

Sri Mohan Kumar Vs. State Of Karnataka

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Court : Karnataka

Decided On : Jun-13-2023

Judge : K.Somashekar and Rajesh Rai K

Appeal No. : CRL.A 1550/2017

Appellant : Sri Mohan Kumar

Respondent : State Of Karnataka

Judgement :

R - 1 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF JUNE, 2023 PRESENT THE HON'BLE MR JUSTICE K.SOMASHEKAR AND THE HON'BLE MR JUSTICE RAJESH RAI K CRIMINAL APPEAL No.1532 OF2018C/W CRIMINAL APPEAL No.1550 OF 2017 IN CRL.A.1532/2018: BETWEEN: MANJUNATHA S/O NAGARAJU AGED ABOUT31YEARS OCC: CAR DRIVER R/AT NO.24, 2ND CROSS KRISHNA LAYOUT DEVARACHIKKANAHALLI VILLAGE BANNERUGHATTA ROAD BENGALURU-560076. APPELLANT (BY SRI. G M SRINIVASAREDDY - ADVOCATE) AND: STATE OF KARNATAKA R/BY BANNERUGHATTA P.S THOURGH STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BENGALURU-560 001. RESPONDENT (BY SRI. VIJAYAKUMAR MAJAGE - ADDL. SPP) - 2 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 THIS CRL.A. FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER

DATED 28.08.2017 PASSED BY THE LEARNED III-ADDITIONAL DISTRICT AND SESSIONS JUDGE, BANGALORE RURAL DISTRICT, SIT AT ANEKAL IN S.C.NO.5021/2014 AND ACQUIT THE APPELLANT / ACCUSED FOR THE CHARGED OFFENCES. IN CRL.A.1550/2017: BETWEEN: SRI. MOHAN KUMAR AGED ABOUT 31 YEARS S/O LATE VENKATAPPA R/O KARIAPPANAHALLI VILLAGE JIGANI HOBLI, ANEKAL TALUK BANGALORE RURAL DISTRICT. APPELLANT (BY SRI. C V NAGESH - SR. COUNSEL FOR SRI. RAGHAVENRA K - ADVOCATE) AND: STATE OF KARNATAKA BY THE STATION HOUSE OFFICER BANNERGHATTA POLICE STATION ANEKAL TALUK BANGALORE RURAL DISTRICT. RESPONDENT (BY SRI. VIJAYAKUMAR MAJAGE - ADDL. SPP) THIS CRL.A. FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT
AND

ORDER

DATED 28.08.2017 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, BANGALORE RURAL DISTRICT, SIT AT ANEKAL IN S.C.NO.5021/2014 - HOLDING THE APPELLANT GUILTY OF THE OFFENCE P/U/S 114 120(B), 302 AND 201 OF IPC AND SENTENCE HIM TO UNDERGO LIFE IMPRISONMENT FOR A PERIOD OF SEVEN YEARS AND TO PAY A FINE OF RS.10,000/- AND IN DEFAULT OF PAYMENT OF FINE, TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF SIX MONTHS FOR EACH - 3 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 ONE OF THE OFFENCES WHICH ARE MADE PENAL UNDER SECTIONS 114 AND 120B OF IPC AND TO UNDERGO RIGOROUS IMPRISONMENT FOR A PERIOD OF TEN YEARS AND TO PAY A FINE OF RS.15,000/- AND IN DEFAULT OF PAYMENT OF FINE, TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF NINE MONTHS FOR THE OFFENCE PUNISHABLE UNDER SECTION 201 OF THE IPC AND TO UNDERGO IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS.20,000/-

AND IN DEFAULT OF PAYMENT OFF FINE, TO UNDERGO SIMPLE IMPRISONMENT FOR A PERIOD OF ONE YEAR FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC , WHILE

ORDER

ING THE SENTENCES OF IMPRISONMENT IMPOSED UPON THE APPELLANT CONCURRENTLY AND FURTHER BE PLEASED TO

ORDER

HIS ACQUITTAL IN RELATION TO THE CHARGES THAT ARE LEVELLED AGAINST HIM IN THE CASE. THESE CRIMINAL APPEALS, COMING ON FOR HEARING, THIS DAY, K. SOMASHEKAR .J., DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are directed against the judgment of conviction and order of sentence rendered by the Court of the III Addl. District & Sessions Judge, Bengaluru Rural District sitting at Anekal in S.C.No.5021/2014 dated 28.08.2017.

2. By the said judgment, the Trial Court had convicted the appellant in CrI.A.No.1532/2018 / Manjunatha, S/o. Nagaraju who is arraigned as Accused No.3 in S.C.No.5021/2014 for offences punishable under Sections 120B, 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC, for brevity); he was sentenced to - 4 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 undergo imprisonment for life and to pay a fine of Rs.20,000/- for the offence punishable under Section 302 IPC, along with default clause; further, he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.15,000/- for the offence punishable under Section 201 IPC along with default clause; and he was further sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.10,000/- for the offence punishable under Section 120B of the IPC along with default clause. All the sentences were ordered to run concurrently.

3. The Trial Court had convicted the appellant in CrI.A.No.1550/2017 / Mohan Kumar, S/o. late Venkatappa who is arraigned as Accused No.1 in S.C.No.5021/2014 for offences punishable under Sections 114, 120B, 302 and

201 of the IPC; he was sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- for the offence punishable under Section 302 IPC, along with default clause; further, he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.15,000/- for the offence punishable under Section 201 IPC along with default clause; further he was sentenced to undergo rigorous imprisonment for 7 years and to - 5 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 pay a fine of Rs.10,000/- for the offence punishable under Section 114 IPC along with default clause; and he was further sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.10,000/- for the offence punishable under Section 120B of the IPC along with default clause. All the sentences were ordered to run concurrently.

4. The appellant in Crl.A.No.1532/2018 / Accused No.3 and the appellant in Crl.A.No.1550/2017 / Accused No.1 have preferred these appeals seeking to set aside the common judgment of conviction rendered by the Trial Court and consequently to acquit them for the alleged offences and to set them at liberty. However, Accused No.2 / Harisha @ Kunta has not chosen to prefer an appeal challenging the said common order in S.C.No.5021/2014 dated 28.08.2017.

5. Since both these appeals arise out of a common judgment rendered by the Trial Court, they are taken up for hearing together and are disposed of by this common judgment.

6. Heard the learned Senior Counsel Shri C.V. Nagesh for Accused No.1 / appellant in Crl.A.No.1550/2017 and so also the - 6 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 learned counsel Shri G.M. Srinivasareddy for Accused No.3 / appellant in Crl.A.No.1532/2018 inclusive of the learned Addl. SPP for the State. Perused the impugned judgment of conviction and order of sentence rendered by the Trial Court in the aforesaid case in S.C.No.5021/2014.

7. Factual matrix of these appeals are as under: It transpires from the case of the prosecution that Smt. Rajamma being the mother of the deceased Ravishankar, had lodged a missing complaint in terms of a report as on 04.09.2013 about her son, an auto-rickshaw driver who was not to be heard of since 02.09.2013 after he had left home by driving his autorickshaw. After a lapse of 7 days, a written

complaint was lodged by her with the respondent / Bannerghatta P.S. The first accused is Mohan Kumar, who is none other than Rajamma's son and step-brother of deceased Ravishankar, who being a suspect, he was apprehended by the Investigating Agency. On interrogation, he had made a disclosure about the participation of Accused Nos.2 and 3 along with himself in killing the deceased. Hence, accused Nos.2 and 3 were arrested and were remanded for three days by the - 7 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 police for the purpose of investigation. Accused Nos.1 and 3 were investigated by the Investigating Agency and on their disclosure relating to the incident about Ravishankar, his dead body was recovered after digging the mud near a Eucalyptus plantation. The said recovery was held in the presence of the Taluk Executive Magistrate / Tahsildar of Anekal. Based upon the direction in terms of the order issued by the Sub-Divisional Magistrate in the rank of Assistant Commissioner, the Executive Magistrate had exhumed the dead body of Ravishankar and thereafter inquest was held over the dead body in the presence of panch witnesses. After exhuming the dead body of Ravishankar, the mother of the deceased namely Rajamma and the wife of the deceased namely Sudha, had identified his dead body. The dead body of Ravishankar was thereafter sent to the mortuary for conducting autopsy over the dead body. After investigation, the Investigating Officer laid the charge-sheet against the accused persons before the Committal Court relating to the offences punishable under Sections 302, 201, 120-B and 114 of the IPC. The Committal Court issued summons to the first accused, who appeared before Court and obtained regular bail.-. 8 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 8. On securing the accused in order to face trial relating to the aforesaid offences, heard the learned Public Prosecutor and so also the learned Defence counsel for the accused and on a perusal of the material secured by the I.O. and on finding prima facie material, charges were framed against the accused for the aforesaid offences. However, the accused had declined the charges levelled against him and pleaded not guilty and claimed to be tried. Subsequently, the case was let in for trial and accordingly, the prosecution subjected to examination in all 27 witnesses as PW-1 to PW-27 and got marked several documents at Exhibits P1 to P30 and so also got marked material objects namely MOs 1 and 2. After completion of the evidence on the part of the

prosecution and so also on the part of the defence, incriminating statements as hit under Section 313 Cr.P.C. were recorded, wherein the accused denied the evidence facilitated by the prosecution. Subsequent to recording incriminating statement under Section 313 Cr.P.C., the accused were called upon to adduce any defence evidence as contemplated under Section 233 Cr.P.C., but the accused did not come forward to adduce any oral evidence or subjected to examination any defence witness. During the course of cross- - 9 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 examination of certain witnesses, the contradictory statements have been got marked at Exhibits D1 to D5.

9. Subsequent to closure of the evidence of the prosecution and so also the defence counsel, the Trial Court heard the arguments advanced by the prosecution in order to prove the guilt against the accused persons and mainly the Trial Court had banked upon the evidence and also the contents of the panchanama at Exhibit P1 wherein the signature of PW-1 and signature of PW-2 inclusive of PW-25 were obtained. Seizure panchanama at Exhibit P2 was held in the presence of PWs 1, 2 and 3. Exhibit P3 is another panchanama which was held in the presence of PWs 4 and 5 and PW-25 and bears their signatures. Several panchanamas have been held by the Investigating Officer during the course of investigation. The Inquest report is at Exhibit P6 which was held in the presence of PW-8 and PW-26, who have subscribed their signatures. PWs 10, 11, 12, 13 and 14 have been subjected to examination on the part of the prosecution but they did not support the case of the prosecution to any extent in their statement. Consequently, the contradictory statements have been got marked at Exhibits P7 to P11. These are all the evidence which - 10 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 have been let in by the prosecution. But the Trial Court had banked upon the aforesaid evidence and arrived at a conclusion that the prosecution has proved the guilt against the accused. Exhibit P14 is the sketch report which has been prepared by the competent authority, which bears the signature of PW-16.

10. The post mortem report at Exhibit P17 was issued by PW-20 being a Doctor. PW-27 has also subscribed his signature. The FSL report at Exhibit P18 has been got marked on the part of the prosecution, which bears the signature of PW-20.

Accused No.2 has not preferred any appeal and there is no information as such relating to challenging the judgment of conviction rendered against the aforesaid accused, but he had given a confession statement which is marked as Exhibit P23. Similarly, Accused No.3 has also given confession statement which is got marked as Exhibit P24. Accused No.1 / Mohan Kumar who had also given confession statement is marked at Exhibit P26. These are the statements which have been recorded during the course of investigation, which is termed as disclosure statement. But Section 27 of the Indian Evidence Act, 1872 states that when any fact is deposed to as discovered in consequence of information received from the - 11 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 accused who is in the custody of the police, the said information whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved, which appreciation is vested with the Trial Court. Section 3 of the Indian Evidence Act relates to proved, dis-proved and not- proved relating to the facts which find place in the charge- sheeted material. These are the disclosure statement or confession statement given by Accused Nos.1, 2 and 3. But accused Nos.2 and 3 who are the co-accused, on the provocation of Accused No.1 / Mohan Kumar had committed the alleged incident, according to the material which have been secured by the I.O. during the course of investigation.

11. But, after a lapse of a period of 20 days, the dead body was exhumed and criminal prosecution was launched on receipt of a complaint as per Exhibit P1 which was made by PW-1 / Rajamma who is the mother of the deceased Ravishankar and similarly, she was also the mother of Accused No.1 / Mohan Kumar. It has come in evidence that the complainant Rajamma had first married one Venkatappa and through Venkatappa, she gave birth to Accused No.1 / Mohan Kumar. But subsequent to that, she left the company of - 12 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 Venkatappa and started to lead her life with one Motappa and through Motappa, gave birth to Ravishankar / deceased. Hence, both Accused No.1 / Mohan Kumar and deceased / Ravishankar were the sons of Rajamma and were related to each other as step-brothers. Rajamma had filed a complaint against Mohan Kumar suspecting him since there were disputes between step-brothers in respect of which property suit was filed by the plaintiff against the defendant before the Court of the Civil Judge (Jr.Dn), Anekal, which is

marked at Exhibit P28, and P29. The case in O.S.No.562/2007 was instituted by the plaintiff against the defendant for partition of the properties depicted therein. Hence, it is revealed that there was an ill-will and animosity which had developed by Mohan Kumar with his step-brother Ravishankar. The deceased Ravishankar by avocation was a driver and he was driving the auto-rickshaw on the fateful day. With the assistance of Accused Nos.2 and 3 and by hatching a criminal conspiracy among themselves, Accused Nos.1, 2 and 3 had taken the deceased Ravishankar to an isolated place, where they had strangled his neck with means of a nylon rope and committed his murder. But the rope was not detected and hence was not secured by the I.O.-. 13 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 during the course of investigation and the same was not got marked on the part of the prosecution. But MO-1 / Iron Hare and MO-2 / Guddali alleged to be used by the accused in the burial place from where the dead body of Ravishankar was exhumed after 28 days, were recovered. But PW-18 / M. Narayana S/o. Muniyappa is said to have accompanied Rajamma initially to lodge a complaint regarding missing of Ravishankar. PW-18 is said to be the brother of the complainant Rajamma. But PW-18 being a witness cited in the charge-sheeted material, was subjected to examination on the part of the prosecution relating to the concept of last seen theory in respect of Accused Nos.1, 2 and 3 having been with deceased Ravishankar. But this witness even though has been subjected to examination, he did not withstand his own statement. A cursory glance of the entire evidence inclusive of the cross-examination done by the defence counsel, reveals that his evidence is contradictory and inconsistent. Hence, his evidence does not repose any confidence as regards the last seen theory and does not support the case of the prosecution. Despite of the said fact, the Trial Court had come to the conclusion by referring to several decisions and has rendered a - 14 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 conviction for the offences stated supra which is reflected in the operative portion of the order.

12. PW-4 and PW-25 have been subjected to examination on the part of the prosecution relating to recovery of the dead body of Ravishankar and Exhibit P3 / panchanama and Exhibit P6 / Inquest report, were held in the presence of panch witnesses namely PW-4 and PW-25 who have been secured by the I.O. Merely because that mahazar has been conducted by the I.O., unless the contents in the

mahazar are established by the prosecution without any room for doubt, it cannot be accepted as a whole as gospel truth as regards the contents in Exhibit P3 and P6. These are the contentions made by the learned Senior Counsel Shri C.V. Nagesh for the appellant in Crl.A.No.1550/2017 relating to Accused No.1 / Mohan Kumar. However, the learned Senior counsel mainly concentrates on the evidence of PW-18 / M. Narayana, who is a relative of the complainant / Rajamma and also related to the deceased Ravishankar as well as Accused No.1 / Mohan Kumar. However, an examination of his evidence reveals that it is completely camouflaged and somersault on the part of the prosecution. This contention is made by the learned Senior - 15 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 counsel. On this count alone, the learned Senior counsel seeks for intervention of the judgment of conviction and order of sentence rendered by the Trial Court. If not intervened, certainly it would result in a miscarriage of justice.

13. Similar contention has been made by the learned counsel Shri G.M. Srinivasareddy in respect of Accused No.3 wherein this accused also had faced trial for offences punishable under Section 302 in respect of the murder of Ravishankar by strangulating his neck with means of a nylon rope. But the rope having not been recovered nor got marked on the part of the prosecution, whether that nylon rope was used by Accused Nos.2 and 3 with the help of Accused No.1, is itself doubtful. When doubt arises in the mind of the Court, naturally that benefit of doubt should be accrued on the part of the accused alone and not on the part of the theory set up by the prosecution. Several witnesses have been subjected to examination on the part of the prosecution to prove the guilt of the accused. But PW-10 to 14 who have been subjected to examination on the part of the prosecution, did not withstand their statements relating to the contents in the First Information Report given by the complainant. Based upon her - 16 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 complaint, criminal law was set into motion by recording the FIR under Section 154 of the Cr.P.C. and thereafter statement under Section 161 and 162 of the Cr.P.C. was recorded. But the aforesaid witnesses have declined the statements made before the I.O. during the course of investigation. That itself is contradictory to the contents in the panchanama at Exhibit P1 and Seizure panchanama at Exhibit P2 and one more panchanama at Exhibit P3 which have been held by the Investigating Agency

during the course of investigation. While exhuming the dead body also, mahazar was held in the presence of Taluk Executive Magistrate who is a responsible person. PW-6, PW-7 and PW-8 have been examined on the part of the prosecution and even the dead body has been exhumed and proceeded further but they did not support the case of the prosecution and there appears to be inconsistencies and contradictions in their statements. On this ground also, it requires intervention of the impugned judgment of conviction and order of sentence. If not, certainly it would result in a miscarriage of justice to the appellants / Accused Nos.1 to 3 respectively.-. 17 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 14. The dead body of Ravishankar was exhumed as per the instructions in terms of direction issued by the Assistant Commissioner, Bangalore Rural District and based upon his direction, the Taluk Executive Magistrate / Tahsildar of Anekal Taluk had conducted a mahazar over the dead body of the deceased Ravishankar but the entire body was decomposed and it was difficult to arrive at the conclusion by the Doctor relating to the cause of death. However, the PM report was issued by the Doctor who was subjected to examination as PW-20. Exhibit P-18 is the opinion report issued by the concerned Doctor who conducted autopsy over the dead body. Exhibit P18 indicates that white plastic stripe which was present inside the neck was corresponding to the ligature mark on the dead body of Ravishankar. However, the said plastic stripe is not produced as evidence.

15. It is contended that though only skeleton was found in the place where the dead body of Ravishankar was buried while exhuming his body, there is no information as regards any bone material collected from the skeleton and performing DNA analysis by the concerned FSL to identify whether the dead body belonged to Ravishankar who is the brother of - 18 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 Accused No.1 and son of the complainant Rajamma. These are all the contentions made by the learned Senior Counsel for the appellant / Accused No.1 and similar contention is made by the learned counsel for the appellant / Accused No.3. Hence, it is stated that the entire theory set up by the prosecution is found to be camouflaged and somersault. However, the learned counsel for the appellant in both appeals / Accused Nos.1 and 3 have specifically contended that the dead body was buried by Accused Nos.2 and 3 with the help of

Accused No.1 in a Eucalyptus grove. But certain portion of the bone was said to be protruding outside the land and was thus exposed. This contention was made by the learned counsel Shri G.M. Srinivasareddy and similar contention was also made by the learned Senior Counsel for the appellant. These are the evidence let in by the prosecution. Hence, the prosecution theory and evidence do not repose confidence that the accused had committed murder of the deceased Ravishankar by strangulating with the rope alleged to be used by accused persons. On all these grounds urged, learned counsel for appellants pray that the judgment of the Trial Court be set - 19 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 aside and the appellants / accused be acquitted of the alleged offences.

16. On the contrary, learned Addl. SPP for the State has taken us through the contents of the panchanama and taken us through the evidence of PW-18 / M. Narayana who is said to be the witness who was subjected to examination in respect of last seen theory on the part of the prosecution. It is further submitted that the dead body of Ravishankar had been exhumed in the presence of the Taluk Executive Magistrate / Tahsildar and in the presence of PW-4 and PW-25. Hence, the recovery of dead body of deceased cannot be denied by the accused persons.

17. Further, the learned Addl. SPP has taken us through the evidence of PW-8, PW-10 and PW-15 wherein the dead body of Ravishankar had been identified and several witnesses had been subjected to examination on the part of the prosecution to prove the guilt against the accused. However, merely because many witnesses were subjected to examination, the theory of the prosecution that the accused had alone committed the murder of the deceased Ravishankar - 20 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 by strangulating his neck by means of a nylon rope, cannot be accepted as gospel truth. As per the direction issued by the Sub-Divisional Magistrate in the rank of Assistant Commissioner, the Tahsildar / Taluk Executive Magistrate had conducted mahazar over the dead body on 26.09.2013 after the body was exhumed. There is a delay, which delay has not been explained by the prosecution to consider their evidence.

18. Though the prosecution has examined several witnesses and got marked several documents in support of its case, no worthwhile evidence has been let in to prove the guilt against the accused. On this count also, it requires to set aside the judgment of conviction and order of sentence rendered by the Trial Court.

19. Accused Nos.1 and 3 have preferred these appeals. Accused No.2 is also a co-accused along with Accused Nos.1 and 3 to have committed the said act complained of. However, Accused No.2 has not chosen to prefer any appeal against the judgment of conviction and sentence rendered by the Trial Court. Accused No.2 was also convicted for the very same offences and was sentenced to undergo imprisonment similarly - 21 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 as that of Accused No.3 and his role also is similar to that of the role of Accused No.3.

20. As regards the last seen theory, it requires corroboration. The accused person cannot be convicted solely on the evidence of last seen together with the deceased. Therefore, in the instant case, it is required to refer to the reliance in the case of Navaneethakrishnan vs. State by Inspector of Police (AIR 2018 SC2027). In the instant case, PW-18 / M. Narayana had been subjected to examination relating to last seen theory set up by the prosecution. He had stated that Accused Nos.2 and 3 who are the co-accused, had accompanied the deceased Ravishankar in the auto-rickshaw belonging to the deceased to the Eucalyptus grove where the dead body of Ravishankar was buried and later exhumed in the presence of panch witnesses. PW-18 who has been subjected to examination relating to the last seen theory, had also accompanied the complainant / Rajamma to the police station to register a missing complaint. But Rajamma has not whispered about the role of Accused No.1 / Mohan Kumar though being the author of the complaint lodged with the Jurisdictional Police. Deceased Ravishankar - 22 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 was the step-brother of Mohan Kumar. There was a civil dispute which emerged between the parties. PW-9 / Sudha who is the wife of the deceased Ravishankar has been subjected to examination. A cursory glance of the evidence of PW-9 runs contrary to the evidence of Rajamma who had been subjected to examination. Even though the last seen theory has been set up by the prosecution, there is no corroboration to

consider that the accused are deserving for conviction.

21. The material on record reveals that auto rickshaw KA- 02 / B6541 was used by Accused Nos.2 and 3 along with the deceased Ravishankar, to proceed to the place where the body of Ravishankar was buried after committing his murder. However, the said auto-rickshaw belonged to one Balaji but it was in the possession of Mohan Kumar. But there is no specific evidence that the said auto-rickshaw was used by Accused Nos.2 and 3 who had accompanied Ravishankar to the place of burial, that is Eucalyptus grove. These are the evidence let in on the part of the prosecution, but there is no specific evidence to prove the guilt against the accused. The dead body of Ravishankar was decomposed and the same has been noticed - 23 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 by the Doctor. The delay in exhuming the dead body is almost all 3 days and more importantly, the nylon rope alleged to be used by the accused to strangle his neck, has not been recovered. Though it is stated in the PM report that there was ligature mark around the neck but any material such as rope has not been recovered in order to convict Accused Nos.1 to 3. Even relating to offences under Section 114 IPC, or Section 120 B of the IPC relating to conspiracy, there is no specific evidence on the part of the prosecution to prove the guilt against the accused as regard to conspiratorial meetings having been conducted among the accused persons. Further, the ingredients of Section 302 IPC and more so, the motive and intention and preparation and in terms of mens rea and actus rea have not been properly established by the prosecution by producing cogent and corroborative evidence in order to convict the accused. But in the criminal justice delivery system, the domain is vested with the prosecution to prove the guilt of the accused beyond all reasonable doubt. There should not be any doubt crept in the mind of the Trial Court. Unless fortified evidence is facilitated by the prosecution, it cannot arise for the Trial Court to convict the Accused.-. 24 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 22. It is well-known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. This issue has been extensively addressed by the Honble Supreme Court in the case of Raja v. State (1997) 2 Crimes 175 (Del). Therefore, the domain is vested with the prosecution to prove the guilt of the accused by

facilitating worthwhile evidence, which should not give any room for doubt in the theory put forth by the prosecution for convicting the accused. It is the quality of evidence and not the quantity of evidence which is required to be judged by the court to place credence on the statements of witnesses and material evidence facilitated, in order to prove the guilt of the accused. But the plurality of witnesses in the matter of appreciation of evidence of witnesses is the domain vested with the Trial Court alone. It is not the number of witnesses but the quality of their evidence which is an important, as there is no requirement in law of evidence that any particular number of witnesses are to be examined to prove / disprove a fact. The evidence must be - 25 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 weighed and not counted. Further, the test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. Whereas the legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is the quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Indian Evidence Act, 1872. The same has been observed by the Honble Supreme Court in the case of Laxmibai (Dead) through LRs vs. Bhagwantbura (Dead) through LRs reported in AIR 2013 SC1204 23. In the peculiar facts and circumstances of the matter and in the totality of circumstances, it is relevant to refer to the judgment in the case of Lalit Kumar Sharma and Ors. Vs. Superintendent and Remembrancer (AIR 1989 SC2134, wherein it is held that the power of an Appellate Court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so.-. 26 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 24. It is further relevant to refer to the judgment of the Honble Apex Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra reported in (1984) 4 SCC116:: AIR 1984 SC1622 wherein it is held as under: Evidence-Circumstantial evidence - Onus on Prosecution to prove that chain is complete - Infirmary or lacuna in prosecution cannot be cured by false defence or plea The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.

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; and 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 - 27 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 accused and must show that in all human probability the act must have been done by the accused.

25. Further, it is relevant to refer to the judgment in the case of RAM NIWAS vs. STATE OF HARYANA (CRL.A.No.25 OF2012. In the said judgment, the Honble Supreme Court has extensively addressed the concept of extra-judicial confession made by accused to the witnesses at paragraph 15. The said paragraph 15 of the judgment reads thus:

15. The prosecution relies on the extra-judicial confession made by the accused/appellant Ram Niwas to these witnesses. This Court in the case of S. Arul Raja vs. State of Tamil Nadu ((2010) 8 SCC233, after considering the earlier judgments of this Court, has observed thus: 48. The concept of an extra-judicial confession is primarily a judicial creation, and must be used with restraint. Such a confession must be used only in limited circumstances, and should also be corroborated by way of abundant caution. This Court in Ram Singh vs. Sonia [(2007) 3 SCC1: (2007) 2 SCC (Cri) 1]. has held that an extra-judicial confession while in police custody cannot be allowed. Moreover, when there is a case hanging on an extrajudicial confession, corroborated only by circumstantial evidence, then the courts must treat the same with utmost caution. This principle has been affirmed by this Court in Ediga Anamma vs. State of A.P..- 28 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 [(1974) 4 SCC443:

1974. SCC (Cri) 479]. and State of Maharashtra vs. Kondiba Tukaram Shirke [(1976) 3 SCC775:

1976. SCC (Cri) 514]. . It is significant to observe that A1 has subsequently sought to retract this statement upon his arrival in Tamil Nadu. In this judgment of Ram Niwas, the Honble Supreme Court has also referred to the case of Sharad Birdhichand Sarda (supra), particularly to Paragraph 153 of the said judgment, which reads thus:

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (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 Sahabrao Bobade vs. State of Maharashtra [(1973) 2 SCC793:

1973. SCC (Cri) 1033 :

1973. CrI LJ1783 where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can - 29 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 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, and (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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. These are the evidence which are required to be referred by appreciating the evidence on the part of the prosecution. On a totality of the circumstances of the entire case, we find that the entire evidence on record is found to be camouflaged, - 30 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 creating doubt in the mind of the Court whether the accused deserve conviction.

26. Contrary to the contentions of the learned Senior Counsel for Accused No.1 and the learned counsel for Accused No.3, the learned Addl. SPP has taken us through the evidence of the prosecution and has supported the judgment of conviction and order of sentence rendered by the Trial Court. Though he has supported the said judgment, the evidence which finds place on record must be cogent, consistent and there must be sound and justifiable reason to convict the accused. If doubt arises in the mind of the Court and mitigating circumstances arise, it must be accrued in favour of the accused alone. In the instant case, the Trial Court has misdirected and misread the evidence on record and has convicted the accused persons. Hence, the judgment of the Trial Court calls for interference in these appeals. If the same is not interfered, it would result in a miscarriage of justice. Hence, we are of the opinion that the accused persons must be acquitted of the alleged offences.-. 31 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 27. In the meanwhile of dictation of this judgment, it is submitted by the learned Senior Counsel Shri C.V. Nagesh that Accused No.2 / Harisha @ Kunta, S/o. late Rajappa who had also faced trial along with Accused Nos.1 and 3, has also been convicted by the Trial Court by the very same order in S.C.No.5021/2014 dated 28.08.2017. Though Accused No.2 is in incarceration, he has not filed any appeal challenging the said judgment of conviction and sentence. In view of the fact that the co-accused namely Accused Nos.1 and 3 are to be acquitted in the appeals, he prays that the said benefit of acquittal be extended to Accused No.2 who is in incarceration as well. In support of his contention, learned Senior Counsel produces a judgment of the Honble Apex Court in the case of SAHADEVAN AND ANR. Vs. STATE OF T.N. (AIR 2012 SC2435, wherein the relevant paragraph 41 of the said judgment is extracted thus: 41. It is very difficult to set any universal principle which could be applied to all cases irrespective of the

facts, circumstances and the findings returned by the Court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where the Court - 32 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 finds that the prosecution evidence suffers from serious contradictions, is unreliable, is ex facie neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the Court will be well within its jurisdiction to return the finding of acquittal and even suo moto extend the benefit to a non-appealing accused as well, more so, where the Court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the Court to apply its discretion judiciously. There can be varied reasons for a non-appealing accused in not approaching the appellate Court. If, for compelling and inevitable reasons, like lack of finances, absence of any person to pursue his remedy and lack of proper assistance in the jail, an accused is unable to file appeal, then it would amount to denial of access to justice to such accused. The concept of fair trial would take within its ambit the right to be heard by the appellate Court. It is hardly possible to believe that an accused would, out of choice, give up his right to appeal, especially in a crime where a sentence of imprisonment for life is prescribed and awarded. Fairness in the administration of justice system and access to justice would be the relevant - 33 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 considerations for this Court to examine whether a non-appealing accused could or could not be extended the benefit of the judgment of acquittal. The access to justice is an essential feature of administration of justice. This is applicable with enhanced rigour to the criminal jurisprudence. Where the court disbelieves the entire incident of the occurrence or where the role of the accused who has not appealed is identical to that of the other appealing accused or where the ends of justice demand, the Court would not hesitate and, in fact, is duty bound, to dispense justice in accordance with law. The powers of this Court, in terms of Articles 136 and 142 on the one hand and the rights of an accused under Article 21 of the Constitution on the other, are wide enough to deliver complete justice to the parties. These powers are incapable of being curtailed by such technical aspects which would not help in attainment of justice in the opinion of the

Court. In light of the above principles, this Court is required to consider the effect of these judgments on the case of the non-appealing accused in the present case

28. On a perusal of the above judgment and having regard to Articles 21, 136 and 141 of the Constitution of India, we find justification in the contention of the learned Senior Counsel and we are of the opinion that the benefit of acquittal - 34 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 ought to be extended to Accused No.2 who has not preferred an appeal challenging the order of Trial Court, as well. Accordingly, we proceed to pass the following:

ORDER

Crl.A.No.1550/2017 preferred by the appellant / Accused No.1 and Crl.A.No.1532/2018 preferred by the appellant / Accused No.3 under Section 374(2) of Cr.P.C., are hereby allowed. Consequently, the judgment of conviction and order of sentence dated 28.08.2017 rendered by the III Addl. District & Sessions Judge, Bengaluru Rural District sitting at Anekal in S.C.No.5021/2014 is hereby set-aside. Consequent upon setting aside the conviction judgment, Accused No.1 / Mohan Kumar is hereby acquitted for offences punishable under Sections 302, 201, 120B, 114 of the IPC, 1860 and Accused No.3 / Manjunatha, is hereby acquitted for offences punishable under Sections 302, 201, 120B of the IPC, 1860. The accused No.3 / Manjunatha who is in incarceration, is ordered to be set at liberty forthwith, if he is not required in any other case.-. 35 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 Accused Nos.1 and 3 have preferred criminal appeals before the High Court of Karnataka challenging the judgment of conviction and order of sentence rendered by the Trial Court in S.C.No.5021/2014. However, Accused No.2 / Harisha @ Kunta, S/o. late Rajappa, has not filed any appeal challenging the said judgment of conviction and sentence. Though Accused No.2 has not preferred any appeal challenging the judgment in S.C.No.5021/2014, having regard to the judgment rendered by the Honble Supreme Court of India in the case of SAHADEVAN AND ANR. Vs. STATE OF T.N. (AIR 2012 SC2435, the benefit of acquittal rendered by this Court in the present appeals in favour of Accused Nos.1 and 3, shall also stand extended in favour of Accused No.2 / Harisha @ Kunta, S/o. late Rajappa, who has not preferred any appeal. The said accused is acquitted also keeping in view Article

136 and 141 of the Constitution of India inclusive of Article 21 of the Constitution of India relating to protection of life and liberty. Hence, Accused No.2 shall be set at liberty forthwith, if he is not required in any other case.-. 36 - CRL.A No.1532 of 2018 C/W CRL.A No.1550 of 2017 Registry of this Court is directed to forward a copy of the operative portion of the judgment to the concerned Superintendent of Jail Authority where Accused No.2 / Harisha @ Kunta, S/o. late Rajappa and Accused No.3 / Manjunatha, S/o. Nagaraju are housed, with a direction to set them at liberty forthwith, if they are not required in any other case. Ordered accordingly. Sd/- JUDGE Sd/- JUDGE KS

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