he could not make out what was inside the sack except that foul smell was emanating. It was found the legs of the dead body along with the waist inside the said sack. He further stated that the distance between the place where he saw accused and Sagar transporting the sack and the Male Mahadeshwara temple is 2 to 3 furlong. In the said road leading to Gandehosahalli, there are fields and in the said road, the Sugar Factory is also there. It is false to suggest that he was deposing falsely that in the said road there are only fields and no houses and shops. It is true to suggest that the said school leaves the children at 5.00 p.m. It is true to suggest that there is Government School near the - 45 - CRL.A No.1450 of 2017 temple and when the school leaves, the school children travel in said Gandehosahalli road in cycles. He stated that he was an agriculturist by profession. It is false to suggest that the distance between his house and field is 1 km. Apart from agriculture, he was also doing social service. It is true to suggest that he has given evidence as witness in number of cases. In the entire examination in chief and in the cross-examination, he has not whispered anything about the real question whether the accused was seen or with regard to taking the sack contacting the lower portion of the dead body. (xvi) P.W.16-Prashanth .K, retired Head Master deposed that he knows Sagar .B. He was a student in his school. He received requisition from Circle Inspector seeking documents relating to date of birth of said Sagar and documents relating to distribution of bicycle to him and accordingly, he furnished the particulars to the police. The said certificate issued by him relating to date of birth of said Sagar was marked as Ex.P.26 and stated that as per the said certificate, the date of birth of Sagar is 18.05.1999. He further deposed that M.O.12-cycle was

shown to him and witness says, he cannot identify M.O.12 since all bicycles look alike. As the bicycle given to Sagar was given under the Government Scheme, each bicycle has a - 46 - CRL.A No.1450 of 2017 number engraved on its frame and the same number will be stated in the Register. In Ex.P.27, he has stated the bicycle number of Sagar, which was given to him. (xvii) P.W.17-Balachandra, Agriculturist, Aravattege Koppalu Village, T. Narasipur deposed that about 3 years back, Bannur Police telephoned to him and told that lower portion of a dead body has been found near Sri Mahadeshwara Temple in Aravattege Koppalu Village and asked him to come near the said Temple. He went to the said place and police shown him a lower portion of the dead body and the photographs shown to him were marked as Exs.P.4 to P.6. He further deposed that police drawn mahazar as per Ex.P.25 in his presence and two others, namely, Boregowda and Divakar of Kodagahalli and police took signature of P.W.17 as per Ex.P.25(b). After one week, Bannur Police again telephoned him and told that the remaining upper portion of the dead body was found near Gandehosahalli Distillery Factory and accused has been apprehended and asked him to come to the spot. When he went to the spot, the accused- Sharada was also present along with the police. At this stage, he identifies the accused, who is present before the Court as Sharada. He identified knife, plastic cover and urea bag as per Exs.P.14 to P.20. He identified M.O.4, M.O.13, M.O.15 to M.O.17 and - 47 - CRL.A No.1450 of 2017 witness to Exs.P.16 and 18 photographs. In the entire evidence of P.W.17, he has not whispered about illicit relationship of the accused and the deceased and the quarrel between the accused and the wife of the deceased. But only witnesses for both the molasses pit and lower portion of the dead body. He also admitted in the cross-examination that he deposed in another criminal case of Bannur Police station. Thereby, he is a stock witness in all the cases and he has not whispered about the involvement of the accused in the homicidal death of the accused. (xviii)P.W.18-Chenna, resident of Bannur deposed that about 4 years back, the police had called him to remove the dead body from molasses pit. Himself and one Rajendra went and remove the dead body, which was in a plastic bag. He deposed that he had given statement before the police. He identified the photographs at Exs.P.14, 17 and 20 as that of molasses tank in which the dead body was found. He identified M.O.15 to M.O.17 as the plastic bags in which the

dead body was found in molasses tank and identified M.O.4-Knife, which was found in the plastic bag and ultimately turned hostile and not supported the case of the prosecution and also he has not stated anything about the illicit relationship between the accused and the deceased nor quarrel between the accused and the wife of the deceased.-. 48 - CRL.A No.1450 of 2017 (xix) P.W.19-Rajendra, also deposed on par with P.W.18 and he also not stated anything about the illicit relationship between the accused and the deceased and thereby, not supported the case of the prosecution. (xx) P.W.20-Dr. Nayaz Pasha, Medical Officer, K.R. Hospital, Mysuru deposed that from 2009 to 2014, he was working as Medical Officer in Bannur Government Hospital. On 25.03.2013 at 2.30 p.m., he received a call from Bannur Police requesting him to conduct post mortem on a dead body and at 3.00 p.m. on the same day, Bannur police came to the Hospital and gave official intimation in that regard. After completing formalities, at about 4.00 p.m., he reached the spot, which was a septic tank near Aravattige Koppalu near molasses factory. The dead body was inside the tank in the filth, when he reached the spot. Thereafter, the body was removed from the tank in separate pieces i.e., head and chest were removed separately from the tank. Only upper half of dead body was found and it was completely decomposed. He took some bones and some tissues attached to the bones and sealed the same for sending it for FSL analysis. He deposed that he has issued post mortem report as per Ex.P.29. Human body can be cut into pieces by the knife at M.O.4, which shown to him. When he saw the body, it was completely decomposed. The - 49 - CRL.A No.1450 of 2017 minimum time for such complete decomposition is one week. On that basis, he says the dead body which he saw must have died about more than 7 days before I saw it. In the cross-examination, he has stated that it is true to suggest that it was not possible to identify, whose dead body it was as it was completely decomposed. (xxi) P.W.21-Moogegowda, Aravattige Koppalu village deposed that he knows the accused and her son Sagar. He does not know about the illicit relationship between the accused and the deceased. He deposed that there was a quarrel between Ningarajus mother and accused and in that regard, he was asked to act as a panchayathedar to resolve the dispute and also stated about the quarrel between deceaseds wife and accused. At that time, the accused called him to resolve the dispute. He deposed that he advised the deceased not to continue

going to house of the accused and at that time Ningaraju-deceased swore on his house-hold god that he would refrain from going there henceforth. He deposed that he has not given statement to police and nothing has been seized in his presence by police and panchanama was not prepared in his presence. He deposed that he has not seen the dead body of Ningaraju. He has signed the Ex.P.7-seizure mahzar of mobile phone. In the cross-examination, he admitted - 50 - CRL.A No.1450 of 2017 that it is true that on 10.06.2013 the Bannur Police had called him to police station to act as a panch witness. He does not know if it is suggested to him that in police station Veerabhadra, the brother of the deceased ningaraju produced the mobile phone as the mobile phone of Ningaraju. He further submitted in the cross-examination that it is true to suggest that he has not personally seen the quarrel between the accused and Ningarajus wife. There are no documents to show the panhayath in which he acted as panchayathdar. He is not personally aware that there was illicit relationship between the accused and the deceased and thereby, the evidence of P.W.21 no way helps to the prosecution and partly turned hostile. (xxii) P.W.22-Ningaraju, Aravattige Koppalu village deposed that he knows the accused and her son Sagar since they are residents of same village. He deposed that nothing was seized in his presence by police and panchanama was not prepared in his presence. The police have not called him for anything and he has not affixed signature to any document before the police and he also not disclosed anything about the illicit relationship of the accused and the deceased. Thereby, he turned hostile to the case of the prosecution.-. 51 - CRL.A No.1450 of 2017 (xxiii)P.W.23-Ashwini .P, WPC, KR Nagar police Station deposed that from January 2013 to June 2013, she was working as WPC in Bannur Police station. On 25.03.2013, she accompanied PSI Santhosh Kashyap at about 8.30 a.m. to Arikere bus stand and arrested the accused, who is present before the Court and produced her before CPI at about 9.30. a.m. In the cross-examination, it is stated that it is false to suggest that the accused was arrested from her house at mid night of previous night. She turned hostile to the case of the prosecution. (xxiv) PW.24/K.S. Sunderraj deposed that he was working as Circle Inspector of Police at T. Narasipura Circle from November-2021 to October- 2013. On 18.3.2013, he took over the investigation of the case from PW.27 and after perusing the investigation done till then, he

continued the investigation. On the same day, he went to the spot where the lower portion of dead body was found i.e., in Aravattegekoppalu village, Mahadeshwara temple, field of Veerabhadra gowda near some shrubs and he conducted inquest mahazar from 3.00 pm to 4.30 pm in presence of PW.17/Balachandra, PW.15/Boregowda and CW- 24/K M Divakar. At the time of inquest proceedings, he seized the bag in which the said lower portion of body was packed. It was a plastic bag of yellow - 52 - CRL.A No.1450 of 2017 colour and he also seized a plastic thread of red colour of length 2 feet which was used to tie the bag. At that time, he also recorded the statements of PW-2/ Veerabhadra, the brother of deceased and CW-3 Vinay. He further deposed that on 19.03.2013, he continued the investigation and obtained information from CW-45 that complaint given by PW-2, brother of deceased on 18/03/2013 with regard to missing of deceased from 13/03/2013 was registered FIR in Cr.No.65/2013 and forwarded to Superintendent of Police, Mysuru. He also deposed that on 20.3.2013, he made requisition to the Nodal Officer/CW-46 for CDR analysis report relating to the two phone numbers viz., (a) 9008162950 being used by the deceased; and (b)7259940133, 9008771529 - the suspected phone numbers. On 22/03/2013, he received the CDR analysis report pertaining to above telephone numbers along with certificate under Section 65B of Evidence Act. On perusal of the said CDR analysis report, it was found that there was continuous phone calls between the telephone number 7259940133 pertaining to accused-Sharada and the telephone number 9008771529 pertaining to the deceased. It was found that these 2 numbers were being used in mobile phone of same EMEI number 358283047493090, pertaining to the phone of accused Sharada. On perusal of the CDR reports, it - 53 - CRL.A No.1450 of 2017 was found that there was continuous phone calls between the phone number pertaining to deceased in 9008162950 and the phone number pertaining to accused in 7259940133. On 25/03/2013, CW-45 and CW-42 arrested the accused in Arikere bus stand at 8.30 am and produced her before him in Bannur police station at 9.15 am. On same day, he subjected the accused to custodial interrogation and recorded her voluntary statement. He further deposed that since the accused disclosed in her voluntary statement that her son is involved in the offence, her son being a juvenile in conflict with the law was arrested at 10.30 am from his house and

produced before him at 11 am and later produced before juvenile board. He further deposed in the further examination that since in the voluntary statement the accused-Sharada had stated that she had fully washed away the blood stains in the place in the cattle shed where she had cut the dead body into 3 pieces, he requisitioned RFSL, Mysuru through E-mail to visit the said spot and see whether they can find any clues and co-operate with investigation and sent the said E-mail on 25/03/2013. On the same day, he received the report from PSI regarding arrest of accused No.1 and her son-Sagar. Then, he instructed the PSI to secure panch witnesses and accordingly CW-5 Chethen, CW-6-Ramesh and CW-7 Puttaraju - 54 - CRL.A No.1450 of 2017 reported to police station. Then in the presence of panch witnesses the accused-Sharada stated whatever she had earlier stated in her voluntary statement. He further deposed that he saw the knife which was already marked as MO.4. In the other plastic bag, it was found to contain a human head in a highly decomposed state. Since the said human body parts were highly decomposed and also smeared with molasses, he dried the said parts in the sun and then packed them and sealed in a cover with the English letter S, in the presence of panch witnesses. He further stated that the accused shown the place where she threw the lower portion of dead body and she took him and the panch witnesses to place near Mahadeshwara swamy temple in Aravattegekoppalu. There, he prepared the mahazar as per Ex.P10. He supported the case of the prosecution. In the cross-examination, he deposed that it is false to suggest that the Veerabhadra at whose land the lower portion of dead body was found is the brother of deceased. Witness volunteered the brother of deceased is Veerabhadra whereas the lower portion of the dead body was found in the land of Veerabhadregowda. He has not cited said Veerabhadregowda as a witness in the charge sheet. He further admitted in the cross-examination that the mud samples taken by RFSL, were not sent for the purpose of DNA test.-. 55 - CRL.A No.1450 of 2017 The RFSL did not test the said mud samples when they took it from the spot but they only packed it and sent it back to him and it was only when he sent back the samples to RFSL, that they analyzed it. The mobile phone of deceased was produced by his brother, saying that it is the mobile phone of deceased. In the cross-examination, he also admitted that while furnishing copies of voluntary statement to accused, the photocopies have to be furnished. He also stated that

he has also affixed his signature to the voluntary statement of the accused. It is true to suggest that in the copies of voluntary statement furnished to the accused, neither his signature nor signature of the accused is there. He supported the case of the prosecution. (xxv) PW.25/C. Veerabhadrapa has deposed that he has been working as ASI of Bannur Police Station from 9.4.2011 to 15.3.2015. On 18.3.2013 at 6.30 p.m. the complainant lodged a complaint in writing that his brother - Ningaraju is missing. Accordingly, he registered the missing complaint in Crime No.65/2013 and sent the same to the Superintendent of Police, Mysure as per Ex.P3 and Ex.P36 is the FIR. He supported the case of the prosecution. (xxvi) PW.26/Geethalakshmi has deposed that from 2012 till February 2014, she has been working as Nodal - 56 - CRL.A No.1450 of 2017 Officer, Technical Cell, SP Office, Mysuru. On 20.3.2013, the Police Inspector of Bannur Police Station sent a letter to her requesting for CDR (Call Details Report) in respect of three mobile numbers i.e., 7259940133, 9008771529 and 9008162950 for the period from 1.3.2013 to 20.3.2013 for the purpose of investigation in Crime No.64/2013. On 21.3.2013 he furnished the said information relating to only two phone numbers and the Bannur Police received the said information. He identified Ex.P37 and Ex.P38/CDRs relating to phone numbers 7259940133 and 9008771529. He has also furnished the documents disclosing the name and address of the person in favour of whom two of the said phone numbers were taken as per Ex.P47. She also admitted in the cross-examination that she has not been given any special training to act as Nodal Officer. It is true that she has analyzed the three mobile numbers furnished to her and on that basis she has furnished the information to Bannur Police Station. She admitted that she does not know whether there is option in their software to edit the information furnished to them from the telephone company. She has not received the customer application form relating to the phone numbers. She denied that although there is an option in their software to edit the information, she is deposing falsely that she does not know. It is false to - 57 - CRL.A No.1450 of 2017 suggest that she has edited the information and furnished false documents. She supported the case of the prosecution. (xxvii) PW.27/Santhosh Kashyap has deposed that he was the PSI of Bannur Police Station from 8.9.2012 to 10.11.2014. On 18.3.2013 at 2 p.m., the complainant/Mariswamy voluntarily came to the Police Station and gave written

complaint and on that basis, the FIR was registered in Crime No.64/2013 for the offences punishable under Sections 302 and 201 of IPC as per Ex.P1. He further deposed that he visited the spot of incident, which was near Mahadeshwara temple of Aravattige Koppalu village and there near the temple at some shrubs of a field, he saw a plastic bag tied with plastic rope containing the lower portion of a human male dead body. He called the dog squad to the spot of the incident. On 25.3.2013 at 8.30 a.m., on suspicion, he arrested the lady by name Sharada near Arakere bus stop. On the same day at 10.30 a.m, he apprehended the son of the accused who is a juvenile in conflict with law at his house and produced before the CPI at 11.00 a.m. He supported the case of the prosecution.

27. On careful perusal of the oral and documentary evidence on record, it clearly depicts that none of the villagers - 58 - CRL.A No.1450 of 2017 i.e., PWs.8,9,10,11, 14, 17, 21 and 22 have deposed about the illicit relationship between the accused and the deceased. PW.12 (father of the deceased) and PW.13 (mother of the deceased) have also not whispered about any illicit relationship between the accused and the deceased Ningaraju. PW.12 (father of the deceased) has stated in his evidence that the deceased Ningaraju used to drove the tractor and he would be away from the house for days together. However, when the deceased did not return to the house for 2-3 days, on suspicion he enquired with his another son/PW.2-Veerabhadra and accordingly, PW.2 gave the police complaint. He further deposed that there used to be no contact between his daughter-in-law and the accused. He came to know that his son was murdered by the accused. He also stated that the deceased Ningaraju used to visit frequently Sriranga Patna in connection with murder case registered against him. He turned hostile to the case of the prosecution. PW.13 (mother of the deceased) deposed that she knows the accused - Sharada and further, the deceased Ningaraju used to help the accused in getting household things to her. The accused/Sharada used to come and abuse her daughter-in-law, but she did not - 59 - CRL.A No.1450 of 2017 know why she used to do that. She has stated in her evidence that she came to know from PW.2/Veerabhadra that the accused/Sharada murdered the deceased, but she has not seen the accused murdering the deceased Ningaraju. She also stated that the deceased had come back from Sriranga Patna and taken bath on the date of missing. On meticulous

reading of the statements made by the villagers so also PWs.2,12 and 13 (brother, father and mother of the deceased respectively), they are inconsistent and there is absolutely no material produced by the prosecution beyond reasonable doubt to prove the illicit relationship between the accused and the deceased.

28. In Ex.P1/complaint given by Mariswamy, villager, he only stated that he has seen the lower portion of the dead body near Mahadeshwara temple and some miscreant might have thrown the same near the temple. Ex.P3/complaint given by PW.2 also does not depict the name of the accused. PW.2 stated in his evidence that on 13.3.2013 at about 8.30 p.m. the deceased left the house. Only after finding the lower portion of the dead body, on suspicion, he lodged the complaint on 18.3.2013 and he has not gone along with the accused on that day. He admitted in the cross-examination that on 13.3.2013, - 60 - CRL.A No.1450 of 2017 he was in the Bangalore. In fact, in the chief-examination, PW.2 has stated that he is resident of Bangaluru and his native place is Aravattige village. He admitted in the cross- examination that Mo.1/mobile belongs to the deceased and there is no document in proof of the same. Except lodging missing complaint, he has not stated anything before the Police. He also admitted that there is a criminal case against the deceased relating to Doddarahalli village and the case is pending in Srirangapatna Court. He further stated that when the plastic bag was removed from the molasses tank, it was completely decomposed and there was no flesh and only bones were there. Mahadevamma/PW.4, relative of the deceased deposed that on the instructions given by PW.7 (wife of the deceased Ningaraju), she has received the call that has come to the mobile phone of the deceased and she heard some female voice, who after discussing with her, disconnected the phone saying that her name is Jyothi. PW5 deposed that the deceased Ningaraju used to go to the house of the accused and in the cross-examination he has stated that he has seen the deceased Ningaraju going to the house of the accused/Sharada and the marriage between Nagarathna (PW.7) and the - 61 - CRL.A No.1450 of 2017 deceased Ningaraju was performed about 1 year 8 months back. PW.6/Puttaraju, villager of Aravattage Koppalu deposed that Nagarathna (wife of the deceased) and the accused/Sharada were in cordial terms and he is not aware of any illicit relationship between the accused and the deceased. PW.7/Nagarathna, wife of the deceased deposed that she was not in

cordial terms with the deceased after she became pregnant. On 13.3.2013 her husband left the house at 7.30 p.m. to attend some marriage. At that time, she was in her husband's house at Aravattige Koppalu and she waited for arrival of her husband for three days and he never come back. Since her husband did not come, she called her father and went along with her father to her parental home and came back to Aravattige Koppalu only after 15-20 days. Even after she got the information from the Police that the dead body belong to her husband, she did not come back immediately. This clearly depicts the unnatural behaviour of PW.7. She further stated that one month after her marriage with the deceased, PW.2 (brother of the deceased) along with his family shifted to Bangalore and they are residing at Bangalore and they never come back to village. PW.7 being the wife of the deceased, - 62 - CRL.A No.1450 of 2017 has never stated before the Police about the alleged illicit relationship between the accused and the deceased. The material on record clearly depicts that there is absolutely no material to prove the illicit relationship between the accused and the deceased and none of the villagers/independent witnesses have spoken to about the illicit relationship. Therefore the prosecution has not proved beyond reasonable doubt the illicit relationship between the accused and the deceased.

29. It is also interesting to note that even after lower portion of the body was recovered in the field of Veerabhadregowda, he has not been examined by the prosecution. Only on suspicion, PW.2 lodged a missing complaint/Ex.P3 on 18.3.2013 at 6.30 p.m. Admittedly, the complaint/Ex.P1 lodged by the villager/Marismwamy (PW.1) at 2 p.m. on 18.3.2013 against the unknown person. Thus, in both the complaints/Ex.P1 & Ex.P3, there is no whisper about the involvement of the accused in the homicidal death of the deceased. PWs.2,12 and 13 in the categorical terms deposed that the deceased was an accused in a murder case which was pending in Sriranga Patna Court and accordingly, the deceased - 63 - CRL.A No.1450 of 2017 used to go to Sriranga Patna Court and on the day of missing of the deceased, he had been to Sriranga Patna Court. Further, the molasses tank where upper portion of the dead body of the deceased was found, is also in Sriranga Patna. Inspite of the same, the Investigating Officer has not investigated as to whether there is any possibility of the deceased having been murdered by somebody else. The investigation done by the prosecution is

not in the proper perspective.

30. As already stated supra, though the deceased was missing from 13.3.2013 as per the evidence of PW.2 (brother of the deceased) and PW.7 (wife of the deceased), very strangely they waited for 5 days to lodge the complaint, thereby they had sufficient time to deliberate and discuss and only after finding the lower portion of the dead body in the field of Veerabhadregowda, then, on suspicion PW.2 lodged the missing complaint/Ex.P3 against the unknown person, but not against the accused. On the suspicion, the Police arrested the accused and thereafter recovered the upper portion of the dead body from the molasses tank as per Ex.P8 and PWs.5 and 6 are the witnesses. Another important aspect is it is the case of the prosecution as per Ex.P39/voluntary statement of the accused - 64 - CRL.A No.1450 of 2017 that on the intervening night between 13/14-03.2013 at about 2.00 a.m. the accused hit the deceased on his head with MO.2- axe handle. If it is true, there must be a fracture on the skull of the deceased, thereby it is relevant to consider the evidence of the doctor/PW.20. PW.20 deposed that the upper portion of the body was removed from the molasses tank and it was completely decomposed. In the cross-examination, he admitted that it is not possible to identify whose dead body it was as it was completely decomposed. Ex.P29/post mortem report depicts that in respect of the skull and vertebrae, it is intact but separated at the level of C-1 vertebra from the body. If the case of the prosecution that the accused has hit the deceased with MO.2/axe handle, when he was in the alcoholic state of mind is believed, there should have been some fracture on the skull. The post-mortem report/Ex.P29 also depicts that the cause of death cannot be given since the dead body was completely decomposed and decapitated. Even in the post- mortem report/Ex.P30, the doctor opined that the cause of death cannot be found out. As per the post-mortem report and the evidence of the doctor, there is no fracture on the skull. That is one of the circumstance to come to the - 65 - CRL.A No.1450 of 2017 conclusion that the accused has been falsely implicated in the case.

31. The learned Sessions Judge proceeded to convict the accused mainly only on the basis of three circumstances viz., i) Illicit relationship between the accused and the deceased; ii) Discovery of the upper portion of the dead body at the molasses

tank on the basis of the voluntary statement; iii) Recovery of the axe handle from the house of the accused. As already stated supra, the illicit relationship is not proved. It is stated that the upper portion of the dead body was recovered on the basis of the voluntary statement of the accused, that too after recovery of the lower portion of the dead body in the field of Veerabhadregowda and on the complaint lodged on suspicion, as admitted by brother of the deceased. Though it is stated that upper portion of the dead body was recovered on the basis of the voluntary statement of the accused, it cannot be called as recovery as lower portion already recovered from the field of Veerabhadregowda.-. 66 - CRL.A No.1450 of 2017 However, the said Veerabhadregowda has not been examined. In the circumstances, there is remote possibility of throwing one portion i.e., upper portion of the dead body to the molasses tank and lower portion in the open field of Veerabhadregowda, thereby the very case of the prosecution implicating the accused is doubtful.

32. It is interesting to note that though it is the case of the prosecution that on the intervening night between 13/14- 03.2013 at 2.00 a.m. the deceased was killed with MO.2/axe handle, on 14.3.2013 morning, the son of the accused even after seeing the dead body, as usual went to the school and came back in the evening. It is also the case of the prosecution that on 14.3.2013 at about 3.30 p.m., the accused removed the clothes from the dead body and cut the dead body at the waist into two parts i.e., upper body and lower body. Thereafter, she again cut the dead body at the neck and separated the head from the body. She packed the lower portion of the dead body into a fertilizer bag, which was in the house and packed the upper portion of the body upto neck and the head in separate plastic bags. She put the knife used to cut the body into the plastic cover along with the upper portion of - 67 - CRL.A No.1450 of 2017 the body and washed away the blood stains. Later, when her son came back from the school, together they kept the upper portion of the body and head which had been packed in plastic bags on his cycle and took them to molasses tank of Distillery in Gendehosahalli village and dumped them in to molasses tank. Afterwards, at 8.30 p.m., they took the clothes of the deceased and also the lower portion of the body and dumped it at open space between Mahadeshwara temple and the school building in their village i.e., Aravatige Koppalu village. It is difficult to believe a mother of two children

killing the deceased at 2 o' clock in the night and even after seeing the dead body, a 14 years son going to the school as usual in the morning and coming back in the evening and by that time, the mother cutting the dead body into three pieces and with the help of her son shifting two portions on a bicycle and throwing them into the molasses tank at 5.30 p.m. and again at 8.30 p.m. taking and dumping lower portion of the dead body at open space between Mahadeshwara temple and the school building in the village. By careful perusal of the material on record, in particular the photos at Ex.P14 to Ex.P20, it clearly depicts that the accused was aged 37 years and was very lean and it is - 68 - CRL.A No.1450 of 2017 unlikely that the said lady, who is a mother of two children, cut the deceased into three pieces in a heinous manner and with the help of her son, aged about 14 years shifted the upper portion of the body in a bicycle and thrown it in a molasses tank and dumped the lower portion of the body in a open space, without disclosing to anybody. On re-appreciation of the entire oral and documentary evidence on record and on considering the totality of the facts and circumstances of the case, we are of the view that the prosecution has not proved its case and it is difficult to believe the case of the prosecution.

33. By careful perusal of the entire material on record, what is the motive for murder is not stated by any of the witnesses and not proved by the prosecution beyond reasonable doubt. It is true there was small rift between the accused and PW.7/Nagarathna (wife of the deceased). If at all she has any grievance or vengeance, she could have attacked PW.7/Nagarathna and not the deceased. Absolutely, there is no motive for murder of the deceased by the accused. The accused is the mother of two children and the houses of the accused and the deceased are adjacent in the village. None of the villagers whispered that the illicit relationship is the motive - 69 - CRL.A No.1450 of 2017 for murder of the deceased. PW.7 has stated in her evidence that she was in cordial terms with the deceased till she became pregnant. On 13.3.2013 her husband left the house at 7.30 p.m. to attend some marriage. At that time, she was in her husband's house at Aravattige Koppalu and she waited for arrival of her husband for three days and he never come back. Since her husband did not come, she called her father and went along with her father to her parental home and came back to Aravattige Koppalu only after 15-20 days. The villager/PW.1 - Mariswamy lodged the

complaint on 18.3.2013 at 2 o' clock after 5 days and thereafter when the lower portion of the body was recovered, PW.2 who was all along in Bangalore, came back to village on the call made by PW.12 and he lodged the missing complaint/Ex.P3 on 18.3.2013 at 6.30 p.m. In both the complaints, there is no whisper about the involvement or any suspicion against the accused.

34. Admittedly, the prosecution has not explained the inordinate delay of more than 5 days in filing the missing complaint. Only on suspicion, the Police arrested the accused at Arikere bus stop on 25.3.2013 at 8.30 a.m. and the son of the accused in the house at 10.30 a.m. If really the accused - 70 - CRL.A No.1450 of 2017 (mother) and her son, aged about 14 years involved in the brutal murder, there is remote possibility of mother somewhere at Arikere bus stop and the son in the house. It is difficult to believe the son of the accused, aged 14 years being alone in the house, that too after the incident and after seeing the dead body. That is one of the circumstance. PW.2 was all along residing at Bangalore. He came to the village only when PW.12 (father of the deceased) called and told him that his brother - Ningaraju missing from the last three days and lodged the complaint as per Ex.P3 after 5 days of missing of the deceased. This is the second circumstance. The other circumstance is that PWs.2, 12 and 13 (brother, father and mother of the deceased) deposed in categorical terms that on 13.3.2013 the deceased Ningaraju went to the Sriranga Patna Court to attend murder case where he was made as an accused. The Investigating officer has not investigated on these aspects in the proper perspective.

35. In so far as the delay in filing the complaint, absolutely there is no explanation for the inordinate delay of 5 days in lodging the complaint. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of - 71 - CRL.A No.1450 of 2017 evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the part played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of

spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story, as has been done in the present case. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this - 72 - CRL.A No.1450 of 2017 behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr PC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante- timed to give it the colour of a promptly lodged FIR. Thereby, the proceedings initiated at the belated stage is also fatal to the case of the prosecution. There is a delay of 5 days in lodging the complaint from the date of missing of the deceased. After PW.12 (father of the deceased) called PW.2 (brother of the deceased), who was at Bangalore, he came back to village, but he has not lodged the complaint immediately. Only after finding the lower portion of the dead body in the field of Veerabhadregowda, PW.2 lodged the missing complaint on 18.3.2013 as per Ex.P3 against the unknown person, but not - 73 - CRL.A No.1450 of 2017 against the accused. The conduct of the complainant and his behaviour is unnatural.

36. It is also well settled that no one can be convicted on the basis of mere suspicion, however strong it may be, in the absence of proper proof. Our view is fortified by the Judgment of the Hon'ble Supreme Court in the case of Chandrakant Ganpat Sovitkar v. State of Maharashtra, reported in (1975) 3 SCC16 wherein it is held at paragraph- 16 as under:

16. It may be mentioned that the High Court accepted the appreciation of the trial Judge that - not only the evidence of Vithal Suryawanshi (PW4, Panchappa Madole (PW10, Daji Mane (PW12 and Maruti Salunke (PW13 should not be relied, but the evidence of Abdul Gani (PW3 and Shamsingh (PW6 also should not be relied on against Accused 3. It appears from the answers elicited in the cross-examination of Abdul Gani that he had falsely stated that Accused 3 wanted to implicate only one person out of four detected on September 3, 1963, though - 74 - CRL.A No.1450 of 2017 in fact Accused 3 is proved to have hauled up four persons who were found in the truck, which was carrying liquor bottles. In fact, there seems to be some substance in the suggestion that he was responsible for implicating only two out of the four persons who were actually caught red-handed. As far as Shamsingh (PW6 is concerned, several circumstances have been brought on the record, which show his possible animus against Accused 3 We may also point out that the High Court, after giving its anxious consideration to the submissions of the learned Advocates, agreed that the prosecution evidence is apparently discrepant on several points. It said: There is also no doubt that the probative value of the draft of the news item (Exhibit

5) prepared by PW10 Panchappa Madole, the writings in the patrol book (Exhibit

27) by Shamsingh and the diary claimed to have been maintained by Daji Mane (Exhibit

61) is not free from suspicion. Similarly, the latter part of the entry claimed to have been made by PW11 Shantaram Joshi, in his diary, the extract of which is at Exhibit 57 also fails - 75 - CRL.A No.1450 of 2017 to inspire any confidence. It is also true that evidence of the witnesses Police Constable Vithal (PW4, Head Constable Daji Mane (PW12, Tahsildar's Peon Maruti Salunke PW13 bristles with several embellishments and artificialities to which reference in detail will be shortly made. It is also true that part of the evidence of Panchappa Madole (PW10, Shantaram Joshi (PW11 and Head Constable Shamsingh (PW5 or Head Constable Abdul Gani (PW3 is incapable of carrying conviction. Again, after examining the evidence of Abrar, PW16 the High Court observed that In view of the fact that the witness was prosecuted at the instance of the three accused, the

grievance of the three accused that the witness had strong motive to implicate them falsely cannot be said to be empty. These passages would show that the High Court could not but admit that there were vital infirmities in the prosecution evidence. It, however, seems to accept the evidence of Bahadur Khan (PW1 Chowkidar of the Dak-Bungalow who it says does not appear to have any animus against A-3, but does not say why the reasoning given by the Special Judge for discrediting his evidence cannot - 76 - CRL.A No.1450 of 2017 be accepted. As we have seen earlier, the Special Judge said that Bahadur Khan admitted that he did not even serve the food in the night, nor did he receive any money for it. While characterising his evidence as not clear, he accepted only the statement that A-3 had left with the Poona bound car within half an hour and again came 2/3 hours thereafter i.e. at 10.30 a.m. At one stage this witness tried to say that A-3 took part in checking the station wagon carrying the opium along with A- 1, but does not say he was present throughout. When A-1 and A-2 were trying to open the top of the vehicle he says he went home. If so, he could not have spoken about A-3 being present when large sums of currency notes were discovered in K. Amar Singh's bag. The evidence of the Tahsildar's peon Salunke PW13 was also held to be irreconcilable. Agreeing with the trial court the High Court did not accept his testimony. It also did not feel it safe to rely on Madole PW10 the newspaper vendor, and the evidence of Manik Patil Panch and the Panchanama Ext. 33 was stated by the High Court to suffer from several infirmities. In spite of rejecting a large number of witnesses, the High Court merely accepted the evidence of some of the prosecution witnesses on the ground that the trial Judge had condemned the evidence wholesale without reference to any of their testimony, - 77 - CRL.A No.1450 of 2017 secondly that he relied on the very evidence he rejected for convicting A-3 to convict A-1 and A-2. The learned Judges of the High Court summed up their conclusions thus: To our mind, this wholesale, out-right, and indiscriminate condemnation of all witnesses without reference to any particular portion of the evidence of such witnesses, is not justified by the facts and circumstances of this case, though we have ourselves noted that some of the witnesses like Vithal Suryawanshi (PW4, Daji Mane (PW12 and Maruti Salunke (PW13 are wholly unreliable and the evidence of witnesses like Abdul Gani (PW3, Ram Dande (PW5, Shamsingh (PW6, Panchappa Madole (PW10, and Shantaram

Joshi (PW11) requires to be approached with caution. That the above observation does not represent his true appraisal of the evidence of the witnesses is displayed by the fact that he himself has relied on their evidence to record the conviction against Accused Nos. 1 and 2. It appears to us that the High Court itself, as seen earlier, agreeing with the trial court, rejected eight out of the sixteen prosecution witnesses, and in cases where the High Court accepted the evidence it did not take into consideration the reasons given by the trial Judge for discarding that - 78 - CRL.A No.1450 of 2017 evidence. This is sufficient for us to reject the conclusions arrived at by the High Court insofar as A-3 is concerned. It is no doubt true that what transpired on September 5, 1963, creates a suspicion about the complicity of A-3, but his conduct from morning of September 6, after A-1 and A-2 had left with K. Amar Singh is wholly inconsistent with his having accepted or taken bribe. It is well-settled that no one can be convicted on the basis of mere suspicion, however strong it may be. It also cannot be disputed that when we take into account the conduct of an accused, his conduct must be looked at in its entirety. His case, and the case of A-1 and A-2, is not the same. It may be that he was tempted on September 5, 1963, regarding which there is no cogent and reliable evidence, but whatever it may be once A-1 and A-2 went away with the third person, A-3 began to pursue the investigation with vigour and efficiency. There is also no evidence of his having received any money, a charge on which he was convicted. On this conclusion it is not necessary to go into the question of the legality of the sanction. In the circumstances we allow the appeal, reverse the judgment of the High Court, set aside his conviction and the sentence passed on him. His bail bond will be cancelled.-. 79 - CRL.A No.1450 of 2017 37. At this juncture, it is relevant to state that PWs.2,12 and 13 in the categorical terms deposed that the deceased was an accused in a murder case which was pending in Sriranga Patna Court and accordingly, the deceased used to go to Sriranga Patna Court and on the day of missing of the deceased, he had been to Sriranga Patna Court. Further, the molasses tank where upper portion of the dead body of the deceased was found, is also in Sriranga Patna. In spite of the same, the Investigating Officer has not investigated as to whether there is any possibility of the deceased having been murdered by somebody else. The investigation done by the prosecution is not in the proper perspective. The lapses or irregularities in the

investigation could be ignored if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. But, in the present case the lapses of the Investigating Officer are very serious and it is difficult to make allowance for such gross lapses. Besides, the evidence of the prosecution witnesses does not inspire confidence.-. 80 - CRL.A No.1450 of 2017 Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder.

38. It is well settled that suspicion however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of Sunil Kundu v. State of Jharkhand reported in (2013) 4 SCC422 wherein it is held at paragraph-29 as under:

29. We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or - 81 - CRL.A No.1450 of 2017 irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious. PW5Jaldhari Yadav is a pancha to the seizure panchnama under which weapons and other articles were seized from the scene of offence and also to the inquest panchnama. Independent panchas have not been examined. The investigating officer has stated in his evidence that the seized articles were not sent to the court along with the charge-sheet. They were kept in the malkhana of the police station. He has admitted that the seized articles were

not sent to the forensic science laboratory. No explanation is offered by him about the missing sanha entries. His evidence on that aspect is evasive. Clothes of the deceased were not sent to the forensic science laboratory. The investigating officer admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides, the evidence of eyewitnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder. It is well settled that suspicion, however - 82 - CRL.A No.1450 of 2017 strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. In the circumstances, we quash and set aside the impugned judgment and order [Sunil Kundu v. State of Jharkhand, Criminal Appeal No.1762 of 2004, decided on 20-8-2007 (Jhar)]. . The appellant-accused are in jail. We direct that the appellants A-1 Sunil Kundu, A-2 Bablu Kundu, A-3 Nageshwar Prasad Sah and A-4 Hira Lal Yadav be released forthwith unless otherwise required in any other case.

39. On meticulous examination of the evidence of PWs.2,4,5,6,7,12 and 13 - relatives of the deceased and PWs.8,9,10, 11, 12, 14, 21 and 22 - the villagers of the accused and the deceased, it is clear that there are so many omissions and contradictions in their evidence, that the entire fabric of the prosecution case appears to be ridden with gaping holes. It is true that due to passage of time, witnesses do deviate from their police statements as their memory fades to some extent. Reasonable allowance can be made for such discrepancies. But when such discrepancies make the foundation of the prosecution case shaky, the court has to take strict note thereof. On going through the evidence of the - 83 - CRL.A No.1450 of 2017 prosecution witnesses, the discrepancies which are material in nature are noticed and the witnesses have discredited themselves. It is well settled that there is no embargo on the Appellate Court exercising the powers under the provisions of Section 374(2) of the Code of Criminal Procedure for reviewing the evidence upon which an order of conviction is based. However, the golden thread which runs through the web of 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. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

40. The learned Sessions Judge proceeded to convict the accused only on the basis of the voluntary statement and recovery and based on the assumptions and presumptions, which is impermissible. The learned Sessions Judge has given too much importance to the voluntary statement given by the accused. Merely based on the voluntary statement, the accused - 84 - CRL.A No.1450 of 2017 cannot be convicted and the voluntary statement can be used only for discovery. Our view is fortified by the judgment of the Hon'ble Supreme Court in the case of Subramanya v. State of Karnataka reported in 2022 0 Supreme (SC) 1046, wherein it is held at paragraphs 76,77 and 78 as under:

76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus: 27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to 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.

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.-. 85 - CRL.A No.1450 of 2017 78. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he

may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused while in custody makes such statement before the two independent witnesses (panch- witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission - 86 - CRL.A No.1450 of 2017 of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

41. Though the charge sheet filed against the accused under Sections 302 and 201 of IPC by the jurisdictional Police along with her son viz., Sagar, aged about 14 years, since he was juvenile, he was considered as child in conflict and produced before the Juvenile Justice Board. In order to prove the guilt of the juvenile, the prosecution has examined as many as seven witnesses - PWs.1 to 7 and got marked 14 documents - Ex.P1 to P14 before the Juvenile Justice Board, Mysuru in J.C. No.33/2014. PWs.1,4 and 5 in the said J.C.No.33/2014 are - 87 - CRL.A No.1450 of 2017 PWs.1,16 and 2 in the present case. Considering the oral and documentary evidence on record, the Juvenile Justice Board recorded a finding that the prosecution failed to prove beyond reasonable doubt that on 14.3.2013 at about 5.30 p.m. and also at 8.30 p.m. of the same day, the Juvenile in Conflict With Law (JCWL)/Sagar (son of the accused Sharada) assisted his mother in transporting the parts of the dead body of deceased Ningaraju who was

murdered by his mother/Sharada and caused disappearance of evidence and consequently the Board acquitted the JCWL/Sagar for the offence punishable under Section 201 of IPC. The said judgment dated 3.11.2017 passed by the Board acquitting the JCWL/Sagar for the offence punishable under Section 201 of IPC has reached finality and admittedly, the State has not filed any appeal. That is one of the circumstance. The prosecution also failed to prove beyond reasonable doubt shifting of the upper portion of the dead body by the accused and her son at 5.30 p.m. and lower portion at 8.30 p.m. That is another circumstance. The judgment passed by the Board on 3.11.2017 and the impugned judgment passed by the trial Court on 23.3.2017. The judgment of acquittal - 88 - CRL.A No.1450 of 2017 passed by the Board was not available to the trial court as on the date passing the impugned judgment. VI Conclusion 42. On re-appreciation of the entire oral and documentary evidence on record in the light of the principles enunciated in the judgments of the Hon'ble Supreme Court cited supra and for the reasons stated above, the point raised in the present criminal appeal is answered in the affirmative holding that the accused has made out a case to interfere with the impugned judgment of conviction and order of sentence passed by the trial Court, convicting and sentencing the appellant/accused for the offences punishable under the provisions of Sections 302 and 201 of IPC in the peculiar facts and circumstances of the case. Accordingly, the impugned judgment of conviction and order of sentence is liable to be set aside. VII Result 43. In view of the above, we pass the following:

ORDER

i) The Criminal Appeal filed by the appellant/accused - Sharada is hereby allowed.-. 89 - CRL.A No.1450 of 2017 ii) The impugned judgment of conviction and order of sentence dated 23/25-03-2017 made in S.C. No.211/2013 on the file of the III Addl. Sessions Judge, Mysuru, convicting the appellant/accused and sentencing her to undergo imprisonment for life for the offence punishable under Section 302 of IPC and to undergo Rigorous Imprisonment for a period of four years for the offence punishable under Section 201 of IPC with fine and default clauses, is hereby set aside. iii) The appellant/accused is acquitted for the offences punishable under the provisions of Sections 302 and 201 of IPC. iv) The

concerned Jail Authorities are hereby directed to release the appellant/accused forthwith, if she is not required in any other case. Sd/- JUDGE Sd/- JUDGE Paragraphs 1 to 3 ..S* 4 to 26(i).. kcm 26(ii) to (xiii).S* 26(xiv) to (xxiii)mbm 26 (xxiv) to end gss

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