

**Mohammed Anwar Vs. State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1234711](https://sooperkanoon.com/1234711)

**Court :** Karnataka

**Decided On :** Jul-20-2023

**Judge :** K.Somashekar and Rajesh Rai K

**Appeal No. :** CRL.A 1319/2016

**Appellant :** Mohammed Anwar

**Respondent :** State Of Karnataka

**Judgement :**

R - 1 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 20<sup>TH</sup> DAY OF JULY, 2023 PRESENT THE HON'BLE MR JUSTICE K.SOMASHEKAR AND THE HON'BLE MR JUSTICE RAJESH RAI K CRIMINAL APPEAL No.1319 OF 2016 BETWEEN:

1. MOHAMMED ANWAR AGED ABOUT 30 YEARS S/O ABDUL KHADER RESIDING AT KANNURU BALLURU GUDDE HOUSE, KANNURU POST, MANGALURU TALUK AND DISTRICT PIN CODE-575 007.

2. MOHAMMED NOUFAL AGED 23 YEARS S/O ABDUL KAREEM R/AT KANNURU BALLURU GUDDE KANNURU POST AND VILLAGE MANGALURU TALUK PRESENTLY RESIDING AT: C/O HUSAINABBA VOLACHIL PADAVU HOUSE ADYAR VILLAGE AND POST MANGALURU TALUK PIN CODE-575

007.

3. MOHAMMED SALEEM AGED ABOUT 26 YEARS S/O ABDUL KAREEM R/AT KANNUR BALLURU GUDDE HOUSE KANNUR POST AND VILLAGE MANGALURU TALUK PIN CODE-575 007.-. 2 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 4. ABDUL BASHEER AGED 37 YEARS S/O ABDUL AZEEZ R/AT KANNUR BALLURU GUDDE HOUSE KANNUR POST AND VILLAGE MANGALURU TALUK PIN CODE-575 007.

5. ABDUL NOUSHAD AGED 32 YEARS S/O B.ABDULLA R/AT KANNUR BALLURU GUDDE HOUSE KANNUR POST AND VILLAGE MANGALURU TALUK PIN CODE-575 007. APPELLANTS (BY SRI. HASHMATH PASHA - SR. COUNSEL FOR SRI. KARIAPPA N A - ADVOCATE) AND: STATE OF KARNATAKA BY MANGALURU RURAL POLICE KANKANADY, MANGALURU PIN CODE-575005 (REPRESENTED BY LEARNED STATE PUBLIC PROSECUTOR) RESPONDENT (BY SRI.VIJAYAKUMAR MAJAGE, SPP-II) THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADVOCATE FOR THE APPELLANTS (ACCUSED NOS.1, 3, 4, 5 AND 6 PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE

JUDGMENT

AND

ORDER

OF CONVICTION AND SENTENCES DATED 23.07.2016 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.91/2013 - CONVICTING THE APPELLANT/ACCUSED NO.1 AND 3 TO 6 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 302 AND 201 R/W 34 OF IPC.-. 3 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 THIS CRIMINAL APPEAL, COMING ON FOR DICTATING

JUDGMENT

, THIS DAY, RAJESH RAI K .J., DELIVERED THE FOLLOWING:

## JUDGMENT

This appeal by the convicted accused is directed against the judgment of conviction and order of sentence dated 23.07.2016 passed in S.C.No.91/2013 by Principal District and Sessions Judge, Dakshina Kannada, Mangaluru, wherein the accused are convicted for the offence punishable under sections 302, 201 r/w 34 IPC and accused Nos.1 and 3 to 6 are sentenced to suffer life imprisonment for the offence punishable under section 302 IPC, so also, they are directed to undergo imprisonment for three years for the offences under section 201 r/w 34 IPC and pay a fine of Rs.10,000/- each, in default of payment of fine, they are further directed to undergo simple imprisonment for a period for 30 days each.

2. The factual matrix of the prosecution case is that one Siddappa, S/o Sangappa of Bhagavathi village, Bagalkot Taluk & District had married accused No.2 in this case one Renuka @ Kasthuri and about twelve years back, - 4 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 he had gone to Mangaluru and settled there itself along with his wife and a child and every now and then, he used to go to his village and also going back to Mangaluru. But, since three years prior to 22.08.2009, Siddappa i.e., deceased had not come to his village. Therefore, suspecting Siddappa's whereabouts, PW-1 Basappa who is younger brother of Siddappa, lodged a missing complaint before Mangaluru Rural Police station on 22.08.2009 as per Ex-P22, upon which, a man missing FIR in Cr.No.174/2009 was registered as per Ex-P23 and investigation was taken up by one Prakash K-Police Sub- Inspector of the said police station.

3. It is further case of the prosecution that on 22.08.2009, Sub-Inspector of Police deputed PW-22 a police constable by name Sunil Patel to trace out accused No.2 Renuka @ Kasturi. Accordingly, said police constable had been to Nargund of Gadag District and traced Renuka @ Kasturi and produced before the Sub-Inspector of Police-K. Prakash on 23.08.2009. On interrogation of - 5 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 accused No.2 Renuka, it had revealed that she had developed illicit intimacy with accused No.1 Mohammed Anwar and in order to maintain the same, she joined hands with accused No.1 and

with the assistance of accused Nos.3 to 6, conspired with each other and they caused the death of deceased Siddappa i.e., the husband of accused No.2 and buried his dead body in Balluru Gudde of Kannuru village, Mangaluru District. Therefore, upon this information given by accused No.2, a suo-moto report was prepared by K. Prakash i.e., Police Sub-Inspector as per Ex-P24 and FIR has been registered in Cr.No.176/2009 under sections 302 and 201 r/w 34 IPC against the accused persons. Thereafter, he investigated the matter and handed over investigation to PW-21 one B.R. Lingappa, who was Circle Inspector of Police of Mangaluru Rural Police Station. Subsequently, on 24.09.2011, PW-21 Circle Inspector of Police took up further investigation from Police Sub-Inspector Prakash and recorded voluntary statement of Renuka i.e., accused No.2 and thereafter she was produced before him and he - 6 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 deputed CW-48 for arrest of other accused persons and on 24.09.2009 at about 1.30 a.m., CW-48 Prakash produced accused Nos.1, 3 to 6 before PW-21 and they were interrogated and their voluntary statements are said to have been recorded at Ex-P26 to Ex-P30.

4. It is further case of the prosecution that on 23.08.2009, Sri. K Prakash Sub-Inspector of Police had submitted requisition to Sub-Divisional Magistrate for exhumation of the dead-body of Siddappa. Accordingly, exhumation proceedings was conducted by PW-11 Prabhulinga Kavalaktti, Sub-Divisional Magistrate in the presence of PW-10 Dr. Raghavendra Babu Y.P., Assistant Professor, Department of Forensic Medicine, K.M.C, Mangaluru and they all proceeded to Balluru Gudde of Kannur Village and the place shown by the accused was dug and there they found some bone pieces, hairs, clothes and other articles which are marked as M.O.1 to M.O.4 and bone pieces which are marked as M.O.5 to M.O.14 and same were seized under mahazar Ex-P2 and - 7 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 simultaneously inquest panchanama also was drawn in the said place as per Ex-P1 and the Doctor who was present at the time of exhumation proceedings also collected hairs and bone pieces and subjected the same to the Doctor's opinion and also for DNA test. Later, during the course of investigation, bones which were collected were sent to

PW-14 Dr. Geethalakshmi P-PW-14. On examination, she has submitted a report as per Ex-P14 stating that the cause of death could not be ascertained due to skeletalisation of the body and opined that death due to constriction of the neck with ligature cannot be ruled out. This opinion is given by the Doctor after procuring DNA report as per Ex-P17. Thereafter, on completion of formalities of investigation and recording statement of the material witnesses, PW-21 laid the charge sheet against the accused persons for the offences punishable under sections 302, 201 r/w 34 IPC i.e., against accused Nos.1 to 6 before the Committal Court.-. 8 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 5. Before the Committal Court, since accused No.2 did not appear, the case was split up against her and in respect of accused No.1 and accused Nos.3 to 6, the case was committed and the learned Sessions Judge framed the charges against the accused/appellants for the aforesaid offences and read over the same to the accused. However, the accused denied the charges and claimed to be tried.

6. In order to bring home the guilt of the accused, the prosecution in total examined 22 witnesses before the trial court as PW-1 to PW-22, so also got marked 31 documents as per Exs-P1 to Ex-P31 and 15 material objects as M.O.1 to M.O.15. After completion of evidence of the prosecution, the learned Sessions Judge read over incriminating portion of evidence to the material witnesses as contemplated under the provisions of section 313 Cr.P.C. However, the accused denied the same. The accused marked one document as per Ex-D1 and did not choose to examine any witness on their behalf.-. 9 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 7. After hearing learned counsel for the accused so also learned Public Prosecutor and on assessment of oral and documentary evidence placed by the prosecution, learned Sessions Judge convicted the accused/appellants for the offences under sections 302 and 201 r/w 34 IPC by judgment dated 23.07.2016. Said judgment is challenged under this appeal.

8. We have heard learned Senior Counsel Sri. Hashmath Pasha for Sri. Kariappa N.A. for the appellants, so also, Sri. Vijay Kumar Majage, learned SPP-II for

respondent-State.

9. Learned Senior Counsel for the appellants vehemently contended that the judgment under appeal suffers from perversity and illegality, since the learned Sessions Judge passed the impugned judgment by convicting the accused without appreciating the evidence in proper prospective and the learned Sessions Judge convicted the accused only on the basis on assumptions and presumptions, as such, the judgment under appeal is - 10 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 liable to be set-aside. He would further contend that the entire case rests on circumstantial evidence and that the prosecution totally failed to prove the homicidal death of the deceased. According to learned Senior Counsel, there is delay of three years in lodging the complaint by the brother of the deceased and the entire case is based on the voluntary statement of accused No.2 and the Investigating Officer arrested the accused/appellants only based on the voluntary statement of accused No.2 and subsequently investigated the matter.

10. Learned Senior Counsel would further contend that the learned Sessions Judge much relied on the recovery of the dead body at the instance of the accused i.e., based on their voluntary statement as per Ex-P26 to 30. However, said discovery cannot be based for conviction of the accused for the reason that based on the missing complaint lodged by PW-1 Basappa i.e., the brother of the deceased, one K. Prakash, Police Sub- Inspector registered the man missing complaint as per Ex- - 11 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 P22 and subsequently arrested accused No.2 i.e., wife of the deceased in this case, Renuka @ Kasturi. He recorded her voluntary statement on 23.02.2009 itself and on interrogation of said accused No.2, it had revealed that she had developed illicit intimacy with accused No.1 Mohammed Anwar and thereby with conspiracy to eliminate the deceased alongwith accused No.1 and accused Nos.3 to 6, they had committed the murder of the deceased and thereafter they buried the dead body near Balluru Gudde of Mangaluru District. Said report is very much forthcoming under Ex-P24. Said report prepared by the Police Sub-Inspector K. Prakash is produced before the

learned III JMFC Court, Mangaluru and as such on careful perusal of Ex-P24 report submitted by the Police Sub- Inspector, the burial of the dead body by the accused was well within the knowledge of the respondent police however, the police failed to act on the said Ex-P24 and to recover the dead-body of the deceased by way of exhumation proceedings. Per-contra, the police recovered the dead body on the next day i.e., on 24.08.2009 based - 12 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 on the voluntary statement of Accused Nos.1 and 3 to 6. Hence, according to learned Senior Counsel, burial of the dead body was already disclosed by accused No.2 to the police. Subsequently, after recording of the voluntary statement of the accused as per Ex-P26 to Ex-P30, recovery of the dead body by way of exhumation proceeding cannot be attached with any evidentiary value since the same amounts to re-discovery of the fact as against the provision of Section 27 of the Indian Evidence Act. Hence, learned Senior Counsel would submit that the prosecution has failed to prove the recovery of dead body at the instance of the accused. He would further contend that all the circumstances, i.e., motive for the alleged incident, last seen theory set up by the prosecution also are not proved in this case. In such circumstances, the prosecution miserably failed to prove the guilt of the accused for the charges levelled against them and inspite of that, learned Sessions Judge convicted the accused only based on presumption and assumptions, as such, learned Senior Counsel prays to allow the appeal.-. 13 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 11. Refuting the above submissions made by the learned Senior Counsel, learned SPP-II Sri. Vijay Kumar Majage for the respondent-State vehemently contended that the judgment under appeal does not suffer from perversity or illegality and same is based on the evidence available on record. Learned Sessions Judge after carefully perusing the evidence of the material witnesses, so also, circumstances relied on by the prosecution convicted the accused for the charges levelled against them. Learned SPP-II would contend that PW-1-brother of the deceased lodged missing complaint as per Ex-P22 on 22.08.2009 and thereafter, the respondent police immediately registered the FIR for man missing and subsequently arrested accused No.2 and based on her voluntary statement, respondent police also

arrested accused No.1, 3 to 6 and subsequently, sent requisition to Taluka Executive Magistrate for exhumation of the dead body and based on the voluntary statement of accused Nos.1, 3 to 6, dead body was recovered by way of exhumation proceedings. To that effect, PW-10 Dr. Raghavendra Baby - 14 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 Y.P and also Investigating Officer- Sri. Lingappa B.R.-PW21 categorically deposed before the Court. As such, there is no delay in either registering the FIR or conducting exhumation proceedings. Learned SPP-II would further contend that the prosecution clearly proved the homicidal death of the deceased by examining PW-10- Dr. Raghavendra Babu Y.P. and said witness was present at the time of exhumation of the dead body of deceased Siddappa at Balluru Gudde, Kannuru village and he clearly deposed that alongwith him, CW-18 Dr. Suresh Kumar Shetty, Assistant Commissioner, Investigating Officer and other police, panch witnesses and five accused persons had been to said place where the dead body was buried. In their presence, after digging the mud, they noticed skeletal remains of a person and 84 bones were found alongwith shirt, a leather belt, pant and nylon rope. They identified those articles as M.O.1 to M.O.14. After exhumation, himself and Dr. Suresh Kumar Shetty prepared the exhumation report as per Ex-P10 and identified his signature as per Ex-P10(a) and P10(b). He - 15 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 also identified the signature on Ex-P2 spot mahazar. Thereafter, according to PW-21- Investigating Officer all those sealed skeletal remains and material founds were sent to FSL, Mangaluru and also for DNA examination through IO. Accordingly, he prepared Ex-P11 report. Doctor's evidence also depicts that himself and Dr. Suresh Kumar Shetty considered Ex.P11 report and also DNA report and opined that the skeletal remains of deceased pertains to offspring of Sri. Sangappa and Smt. Shanthamma. Hence, it is undisputed fact that deceased Siddappa was the son of Sangappa and Smt. Shanthamma. Even though PW-10 Dr. Raghavendra Babu Y.P. could not found that the cause of death is due to skeletalisation, but he opined looking to the stricture on the neck that the death of deceased Siddappa due to strangulation cannot be ruled out. Accordingly, he issued report as per Ex-P12. He also gave an opinion that there is possibility of death of Siddappa due to

asphyxia. This witness identified M.O.1 to M.O.14. As such, learned SPP- - 16 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 II would contend that the prosecution clearly proved the homicidal death of the deceased in this case.

12. Learned SPP-II further contends that the evidence of PW-1, 4 and 8 who are material witnesses in this case though have turned partially hostile to the prosecution case, however, they have deposed that deceased and accused No.2 were residing together at Mangaluru i.e., three years prior to the incident and thereafter the deceased was missing from said place and accused No.2 was residing alongwith accused No.1. Hence, an inference can be drawn that accused No.1 and other accused Nos.3 to 6 are responsible for the death of the deceased. More so, accused No.2 being the wife of the deceased in this case, kept quiet for a long period of three years without even lodging the missing complaint for missing of her husband. Such conduct of accused No.2 clearly indicates that she only hatched the conspiracy alongwith accused No.1, 3 to 6 to eliminate the deceased and accordingly, she executed the conspiracy on the fateful day by - 17 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 committing the murder of the deceased and thereafter buried the deadbody in the place they have shown. In such circumstances, the prosecution proved the involvement of the accused in this case. Learned SPP-II would also contend that based on the voluntary statement of accused Nos.1, 3 to 6, exhumation proceedings were held and accused No.1, 3 to 6 showed the exact place where they buried the dead body and investigation officer PW-21 and Doctor PW-10 alongwith Taluka Executive Magistrate, all together exhumed the dead body and recovered M.O.1 to M.O.4. Those M.O.1 to M.O.4 belonging to the deceased were identified by his brother PW-1. In such circumstances, the prosecution clearly proved the involvement of the accused in this case. As such, by considering all these aspects, learned Sessions Judge has rightly convicted the accused for the charges levelled against them. Hence, learned SPP-II prays to dismiss the appeal.-. 18 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 13. We have bestowed our anxious consideration on the submissions made by the learned Senior counsel for the

appellants and also learned SPP-II and we have also perused the entire evidence and materials including the trial Court records.

14. In the facts and circumstances of the case and in the light of submission made on both side, the points that would arise for consideration are: (i) Whether the judgment under this appeal suffers from any perversity or illegality?. (ii) Whether the learned Sessions Judge is justified in convicting the accused for the offence punishable under Sections 302 and 201 read with 34 of IPC?.

15. This Court being the appellate Court, re- appreciation of the entire evidence on record is very much required. On a cursory glance of the evidence of the witnesses examined before the trial Court - - 19 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 (i) PW.1 - Basappa is the younger brother of deceased - Siddappa. He deposed before the Court that his elder brother had come to Mangalore about 15 years back for coolie work and later on he married a girl in the month of May 2006 i.e., accused No.2. According to him, when he tried to contact his brother Siddappa, he was not heard about him and he received information about missing of his brother. As such, on 23.08.2009 he lodged missing complaint before the Mangalore Rural Police as per Ex.P.22 which was registered in Crime No.174/2009. Subsequently, the police had come to his village for enquiry and they informed that his brother - Siddappa was murdered and the dead body was buried. Accordingly, he came to Mangalore and along with PW.21 and PW.10 - Doctor and Taluka Executive Magistrate and accused went to the place where the dead body of deceased was buried and by way of exhumation proceedings, the dead body was recovered. In the said place, the Doctor prepared exhumation report as per Ex.P10. He also identified the belongings of deceased as - 20 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 per M.O.1 to M.O.4 and also the skull and rib bones as per M.O.11 to 14. He witnessed the seizure mahazar as per Ex.P2. However, this witness did not depose anything about accused Nos.1, 3 to 6 in his evidence. In the cross- examination he admitted that the police called him to come to police station stating that they have found bones and other articles. When he went to police station the police had shown M.O.1 to M.O.14. According to him,

he did not know who brought these articles and when they were brought. Along with him PW.2 - Ananda had come to police Station. (ii) PW.2 - Ananda is the relative of deceased - Siddappa. He deposed that himself and Siddappa are from Bhagavati Village of Bagalkot District. That deceased - Siddappa had gone to Mangalore about 15 years back for coolie work. He used to visit his village once in two or three years. He did not saw Siddappa for the last about 7 to 8 years back. Therefore, he and PW.1 came to Mangalore to know the whereabouts of deceased - Siddappa. But he did not found him. Therefore, missing - 21 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 complaint came to be lodged. After sometime police came to his village and informed that Siddappa was murdered. Thereafter, he came to Mangalore Police Station and the police took him to the place where dead body was buried and the police dug that place. As per the recovery of the dead body is concerned this witness turned hostile to the prosecution case. In his cross-examination his statement as per Ex.P1(a) was marked which was recorded during the inquest. (iii) PW.3 - Venkana Gowda Sangana Gowda Patil is the panch witness for the inquest held over the dead body of deceased as per Ex.P1 and also spot mahazar as per Ex.P2. He deposed that he was knowing Siddappa since 15 years when he was residing in Koluru in the house of one Nazeer along with his wife Kasturi. According to him, deceased - Siddappa used to tell his wifes behavior was not proper and she had connection with other persons. Few years back police had called to Kankanady police station. In police station five persons were there including Kasturi i.e., the wife of deceased - Siddappa and those - 22 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 accused persons led the police, Assistant Commissioner and the Doctor to a place and the said place was dug and found belt, torn pant, shirt, nylon rope i.e., M.O.1 to M.O.4. Later they found skull and other bones i.e., M.O.11 to M.O.14. According to him, the police prepared inquest as per Ex.P1, seizure mahazar as per Ex.P2. He identified his signature on both Exs.P1 and P2. However, he deposed that accused Nos.1, 3 to 6 were visiting his house, but he has not seen. Hence, this witness was treated as hostile to the prosecution case. (iv) PW.4 - Nagaraj is the panch witness for Ex.P1 - inquest mahazar and Ex.P2 - seizure mahazar. This witness deposed similarly as

that of PW.3 and stated that about 6 years back, police called him and PW.3 to the police station. In the police station all the six accused were present. All the accused led them to Kannur Gudde and shown the place. The police dug the place and on removal of mud, skeleton parts were found and also belt, pant, shirt and rope as per M.Os.1 to 4. The police - 23 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 prepared inquest mahazar as per Ex.P1 and seizure mahazar as per Ex.P2 which was identified by him. (v) PW.5 - Ibrahim @ Dodda Putta is a circumstantial witness for exhumation proceedings. However, this witness turned hostile to the prosecution case. (vi) PW.6 - Ayub deposed that he knew accused No.1 - Mohammed Anwar. His house is nearby to his house. He has not seen one male child of someone in the house of accused No.1. According to him, accused Nos.3 to 6 are neighbourers to him. He further deposed that accused have not shown any place to him and he was not knowing wife of deceased - Siddappa. Hence, this witness was treated hostile to the prosecution case. (vii) PW.7 - Abdul Khader is also one more circumstantial witness. He deposed that he knew accused Nos.1, 3 to 6 and all of them were close to each other. Few years back he has not seen that male child of someone was in the house of Mohammed Anwar i.e., Accused No.1. He has stated that accused have not shown any place and police have not recovered anything and he - 24 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 has not given statement to police. Hence, this witness was treated as hostile to the prosecution case. (viii) PW.8 - Raju is also circumstantial witness. According to him since 12 years he was working as Mason in Kolluru area. Siddappa was also doing masonry work. He knew Siddappa, his wife Renuka and child. He deposed that Siddappa was under tension regarding wife and child. This witness did not depose anything about accused Nos.1, 3 to 6. Hence, this witness was treated partially hostile to the prosecution case. (ix) PW.9 - Agneel DSouza in his evidence has deposed that from the year 2006-2008 for two years he was working in Meat Mart mutton shop. Accused No.1 - Mohammed Anwar, accused No.2 - Mohammed Noufal also were working with him. But they left the job in December 2007 and he has not seen any lady coming and talking to accused No1. He do not know one male child was in

the house of accused No.1 - Mohammed Anwar. He do not know Siddappa and Kasturi and he has not seen Kasturi coming to the shop in December, 2007. About two - 25 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 years back he read in the news paper about murder of Siddappa and involvement of accused No.1. The police have not recorded his statement. Hence, this witness was also treated as hostile to the prosecution case. (x) PW.10 - Dr.Raghavendra Babu Y.P. conducted the exhumation proceedings. According to him as per the requisition dated 24.08.2009 of Mangaluru Rural Police, he was present during the exhumation proceedings and the place was at Balluru Gudde and five accused also had come. The place shown by the accused was dug and found skeleton remains of a person, 84 bones, shirt, leather belt, pant and nylon rope were recovered from the said place. According to him, CW.18, the Assistant Commissioner prepared exhumation report as per Ex.P10 and also seizure mahazar as per Ex.P2. After following the procedure the skeleton remains and articles were packed and sealed. He collected samples of bones for DNA and prepared one report as per Ex.P11. On 15.04.2012, he received requisition from Circle Inspector with DNA report for opinion. Hence, himself and Dr.Suresh Kumar Shetty - 26 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 together considered and gave opinion as per Ex.P12 that (1) the skeleton remains exhumed belonging to offspring of Sangappa and Shanthamma (2) The cause of death could not be found out due to skeletonization. However, possibility of constriction of neck cannot be ruled out. He identified MO.1 to 14. (xi) PW.11 - Prabhuling Kavlkatte is the Sub- Divisional Magistrate. He deposed that as per the telephonic call on 24.08.2009 from Mangaluru Rural Police Station for exhumation of one dead body he came to police station, where police officer, two doctors and five accused were present. The accused led them to Balluru Gudde and showed the place. The place was dug and found bones, shirt, belt, pant, nylon rope. He conducted the inquest as per Ex.P1 and he also drew the seizure mahazar as per Ex.P2 and seized M.O.1 to 14. (xii) PW.12 - Manoj Kumar is the Manager of Meat Mart, Mangaluru. According to him, PW.9 - Agneel DSouza was working in his shop and he has not seen Accused Nos.1, 3 to 6. He did not know whether they - 27 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 were working in the shop. Hence, this witness was treated as hostile to the prosecution case. (xiii) PW.13 - Hanumanthappa is the first husband of Renuka i.e., accused No.2. According to him, he had married accused No.2 - Renuka two to three years back and she lived with him. Thereafter she took divorce and went and he was not knowing where she went thereafter. (xiv) PW.14 - Dr.Geethalakshmi is the FSL Officer. She conducted the analysis of articles M.O.1 to M.O.4 and issued report as per Ex.P14, Ex.P15 - Sample seal. (xv) PW.15 - Jayananda Poojari is the Junior Engineer. According to him, on 26.08.2009, Mangaluru Rural Police requested to draw sketch of place at Balluru Gudde. Accordingly, on 06.11.2009, he visited the place and drew the sketch as per Ex.P16. (xvi) PW.16 - Pramod Kumar is the police constable. According to him, on 24.08.2009, CW.49 police inspector called for videography of exhumation proceedings. Accordingly, he went along with accused Nos.1 and 5 others and at that place found skeleton and he recorded - 28 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 videograph. The CD is marked as MO.15. The police recovered MOs.1 to 14. (xvii) PW.17 - Dhananjaya is the head constable. According to him on 22.08.2009 while he was working as Head constable in Mangaluru Rural Police Station, PW.1 Basappa came and gave missing complaint, of his elder brother Siddappa upon which he registered the case in crime No.174/2009. (xviii) PW.18 - H.D.Nithyananda is the Head Constable. He has deposed that on 24.08.2009 he carried the FIR and complaint to the Magistrate Court. (xix) PW.19 - Kumareshwaran is the PSI. He deposed that as per the instruction of CPI he had accompanied PW.15 - PWD engineer for showing the spot for drawing sketch. (xx) PW.20 - Ravish is the CPI who took up further investigation from Manjunath Shetty. According to him, on 15.02.2012 he received DNA report as per Ex.P17. To know the cause of death, he sent the same to Doctor Suresh Kumar Shetty and the Doctors have given opinion - 29 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 as per Ex.P12. He recorded the statement of some of the witnesses and filed charge sheet against the accused persons. (xxi) PW.21 - Lingappa B.R. is the police inspector and investigation

officer. He took up further investigation of missing FIR and conducted major investigation by recording statement of all witnesses and so also, obtained documents from the concerned authorities, recorded the voluntary statements of accused and conducted the examination proceedings and recovered MOs.1 to 14 at the time of exhumation proceedings and after completing the investigation, handed over the case to PW.20.

16. On careful perusal of the evidence and material placed by the prosecution, in order to prove the homicidal death of Siddappa in this case, the prosecution relied on the evidence of PW.10 - Dr.Raghavendra Babu Y.P. He has deposed that, as per the requisition dated 24.08.2009 by the Mangaluru Rural Police he was present at the time of exhumation of the dead body of deceased - Siddappa at Ballur Gudde, Kannur Village. He has stated that along - 30 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 with CW.18 - Dr.Suresh Kumar Shetty, Assistant Commissioner, the investigation officer, panchas and five accused persons had been to Ballur Gudde. These accused took them to a place near a small temple like structure. According to him, at the instance of these accused and in the presence of the persons present there, after digging the mud noticed the skeletal remains of a person. Around 84 bones were found along with shirt, leather belt, pant and nylon rope. He identified these articles as MO.1 to 14. According to him, after examination, himself and Dr.Suresh Kumar Shetty prepared exhumation report as per Ex.P10. He identified his signature and signature of Dr.Suresh Kumar Shetty as per Ex.P10(a) and P10(b) respectively. He also deposed that seizure mahazar as per Ex.P2 was prepared in the said place. He also identified his signature on Ex.P2 as Ex.P2(c). He further deposed that the investigation officer sealed all the skeletal remains and materials found and all those sealed and labeled packets were produced before the FSL, KMC, Mangaluru. Himself along with Dr.Suresh - 31 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 Kumar Shetty examined the sealed packets produced by the investigation officer and the seals were in tact. After examination, collected the samples of the materials and sealed the same and sent for DNA examination other remains were also packed, sealed and sent back to

Investigation officer. Accordingly, he prepared report as per Ex.P11 and he identified his signature as per Ex.P11(a) and signature of Dr.Suresh Kumar Shetty as per Ex.P11(b). Further, a perusal of the evidence of PW.10 indicates that he received the requisition from the Circle Inspector of Police, Mangaluru Rural Circle along with DNA report as per Ex.P17 requesting to consider the same and give opinion. On receipt of Ex.P17, himself and Dr.Suresh Kumar Shetty considered the examination report and also the DNA report and opined that the skeletal remains exhumed were belonging to the offspring of Sangappa and Smt.Shanthamma. The cause of death could not be found out due to skeletonisation. However, the death was due to strangulation of the neck structure with a ligature cannot be ruled out. He prepared the report as per - 32 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 Ex.P12. According to him there is possibility of the death of said person due to asphyxia. He also identified MOs.1 to 14.

17. On careful perusal of evidence of PW.10 and also report as per Exs.P10, P11 and P12 coupled with the evidence of PW.1, i.e., brother of the deceased since he identified M.O.1 to 4 belonging of deceased and also by considering the fact that the dead body was recovered by way of exhumation proceedings, it can be gathered that the death of deceased was homicidal one. Once the homicidal death of the deceased was proved, the next aspect that arise for consideration is whether the accused are responsible for the same.

18. To prove the said aspect, the prosecution relied on the evidence of PW.1 i.e., brother of deceased who lodged the missing complaint and subsequently identified the belongings of deceased as per MOs.1 to 4 and so also, the evidence of PW.4 and PW.8 who are the independent witnesses deposed that they were knowing deceased - Siddappa and his wife Renuka @ Kasturi. According to - 33 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 PW.4, deceased - Siddappa told him that one Mohammed Anwar was harassing his wife. Even though he stated that he advised wife of Siddappa and this accused but inspite of that they both continued their illegal acts. PW.8 also deposed in the same manner. However, on careful perusal of evidence of these two witnesses, they both partially turned

hostile to the prosecution case and also they did not whisper anything in respect of involvement of accused Nos.1, 3 to 6 in the commission of murder of deceased - Siddappa. The prosecution also relied on the evidence of other circumstantial witnesses i.e., PWs.2 to 6 to prove the motive for the commission of the incident. Though PWs.2 and 3 deposed before the Court that they were present at the place where exhumation of dead body was carried out and identified MOs.1 to 14, but once again these witnesses did not whispered anything about involvement of accused Nos.1, 3 to 6 in the commission of murder of deceased - Siddappa. Hence, on careful perusal of evidence of PWs.1 to 8, in our considered opinion the prosecution has failed to prove the - 34 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 circumstance of motive for the commission of crime by accused Nos.1, 3 to 6.

19. The prosecution mainly relied on the circumstance of exhumation of dead body based on the voluntary statements of accused Nos.1, 3 to 6 in this case as per Exs.P26 to P30 respectively.

20. The learned SPP would vehemently contend that recovery of dead body at the instance of accused by way of exhumation proceedings is a major circumstance and the conviction can be based solely on the said circumstance, since the burial of dead body was well within the special knowledge of the accused and as such they had shown the exact place where they buried the dead body and thereafter the same was recovered by the investigating officer in the presence of Doctor and Taluka Executive Magistrate. In such circumstance, the presumption under Section 114 of the Indian Evidence Act can be invoked and the Court can presume the guilt of the accused. It is relevant to refer Sections 26 and 27 of the Indian Evidence Act, 1872 which reads thus: - 35 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 26. Confession by accused while in custody of police not to be proved against him.-No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate<sup>1</sup>, shall be proved as against such person.-No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate<sup>2</sup>, shall be proved as

against such person.

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.

21. Insofar as scope of Section 26 of the Indian Evidence Act, the statements made in police custody are considered to be unreliable, unless they have been - 36 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 subjected to cross-examination or judicial scrutiny. This issue has been addressed by the Honble Supreme Court in the case of Sehr vs. State of Karnataka (AIR 2010 SC1974. Further, in the case of Kamal Kishore v. State (Delhi Administration) (1997)2 Crimes 169 (Del), it is held that the confession made while in custody is not to be proved against the accused as the provisions of Sections 25 and 26 do not permit it unless it is made before a magistrate. This issue has been addressed by the Honble Supreme Court in the aforesaid case to a greater extent.

22. Insofar as scope of Section 27 of the Indian Evidence Act in respect of how much of information received from the accused may be proved indicates as to whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Insofar as applicability of Section 27, the statement must be split into its components and to separate the admissible portion. Only those components or portions which were - 37 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 the immediate cause of the discovery would be legal evidence and not the rest which must be exercised and rejected. This issue has been addressed by the Honble Supreme Court in the case of Mohd.Inayatullah v. State of Maharashtra reported in AIR 1976 SC279 23. However, on a careful perusal of Ex.P24 i.e., the report submitted by one Prakash, Police Sub-Inspector who received the missing complaint on 22.08.2009 by PW.1 and registered the missing FIR as per Ex.P23 in crime No.174/2009, depicts that

they arrested accused No.2 in this case on 23.08.2009 based on the missing complaint and thereafter they thoroughly interrogated her and during the course of her interrogation she revealed that she had an affair with accused No.1 and thereby herself and accused No.1 have conspiracy to eliminate deceased and to execute their plan, they took the assistance of accused Nos.3 to 6 and thereafter committed murder of deceased by way of strangulation and buried the dead body at Ballur Gudde, Kannur village, Mangaluru Taluk near Railway track.-. 38 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 24. However, it could be seen from the records that either the said Prakash, police sub-inspector who arrested and recorded the voluntary statement of accused No.2 or the investigating officer PW.21 failed to act on the voluntary statement of accused No.2 and to exhume the dead body on the same day nor they made any such attempts to find out the place where the dead body was buried by the accused. It is an admitted fact that burial of the dead body by the accused was well within the knowledge of respondent - police on 23.08.2009 itself. But they failed to recover the same, per contra, they arrested accused Nos.1, 3 to 6 on 24.08.2009 and recorded their voluntary statements as per Exs.P26 to 30 respectively and based upon their voluntary statements recovered the dead body by way of exhumation proceedings.

25. As rightly contended by learned Senior counsel, once the police had knowledge of discovery of the fact, they failed to act upon it and subsequently, based on the voluntary statement of co-accused, they recovered the - 39 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 same i.e., the fact well within their knowledge which amounts to rediscovery of the fact. The Honble Apex Court in the case of Sukhvinder Singh and others vs. State of Punjab reported in (1994) 5 SCC152 in para 16 of the said judgment held as under: 16. The first piece of circumstantial evidence relied upon against them revolves around the recovery of the dead body of Varun Kumar from the house of Sukhvinder Singh and his parents on the disclosure statement made by Sukhvinder Singh, Sukhdev Paul and Puran Chand Ex. PW.10/B, EX. PW10/C and Ex. PW10/D respectively. We are surprised at the manner in which the disclosure statements were recorded by the investigating agency and relied upon by the Designated Court. That Section 27

of the Evidence Act is an exception to the general rule that a statement made before the police is not admissible in evidence is not in doubt. However, vide Section 27 of the Evidence Act, only so much of the statement of an accused is admissible in evidence as distinctly leads to the discovery of a fact. Therefore, once the fact has been discovered Section 27 of the Evidence Act cannot again be - 40 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 made use of to 're-discover\* the discovered fact. It would be a total misuse - even abuse-of the provisions of Section 27 of the Evidence Act. From the testimony of PW14, SI Kashmir Singh it transpires that in the presence of PWs Hari Dutt and Jugal Kishore during the interrogation by SI Amar Singh, Sukhavinder Singh appellant made a disclosure statement to the effect that he alongwith others had concealed the dead body of Varun Kumar in the stack of hay in the room and that he could get the same recovered. His disclosure statement Ex. PW10/B was accordingly recorded which was signed by him and attested by the panch witnesses. Except for the discovery of the dead body of Varun Kumar on the basis of the disclosure statement of Sukhvinder Singh, EX.FW10/B, no other portion of the statement of Sukhvinder Singh implicating himself and others with the commission of the crime is admissible in evidence. After the disclosure statement was made by Sukhvinder Singh disclosing as to where the dead body of Varun Kumar had been concealed and from where it could be recovered, the recording of the disclosure statements of Sukhdev Paul and Puran Chand Ex. PW10/C and Ex. PW10/D was a wholly impermissible exercise and an obvious - 41 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 attempt to rope in Sukhdev Paul and Puran Chand with the aid of Section 27 of the Evidence Act. Since, the information had already been given by Sukhvinder Singh, appellant in his disclosure statement Ex. PW10/B, the (wo subsequent statements Ex. PW10/C and Ex.PW10/D were not admissible in evidence because at the best they were leading to the "re-discovery of a fact already disclosed and capable of discovery. It has been admitted by PW14 that the disclosure statement, Ex. PWIO/B, made by Sukhvinder Singh was the first in point of time and that he had disclosed where the dead body had been concealed and that he could point out the place and gel it

recovered. The investigating officer should have immediately acted upon disclosure statement Ex. PW10/B, rather than wait and record two more disclosure statements, as if the authenticity of recovery of dead body could be achieved by the mere number of disclosure statements leading to the discovery of one and the same fact. In the face of the admission of PW14 as noticed above, it is obvious that the so- called disclosure statements of Sukhdev Paul and Puran Chand Ex. PW10/C and Ex. PW10/D were not admissible in evidence and the Designated Court fell in error in relying upon the same. Admittedly, - 42 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 so far as Puran Chand is concerned, apart from the disclosure statement Ex. Pw10/D, there is no other piece of circumstantial evidence relied upon by the prosecution and once we rule out of consideration the disclosure statement allegedly made by Puran Chand Ex, PW10/D, the conclusion is inescapable that the prosecution has not been able to establish the case against Puran Chand beyond a reasonable doubt and there is no circumstance which can connect him with the alleged crime. The prosecution has led no evidence to show any connection interse so far as the three appellants are concerned.

26. On careful perusal of the dictum laid by the Honble Apex Court in the above said judgment, it is clear that subsequent voluntary statement of the accused cannot be admissible in evidence and recovery to that effects to rediscovery of a fact already disclosed and capable of discovery. Hence, as per the judgment rendered by the Honble Apex Court supra, in our considered opinion, the prosecution failed to prove the circumstance of recovery of dead body at the instance of - 43 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 accused i.e., based on the voluntary statement of accused Nos.1, 3 to 6 as per Exs.P.26 to 30 respectively. Even otherwise per the discovery/recovery of the dead body and the weapons which said to have used for commission of crime is concerned, the Apex Court laid the law in the case of Subramanya vs. State of Karnataka reported in 2022 SCC Online SC1400 wherein it is held the procedural aspect how the recovery should be done by the investigating officer based on the disclosure statement of the

accused. In paras 82 to 84 of the said judgment, the Honble Apex Court discussed as under: 82. 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. - 44 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 83. 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.

84. 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 - 45 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 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 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 (panchwitnesses) 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 - 46 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 that the same is deficient in all the aforesaid relevant aspects of the matter.

27. In the case on hand, accused No.2 volunteered before the police sub inspector of the respondent police in respect of burial of dead body on 23.08.2009. Since the police failed to act upon it, subsequently based upon the voluntary statement of accused Nos.1, 3 to 6 alleged to have been given on 24.08.2009 cannot be based and no evidentiary value can be attached on the same. The said recovery of dead body by way of exhumation proceedings cannot be held against the accused as per the law laid down by the Honble Apex Court stated supra. Admittedly, the investigating officer failed to prepare any panchanama in the presence of panch witnesses before the accused led them to the place where the dead body was buried. Hence, on careful perusal of the law laid down by the Honble Apex Court in the judgment of Subramanya vs. State of Karnataka and also subsequent judgment by the Honble Apex Court in the judgment of Bobby vs. State of Kerala reported in 2023 SCC Online SC50 we are of - 47 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 the considered opinion, the prosecution has failed to prove the circumstance of recovery of dead body at the instance of accused Nos.1, 3 to 6.

28. The learned SPP also argued that the recovery of the material objects i.e., M.O.1 to 4 belonging to the deceased - Siddappa was identified by PW.1 who is none other than the brother of the deceased. But at the same time, PW.1 failed to

depose any aspect against the accused in respect of the commission of crime or motive for the alleged incident. As discussed supra, the other circumstantial witnesses i.e., PWs.2 to 8 also partially turned hostile in this case and failed to depose any evidence against the accused in respect of their participation in the crime. In such circumstance, since the case rests on circumstantial evidence, it is settled position of law that all the circumstances should be proved beyond reasonable doubt by hypothesis of the guilt of the accused as held by the Honble Apex Court in the case of Chandrapal vs. State of Chattisgarh reported in 2022 - 48 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 SCC Online SC705 The Honble Apex Court has reiterated the principles and guidelines issued in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC116 The Honble Apex Court reproduced the five golden principles enumerated in the said case as under: 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 v. State of Maharashtra where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]. - 49 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 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, 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.

29. Hence, in the case on hand, the prosecution failed to prove all the circumstance beyond reasonable doubt. Though the prosecution relied on the evidence of PW.10 to prove the homicidal death of the deceased, but - 50 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016 at the same time, to connect the accused for the homicidal death of the deceased is concerned, the prosecution failed to place sufficient and cogent evidence in this case. Hence, having regard to the totality of the evidence on record, we are of the considered opinion that the learned Sessions Judge committed gross error in convicting the appellants/accused for the alleged charge of offence under Sections 302 and 201 read with Section 34 of IPC by relying on a very weak kind of evidence. It is settled principle of law by the Honble Apex Court that suspicion however strong cannot take place of proof. Under such circumstances, it is required to be held that the prosecution has miserably failed to bring home the charges leveled against accused Nos.1, 3 to 6 beyond reasonable doubt.

30. In view of the aforesaid reasons and findings, we are of the considered opinion that in this appeal it requires intervention and accordingly, we answer the points raised above. Accordingly, the following: - 51 - NC:

2023. KHC:25327-DB CRL.A No.1319 of 2016

## ORDER

The appeal filed by the appellants/accused Nos.1, 3 to 6 under Section 374(2) of Cr.P.C. is hereby allowed. Consequently, the judgment of conviction and order of sentence rendered by the Principal District and Sessions Judge, D.K. Mangaluru in S.C.No.91/2013 dated 23.07.2016 is hereby set-aside. Appellants / accused Nos.1, 3 to 6 are acquitted for the offence under Sections 302 and 201 read with Section 34 of IPC. Bail bonds if any, executed by the accused shall stand cancelled. Fine amount if any, deposited by the accused shall be refunded to them respectively, on due identification. Sd/- JUDGE Sd/- JUDGE MN/DKB