

Somling @ Some Vs. The State Through

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Court : Karnataka Dharwad

Decided On : Oct-01-2024

Judge : S.Sunil Dutt Yadav and Ramachandra D. Huddar

Appeal No. : CRL.A 200133/2017

Appellant : Somling @ Some

Respondent : The State Through

Judgement :

- 1 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE01T DAY OF OCTOBER, 2024 PRESENT THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV AND THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR CRIMINAL APPEAL NO.200133 OF2017C/w CRIMINAL APPEAL NO.200113 OF 2017 IN CRL.A NO.200133/2017: BETWEEN: SOMALING @ SOMA S/O PANDIT SHENDAGE, AGE:

28. YEARS, OCC: AGRICULTURE, R/O: VILLAGE KANNUR, TQ. & DIST: VIJAYAPUR. APPELLANT (BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE) AND: THE STATE THROUGH MARKET YARD P. S. RAICHUR NOW REPRESENTED BY ADDL. SPP IN HCKB AT: KALABURAGI. RESPONDENT (BY SRI SIDDALING P. PATIL, ADDL. SPP) THIS CRIMINAL

APPEAL IS FILED UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE,
PRAYING TO SET - 2 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
ASIDE THE

JUDGMENT
OF CONVICTION AND

ORDER

OF SENTENCE, DATED 28.03.2017 OF VTH ADDL. SESSIONS JUDGE, AT
VIJAYAPUR IN S.C. NO.73/2015 FOR THE OFFENCE UNDER
SECTION 302R/W149 OF IPC, AND ACQUIT THE APPELLANT, IN VIEW OF THE
REASONS AS STATED ABOVE, IN THE INTEREST OF JUSTICE AND EQUITY.
IN CRL.A NO.200113/2017: BETWEEN: KAMANNA @ KAMA S/O SHIVAPPA
SHENDAGE, AGED ABOUT 34 YEARS, R/AT KANNUR VILLAGE, TQ. & DIST:
BIJAPUR- 586 101. APPELLANT (BY SRI NANDKISHORE BOOD, ADVOCATE)
AND: STATE OF KARNATAKA BY CPI, RURAL CIRCLE POLICE, BIJAPUR,
NEW REPRESENTED BY ADDL. SPP HIGH COURT OF KARNATAKA,
KALABURAGI BENCH- 585 105. RESPONDENT (BY SRI SIDDALING P. PATIL,
ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF
CRIMINAL PROCEDURE CODE, PRAYING TO SET ASIDE THE IMPUGNED

JUDGMENT
OF CONVICTION AND

ORDER

OF SENTENCE, DATED 28.03.2017, PASSED IN S.C. NO.73/2015, BY THE IV
ADDL. SESSIONS JUDGE VIJAYAPURA, BY ALLOWING THIS APPEAL
CONSEQUENTLY ACQUIT THE APPELLANT/ACCUSED OF THE CHARGES
LEVIED AGAINST HIM, - 3 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
FOR OFFENCES PUNISHABLE UNDER SECTIONS 302R/W149 OF IPC, IN THE
INTEREST OF JUSTICE. THESE APPEALS HAVING BEEN RESERVED FOR

JUDGMENT

, COMING ON FOR PRONOUNCEMENT THIS DAY, RAMACHANDRA D. HUDDAR J., DELIVERED/PRONOUNCED THE FOLLOWING: CORAM: HON'BLE MR. JUSTICE S. SUNIL DUTT YADAV AND HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR CAV

JUDGMENT

(PER: HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR) These two Criminal appeals are arising out of the same occurrence, call in question the judgment of conviction and order of sentence passed by the IV Addl. Sessions Judge, Vijayapura, dated 28.03.2017 in S.C.No.73/2015, wherein accused No.1 has preferred Criminal Appeal No.200113/2017 independently and accused No.4 has preferred his own independent appeal in Criminal Appeal No.200133/2017 for finding them guilty of committing an offence under Section 302 R/w Section - 4 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 149 of the IPC and sentencing them to undergo life imprisonment and pay a fine of Rs.30,000/- each for the said offence and in default to pay the fine amount, they were ordered to undergo simple imprisonment for a period of 6 months. FIRST INFORMATION REPORT (FIR) 2. That within the jurisdiction of Kannur village in Sy.No.298 measuring 5 acres of land was purchased by the uncle of accused No.1-Kammanna, i.e., Rudrappa, from Malappa Barakade. The accused No.1 was insisting the said Malappa Barakade to get back the said landed property. For that, Malappa was not inclined to return the said land. Therefore, because of this insistence and pressure of accused No.1, Malappa Barakade informed deceased Amasidda Barakade about the pressure of accused No.1. At that time, deceased supported the Malappa Barakade, stating that he would support him and told him not to give back the said properties purchased by - 5 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 him. Therefore, the accused Nos.1 and 2 came to the said deceased Amasidda Barakade 2-3 times and held out a threat stating that, he has become a hurdle between the purchaser Malappa and themselves and therefore they will not leave

him and they were going to kill him. Pursuant to such threat, all the accused in a Samudhaya Bhavan of Maddi Maragamma temple situated near the landed property of accused No.5, the accused No.1 to 4, on 18.09.2013 at 6.00 p.m., by sitting in the said Samudhaya Bhavan along with accused No.5, have conspired to kill the deceased Amasidda Barakade. Thus, they committed criminal conspiracy in furtherance of the common object to kill Amasidda Barakade. In furtherance of the common object of this conspiracy, it is alleged, that on 19.09.2013 at 5.00 p.m., when deceased Amasidda Barakade was on his landed property, accused Nos.1 and 4, along with accused Nos.2 and 3, by forming themselves into an unlawful assembly having ill-will against the said deceased, came near Amasidda and dragged him towards the other land and at that time, accused Nos. 2, 3, and 4 - 6 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 caught hold of the hands and legs of Amasidda and accused No.1 by using the iron jambe assaulted Amasidda on his neck, stomach and caused his murder. With these allegations, a complaint came to be filed by the father of the deceased by name Shankarappa at 00:30 hours on 20.09.2013 before the PSI Vijayapura Rural Police Station, which was registered in Crime No.236/2013 for the offences punishable under Section 302, 504 R/w 34 of the IPC, and the criminal law was set in motion. INVESTIGATION³ Consequent upon the registration of the FIR, the CPI Vijayapura Rural Police Station (who was also an investigation officer) proceeded to the place of occurrence along with his police staff and conducted the inquest panchanama in the presence of panchas as per Ex.P13. He noticed the falling of the blood at the scene of offence. During the course of the investigation, accused No.1 to 4 were arrested. Sent the dead body for the postmortem to the Al Ameen Medical College Hospital, Vijayapura. The - 7 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 doctor at Al Ameen Medical College conducted the postmortem on the dead body of Amasidda, aged 32 years, in between 10.30 a.m. and 12.00 noon on 20.09.2013, as per Ex.P34. The investigation officer recorded the statements of the witnesses, sent the seized articles to the FSL for the purpose of chemical examination and on completion of the investigation, the I.O. filed the charge sheet

against the accused for the offence under Section 302 R/w Section 149 of the IPC against five accused. Upon committal, the learned trial Court framed the charge against the accused for the offences under Section 120-B, 302 and 504 R/w Section 149 of the IPC for which the accused No.1 and 4 pleaded not guilty and claimed to be tried. Proceedings Before The Trial Court:

4. Before the learned trial Court, to bring home the guilt of the accused, prosecution in all examined 25 witnesses from PW1 to PW25 got marked documents Ex.P1 to Ex.P42 with respective signatures thereon. So - 8 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 also got marked MO.1 to 12. During the course of cross- examination, the portions of statements of PW12 and PW6 were marked as per Ex.D1 and D2, and the prosecution closed their side.

5. The records of this case reveal that, the case against accused No.2 and 3 was spilt up and the trial was proceeded against accused No.1, 4 and 5 only.

6. The learned trial Court on hearing the arguments and evaluation of evidence found accused No.1 and 4 guilty of a committing the offence under Section 302 R/w Section 149 of IPC and sentenced them as stated herein above. This is how both accused No.1 and 4 have preferred their independent appeals challenging the said judgment of conviction and order of sentence passed against them before this Court. Proceedings Before This Court:

7. The learned counsel for the appellants in both these appeals with all vehemence submit that, except the - 9 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 complainant and his other son, other witnesses are hearsay witnesses. The witnesses who have supported the prosecution are all interested witnesses. Therefore, it is submitted by the counsel for the appellants in both these appeals that the very presence of accused Nos.1 and 4 at the scene of offence is not stated either by the complainant and other son who are branded as eyewitnesses. It is submitted that, there are more contradictions, omissions and discrepancies in

the evidence led by the prosecution. So therefore, according to them, the learned trial Court has failed to consider the contradictions and omissions in the evidence led by the prosecution. The presence of these accused at the scene of offence is not at all stated by any of the witnesses. When the so-called witnesses state that they have noticed the presence of these accused persons and accused No.1 assaulted the deceased, but the other witnesses have stated that when they reached the scene of offence none of the accused were present at the scene of offence. So pointing out the contradictions so elicited in the cross- - 10 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 examination, the learned counsel for the appellants submits that, all is not well with the case of the prosecution and their evidence cannot be accepted as truthful evidence. No evidentiary value can be attached to the evidence of the complainant and his son, who are branded as eyewitnesses and were interested because of animosity between the families of the accused No.1 and themselves. It is submitted that the trial Court has lost sight with regard to the contradictions and omissions, especially when the two eyewitnesses are the relatives, they are interested witnesses and therefore their evidence cannot be accepted as truthful evidence. In support of submission, the counsel for the appellant in Criminal Appeal No.200113/2017, Sri. Nandkishore Boob, relied upon the following judgments.

1. 1981 Crl. Law Journal, Page - 484 (SC) Ram Ashrit and others V/s State of Bihar.
2. AIR1956 Page - 471 (Bombay HC) Yellawwa V/s The State of Maharashtra.
3. 1971 CAR, Page -247 (SC) Yudhisthir V/s The State of Madhya Pradesh.-. 11 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017

4. 1997 Criminal Law Journal, Page-905 (SC) The State of UP-Ashok Kumar & Another.

5. AIR (SC) 1975, Page-1727 (SC) Ram Narain Singh V/s The State of Punjab.

6. 2004 AIR (SC), Page 2943 Ram Swaroop & Others V/s The State of Rajasthan.
 7. 1980 Crl.Law Journal, Page-1397 (Delhi HC) Randhirsingh V/s The State of Delhi.
 8. 1993 Crl. Law Journal, Page-3684 (SC) The State of APPORTIONMENT V/s P.K.Singh
 9. LAWS (SC) 2019 (11), Page-98 Imratsingh V/s the State of MP.
 10. 2017 SAR (Crl), Page-8 (SC) Mahaveersingh V/s The State of MP.
 11. 2016 SAR (Crl), Page-166 (SC) Mangusingh V/s Dharamendra.
 12. 2002(3) Crimes Page No.82 (Toran singh V/s State of MP)
 13. 1994, Crl. LJ, Page-66 (Ramu @ Ramkumar V/s Jaganath)
8. Further it is submitted that, right from the date of arrest, these accused Nos.1 and 4 are in judicial custody and their presence at the scene of offence not being proved, they are entitled for acquittal.-.
- 12 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017

9. Refuting this submission, the learned Addl. SPP, Siddaling P.Patil, submits that, the trial Court on evaluation and scanning the evidence led by the prosecution has rightly come to the conclusion that, these accused are guilty of committing the offence of murder of deceased Amasidda. The motive has been spoken to by the witnesses in this case. He submits that, one Malasidda had purchased the landed property from Rudrappa measuring 5 acres. Accused No.1 was pressurizing the said Malappa to return the said landed property to him. As there was refusal, the said Malasidda informed the deceased about the pressure of accused No.1. The deceased supported the said Malasidda and told him not to give back the landed property so purchased by him and he would be behind him. Being enraged by the support of the said Malasidda, the accused No.1 and his henchman came to Amasidda and threatened them that he has become a hurdle between himself and Malasidda as he is supporting him. Thus, by holding out threat to take his life, the -

13 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
accused No.1 cautioned the deceased. Because of the support of Amasidda to the

said Malasidda, the accused Nos.1 to 5 have planned and made a conspiracy in between them and thereafter committed the heinous offence of murder of Amasidda. He submits that, in all 11 severe injuries have been suffered by the deceased because of persistent stabbing of deceased by accused No.1 by using the said iron jambe, which is a sharp edged weapon. The photographs so produced by the prosecution as well as the PM report show that, even the intestine and other parts of the body have come out because of the injuries so caused by the accused No.1. The vital part of the body of the deceased was severely injured, i.e., the neck and stomach. On hearing the hue and cry, complainant, the father of the deceased rushed to the spot. He noticed assault on the deceased by accused No.1 and other accused persons who were caught holding the hands and legs of the deceased. Even the other son of the complainant has also seen the said assault committed by the accused with his own eyes. He submits that, the - 14 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 medical evidence and oral evidence of the eyewitnesses support the case of the prosecution. Rightly, the learned trial Court has come to the conclusion that, because of assault committed by the accused, deceased died. He prays to dismiss both these appeals. In support of his submission, he relied upon the judgment of Honble Supreme Court in Dharnidhar v. State of U.P and Ors., reported in 2010 (7) SCC759 10. In view of rival submissions of both the side, the question that would arise for consideration before this Court is as under: Whether the trial Court is justified in recording conviction and consequently, sentencing the appellants to undergo life imprisonment?.

11. Already the learned trial Court has found the accused No.1 and 4 guilty of committing the offence under Section 302 R/w 34 of the IPC. That means the answer to this question would guide this Court to decide this appeal also.-. 15 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
12. So far as the homicidal death of Amasidda is concerned, it is not in dispute. To prove that the deceased suffered homicidal death, the prosecution relies upon the

PM report marked at Ex.P.34, the inquest report at Ex.P.13, photographs so produced at the time of conducting the inquest panchanama as per Ex.P14 and Ex.P15, and also the evidence of the complainant and his other son. So also the evidence of the doctor. The learned trial Court has discussed the contents of the inquest panchanama and PM report. As per the PM report, the deceased had suffered the following 11 external injuries on his person. i) Cut laceration on the right side of face above right ear measuring 2 x cms x muscle deep. ii) Cut laceration on the right side of head 4 cms above injury number (1). iii) Cut laceration on the right side of face over maxillary area 2 cm x 1 cm x muscle deep. iv) Cut laceration over neck above thyroid cartilage measuring 15 cm x 3 cms x cervical bone deep.-. 16 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 v) Cut laceration on the neck 1 cm above injury No.4 measuring 3 cm x 1 cm x muscle deep. vi) Cut laceration over abdomen above umbilicus measuring 13 cm x 7 cm x abdominal cavity deep. vii) Cut laceration over abdomen 2 cm below injury No.6 measuring 5 cm x 2 cm x abdominal cavity deep. viii) Cut laceration over right side of chest along the anterior axillary line between 8th and 9th rib measuring 4 cm x 3 cm x Thoracic cavity deep. ix) Cut laceration on the back of chest 8 cm below and posterior to injury No.8 between 9th & 10th rib measuring 4 cm x 2 cm x Thoracic cavity deep. x) Cut laceration on the right loin 8 cm above the right iliac crest measuring 2 cm x 1 cm x muscle deep. xi) Cut laceration on the left hip measuring 4 cm x 20 cm x bone deep.

13. The doctor has opined that the death of the deceased was due to hemorrhage shock as a result of injuries sustained over the neck. All the injuries were ante mortem in nature and time since death was 12-24 hours prior to the post mortem examination. Thus, on a - 17 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 cumulative reading of the documentary evidence as well as the oral evidence of the complainant and doctor, it shows that, the deceased suffered the homicidal death, which is not in dispute. Thus, the prosecution is able to prove the homicidal death of the deceased with legal and acceptable evidence.

14. Before embarking on the exercise of the deciding the fate of these accused No.1 and 4, it would be apt to take note of certain principles relevant for decisions on these two appeals. It is necessary to observe that, such principles have evolved over the years and crystallized into settled principles of law, these are: i) Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and - 18 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 trustworthy, could lead to a conviction. ii) Generally speaking, oral testimony may be classified into three categories, they are: (a) Wholly reliable; (b) Wholly unreliable; (c) Neither wholly reliable nor wholly unreliable. This principle is well laid down by the Apex Court in the various judgments. The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence. iii) A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.-. 19 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 iv) Even laws says that Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal. v) Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance. As we cannot expect the human memory to manifest as a video clip.

15. Now let us analyze whether the prosecution is able to establish the guilt of the accused beyond reasonable doubt. As per the criminal jurisprudence, it is the burden on the prosecution to prove the guilt of the accused beyond all reasonable doubt. Law says that even if a slightest doubt arises in the case of the prosecution that benefit has to be extended to the accused.

16. PW.1 one Dadu Mane, is examined by the prosecution to prove that he is pancha to Ex.P1-the - 20 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 panchanama and in his presence, the photographs were taken as per Ex.P2 and Ex.P3. This Ex.P1 is the place where the accused No.1 to 5 did the conspiracy to commit the offence. The presence of this PW1 is seen in the photographs Ex.P2 and Ex.P3. But he has deposed ignorance with regard to the contents of the panchanama. Therefore, the prosecution treated him as a hostile witness. But nothing worth is elicited in the cross- examination directed by the prosecution witness and his evidence in view of his hostility would not help the case of the prosecution. Therefore, the evidence of PW1 cannot be accepted as truthful evidence.

17. PW.2 -Bhimabai Barakade is none other than the mother of the deceased. According to her evidence, they were cultivating landed properties of Saibanna Patil. By the side of their property the Malappas property is situated. Rudrappa had sold 5 acres of land to Malappa. Because of that accused No.1 use to pressurize the Malappa to return the said landed property so purchased - 21 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 by him. For that deceased Amasidda was telling Malappa not to return. Therefore, ill-will developed between accused persons and the deceased Amasidda. She specifically states that, about three years prior to her deposing before court, at 5.00 p.m. her son Amasidda was murdered. At that time, her husband complainant and another son CW8i.e. Srimanth was in the landed property. She was also in the farm house at that time along with her daughter-in-law. When they were in the house, she heard the wailing sound of her husband. Immediately she and her daughter-in-law came out of the house and went to the place and noticed that her

son Amasidda had sustained injuries on his neck and stomach and had died on the spot. When she enquired her husband, it was told that accused Bhimu, Ballu and Somalinga caught hold of her son and accused No.1 Kammanna assaulted the deceased by using the jambe. Thereafter, the police came and shifted the dead body to Bijapur Al Ameen Hospital. To that effect she has given a statement before the police. Partly she has been declared - 22 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 as a hostile witness. She is specific before the Court about the ill-will developed in between accused No.1 and the deceased. According to her, it was accused No.1 to 5 who committed the offence. She has been cross-examined by the defence intensively but, she is specific about she coming to the scene of offence on hearing the hue and cry of her husband and noticing the dead body of her son. Except the denial in the cross-examination, nothing worthy is elicited in the cross-examination.

18. PW.3 Sayyappa Barakade is the cousin of the deceased and complainants brothers son. PW.4 Mareppa Barakade, is also a relative of the deceased. PW3 and PW4 specifically state with regard to the development of ill-will between the accused and the deceased. They specifically state that, accused No.1 used to insist Malappa to give up his land so purchased from Rudrappa. For that, Amasidda, deceased, was supporting Malappa and told him that he was behind him and not to give up the property. These two witnesses came to the scene of - 23 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 offence only on hearing the hue and cry of a complainant. PW.3 states that when they went to the scene of the offence, he noticed that accused Bhimanna, Ballu and Somalinga caught hold of the deceased and his uncle, i.e., the complainant, were crying. When they went, there was a dead body lying on the ground. That means, PW.3 arrived at the scene of offence only after the incident. But one thing is clear from the evidence of this PW.3 & PW.4 that, there was ill-will between the accused and the deceased because of the property so purchased by Malappa from Rudrappa, for which the accused No.1 was insisting for returning it.

19. Further, PW.6 Malappa Barakade has come before the trial Court and stated that complainant Shankrappa is his uncle. Deceased Amasidda is the son of Shankrappa. According to him, he had purchased 5 acres of land from Rudrappa and for that, accused No.1 was insisting him for giving up the said land. But Amasidda had supported him and told him not to leave the land. He - 24 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 further states that, about two years and eight months prior to giving his evidence at 4.30 p.m. when he was in his garden land, deceased Amasidda went to bring his bullocks. His uncle Shankrappa had gone to bring the grass. Srimanth and another brother of the deceased had gone to graze the sheep. He heard the noise of Shankrappa. When he went there, he noticed that Amasidda was lying dead. He had suffered injuries on his stomach and neck. When he enquired Shankrappa, it was told that all these accused persons had committed the murder of Amasidda. It was accused No.1 who assaulted Amasidda by using the jambe. To some extent, he was treated as a hostile witness, but he is a hearsay witness according to his cross-examination directed by the prosecution. But in the cross-examination by the defence, he has completely turned hostile and admitted all the suggestions directed to him. So one thing is clear from the evidence of this PW.6 that, he had purchased 5 acres of land from Rudrappa, for which the accused No.1 raised the objections. He was insisting to return of the said land, for - 25 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 that deceased was supporting this PW6 and insisting not to return the land. In page No.6 of the cross-examination, it is suggested to PW.6 that when he went near his uncle on the date of the incident, except his uncle, nobody was there. That means the presence of accused No.1 to 5 is not at all stated by this PW.6, though he has stated the same in his statement before the police. That means he is not an eyewitness but went to the scene of offence only after the happening of the incident. Thus, much value cannot be attached to the evidence of this PW.6.

20. PW.7 - Patlu Kande is one of the panchas to Ex.P1 and he states with regard to noticing these accused Nos.1 to 5 conspiring themselves to commit the offence of murder of the deceased. He has denied all the suggestions so directed to him.

He identified the signature on Ex.P1. From the evidence of this PW.7, it is proved that Ex.P1 was prepared in his presence by the I.O.-. 26 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 21. PW.8-Yallavva Barakade is none else than the wife of the deceased. She too speaks in line with the evidence of the wife of the complainant. She states with regard to the relationship with Shankarappa-complainant, Shrimant-husbands brother, etc. She also speaks about the purchase of land by Malappa from Rudrappa and the insistence of accused No.1 to return the said land, etc. She went to the scene of offence on hearing the hue and cry of the complainant and noticed the grievous injuries on the person of the deceased on his stomach and neck. She has been cross-examined at length by the defence. She is a hearsay witness and not an eyewitness to the said incident.

22. PW.9-Ambadas Kokare is the inquest pancha. In his presence, the inquest panchanama was conducted and he noticed so many injuries on the person of a deceased and in his presence, photographs were taken as per Ex.P.17. He put his signature. Under Ex.P16, MO Nos.2 to 7 were seized by the police. With regard to the conduct of - 27 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 the inquest panchanama by the I.O., it is not in dispute. Though a lengthy cross-examination is directed to him, nothing worthy is elicited so as to disbelieve his presence at the time of conducting panchanama.

23. Likewise, PW.10 Jaganath Mashyal is also one of the panchas. His evidence is in line with the material evidence of PW.9. To disbelieve the evidence of PW9 and PW10, no effective cross-examination is directed. Thus, through PW.9 and PW.10 inquest panchanama is duly proved in accordance with law.

24. PW.11-Shankrappa Barakade is the complainant who is an eyewitness to the said incident of assault on his son Amasidda and he has witnessed these accused persons catching hold of the hands and legs of the deceased and accused No.1 assaulting the deceased by using the iron jambe. He corroborates the contents of the complaint in his evidence in material particulars. According to him, on hearing

the sound of his son, he rushed to the spot and noticed the presence of all these accused persons - 28 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 and assault by the accused No.1 on the person of the deceased. He speaks of shifting the dead body to the hospital, so also visiting the scene of the offence by the police, etc. Though he has been subjected to severe and intensive cross-examination, the trend of the cross-examination directed and shows that there was ill-will in between accused No.1 and the deceased, and as the deceased had become a hurdle in between Malappa and accused No.1, there was a previous threat given by the accused No.1 to this deceased to kill him, and he has executed the same as per the evidence spoken by the PW.11. Though many suggestions are directed, all the suggestions are denied by him. He was specific about the presence of these accused Nos.1 to 4 at the scene of offence when the incident of murder of his son Amasidda took place.

25. The evidence of PW.11 is corroborated by the evidence of PW.12-Shrimant Barakade another eyewitness. He says with regard to the ill-will between - 29 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 accused No.1 and the deceased with regard to the purchase of the land by Malappa as stated by the other witnesses. He too states, that on hearing the hue and cry of his brother, he rushed to the spot and noticed the presence of all these accused persons and noticed accused Kamanna assaulting his brother Amasidda on stomach, waist, neck, etc. Because of this severe attack on the person of the deceased, the intestine had come out, so also there were severe cut injuries to his neck, and he died on the spot itself. At that time, his father was crying. He identified MO.1 as the iron jambe used by accused No.1 at the time of committing the crime, so also he identified MO.8 to 12 as the clothes being worn by the deceased when the assault on him had taken place. Though this PW.12 is directed with searching and intensive cross-examination, he is specific about ill-will as well as the motive for crime by the accused persons. No doubt it has come in the evidence of PW.12, that the scene of offence is surrounded by the crops

being grown and nobody has seen the same, etc. But he has identified all these accused - 30 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 persons. All these accused persons were acquainted with the family of the complainant. They are of the same village. This fact of acquaintance between the accused persons and the complainants family is not denied by the defence. That means accused Nos.1 and 4 are not strangers to the family of the complainant. A lengthy cross-examination is directed at this PW.12, but he has with stood the test of cross-examination.

26. PW.13-Sayabanna Belandagi also speaks about the purchase of the property by Malappa and there was ill- will about the purchase of the land from Rudrappa from this Malappa, etc. He has turned hostile. He has deposed ignorance about the ill-will between the family. He has also deposed ignorance with regard to the quarrel between the deceased and accused. Nothing worthy is elicited. Therefore, evidence of this PW13 has not supported case of the prosecution. So also PW14- Maningappa Jiragal has turned hostile and nothing worthy is elicited and his evidence also would not help the case of the prosecution.-. 31 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017

27. PW.15-Gangaram Barakade is one of the witnesses to the criminal conspiracy by these accused persons. He states that, on 18.09.2013, when he had been to Maddi Maragamma temple along with Basavaraj Gobbi, he noticed the presence of all these accused conspiring amongst themselves and they were talking about hatching a plan to kill this Amasidda. He has been cross-examined at length by the defence, but he speaks about noticing the presence of all these accused on that day at 6.00 p.m. and talking with each other. He denied all the suggestions so directed to him. He further states that when he heard about the conspiracy by the accused persons, it was not informed to the family members of the deceased. If really as rightly observed by the trial Court, he has heard about the conspiracy to kill the deceased by the accused persons, he would have informed the family members of the deceased. In the absence of such evidence of information furnished to the family members, his evidence - 32 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 would not help the case of the prosecution to prove the criminal conspiracy as alleged by the prosecution.

28. PW.16-Basavaraj Gobbi also speaks in line with the evidence of PW15, but he has also not informed the same to the family members of the complainant. Though, he denied all the suggestions but criminal conspiracy as rightly observed by the Trial Court is not proved in accordance with law. Criminal conspiracy requires to be proved in accordance with law. That means, meeting of mind. It is very difficult to prove the criminal conspiracy, though the making allegations of criminal conspiracy is very easy. The ingredient of criminal conspiracy as defined under Section 120A of the Indian Penal Code are not duly proved in accordance with law.

29. The prosecution has examined a witness by name Malappa Kanade as PW.5. According to his evidence on 08.10.2013, himself and Siddappa were called by the Vijayapura Rural Police. At that time, accused Kamanna Shendage was in the custody of the police. Himself and - 33 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 Siddappa, along with the police and accused No.1 at the instance of accused No.1 went to the garden land of Kamanna. It was accused No.1, who produced the iron jambe, i.e., MO.1, which was blood stained. In his presence and during the presence of Siddappa, the police prepared the recovery panchanama as per Ex.P.10. Prepared the panchanama as per Ex.P7 and took the photographs as per Ex.P8 to Ex.P10. He identified the said iron jambe as MO.1. Thus, the recovery of the incriminating weapon is seized in the presence of this PW.5 and the presence of one Siddappa, who are the recovery panchas. Though intensive cross-examination is directed to this PW5 by the defence, he has withstood the test of cross-examination. All the suggestions directed to him have been denied by him. Therefore, it can be stated that the prosecution is able to establish the recovery of MO.1 at the instance of accused No.1 as per the panchanama Ex.P7.-. 34 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
30. PW.17-Arun Kumar Gangamshetti is a police constable who carried the FIR to

the Court. Accordingly, he has submitted the report as per Ex.P27. He identified the FIR as per Ex.P.22. Carrying FIR to the magistrate is not denied by the defence in material particulars. Therefore, the evidence of this PW17 has to be accepted to the extent of reaching the FIR to the jurisdictional magistrate on registration of the crime in Crime No.236/2013 by the police.

31. PW.18- Mohan Kumar Umadi was the Head Constable at the relevant time and as per the directions of his superior officers, he carried the dead body for the postmortem. He took the dead body to the Al Ameen Hospital, handed over the same for the postmortem to the doctor, and submitted a report to that effect. This fact is not denied by the defence in material particulars. His report is marked at Ex.P28, which is not disputed.

32. PW.19- Vishwanath Bhajantri was the Police Constable who took the seized articles to the FSL Belagavi - 35 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 and submitted a report as per Ex.P29. This fact is not denied by the defence. Therefore, except denial, nothing is brought on record in the cross-examination. That means carrying the seized articles to the FSL is not disputed in a proper manner.

33. PW.20-Nagappa Ambiger was the then PSI, Vijayapura Rural Police Station, and he went to the scene of offence on getting information at about 8.45 p.m. on 19.09.2013 at Government Ambulance and shifted the dead body to the Al Ameen Hospital to the mortuary. Recorded this complaint from the complainant Shankrappa at 1.00 a.m. on that day. Registered the same and set the criminal law in motion. Except denial, nothing worthy is elicited from the mouth of this PW.20 by the defence. It has come in his evidence that till 9.30 pm. on that day he was at the scene of offence. At that time, ASP R.Chetan was a Dy.S.P. It was raining at that time, according to him and he was wearing a jerkin, etc. Except this, nothing worthy is elicited from the mouth of this witness.-. 36 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017

34. PW.21-Vishnu Gaddennavar is the photographer attached to the Police

Department and he went to the scene of offence along with the police and took up the photographs as per Ex.P17. So also submitted a report as per Ex.P.32. The taking of the photographs is not denied by the defence. Negatives are not produced because he has taken the photographs by using a digital camera.

35. PW.22-Srikant Wali was the Assistant Executive Engineer, who prepared the sketch of the scene of offence as per Ex.P.33. The contents of this sketch are not denied by the defence. Therefore, evidence of this PW.22 is to be accepted to the extent that he has prepared the sketch as per Ex.P.33.

36. PW.23- Dr. Ramesh Patil was the Associate Professor, Department of Pharmacy, Al Hazar Medical College, Thord Pooja, Kerala and he was working as a Professor at Al Ameen Medical College, Vijayapur, at the relevant time. He conducted the postmortem on the dead - 37 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 body of the deceased and noticed the injuries stated above He is of the opinion that, death was due to the hemorrhage shock as a result of injuries sustained over the neck. Though a lengthy cross-examination is directed at him, nothing worthy is elicited, and he is consistent about the contents of his PM report and opinion. So therefore, the evidence of this PW.23 is to be accepted to the extent of conducting the postmortem. The medical evidence is corroborative in nature with that of the evidence of the complainant and other witnesses with regard to the injuries sustained by the deceased in the said assault by accused No.1.

37. PW.24- Kareppa Hatti was the CPI who conducted the inquest panchanama of the dead body and recorded the statement of witnesses. So also he has handed over the investigation to the PSI on his transfer. He denied all the suggestions so directed to him. Nothing worthy is elicited from the mouth of this witness.-. 38 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
38. PW.25- Chandrashekhar B.P. was the then CPI, Vijayapur Rural Circle, he was an investigation officer as well as a charge sheeting officer. He speaks in line with the investigation by him right from the taking of charge as a CPI, Vijayapura

Rural Circle. He has spoken with regard to the recording of the statement of witnesses and also sending of the seized articles of the FSL Belagavi, as well as preparation of the sketch through the Asst. Executive Engineer, etc. Though he has been directed with severe cross-examination, he has withstood the test of cross-examination.

39. Thus, on cumulative reading of the entire evidence spoken to by the witnesses, though the learned counsel for the appellant argued that the witnesses so examined in this case PW11 and PW12 even if threatened as interested witnesses being the father and son who are branded as eyewitness, but the oral evidence of PW11 and PW12 specifically establishes that, on the ill fated day, these accused No.1 to 4, in furtherance of their common - 39 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 intention, came to the landed property where the deceased had gone to bring his bullock. He quarreled with him. Accused No.1 by using MO No.1 jambe assaulted the deceased in discriminately not only on the vital part of the body but also all over the body and he has caused severe grievous injuries on the neck as well as on the stomach. Because of the brutal attack on him, even the intestine came out from the stomach. The photographs corroborate the contents of the PM report.

40. No doubt the said incident had taken place on the landed property. It is not in dispute that, these accused persons also have landed property. So also this complainant has land property and he has a farm house on the landed property. All of them have gone to their landed properties. So PW11 & PW12 cannot be termed as chance witnesses. They are very much present at their landed properties. The wife of the complainant and his daughter-in-law were also in the farm house. On hearing the hue and cry of the complainant, they came out and went to the - 40 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 scene of offence and noticed the dead body of Amasidda. They noticed the severe injuries sustained by the deceased, and it was a murderous attack. At the instance of accused No.1, the said MO No.1 was seized by the police. There is no missing link with regard to the said recovery of the incriminating articles at the instance of

the accused No.1. So the evidence placed on record by the prosecution do establish the presence of accused No.1 to 4 at the scene of offence when the incident took place. The medical evidence spoken to by the doctor also corroborates the prosecution story. Doctor having conducted the postmortem, state that, in all eleven injuries were sustained by the deceased. It is opined by the doctors that by using a MO No.1 the said injuries may be caused to him.

41. No doubt the learned counsel for the appellants found defects in the investigation process however that by itself cannot constitute grounds for acquittal. It is a legal obligation of the Court to examine carefully in each case, - 41 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 the prosecution evidence minus the lapses committed by the investigating officer to find out whether the evidence brought on record is, reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position of law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, this Court has examined the evidence led by the prosecution at threadbare and refrained from giving primacy to the negligence of the investigation officer as well as the omission and lapses resulting from the perfunctory investigation undertaken by the IOs. The endeavor of this Court has been to reach the root of the matter by analyzing and assessing the evidence on record and to ascertain whether the appellants were duly found to be guilty, as well as to ensure that the guilty do not escape the rigorous of law.

42. It is argued by the learned counsel for the appellants that PW.11 and PW.12 are the interested witnesses; therefore, their evidence cannot be accepted.-. 42 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 We have scrupulously perused the citations cited by the counsel for the appellants and with regard to the ratio laid down in the said decisions; there is no dispute as such. But the facts of this case and the facts of the said judgments are different, and they cannot be justifiably made applicable to the present facts of the case, for the simple reason that, the evidence brought on record clinchingly establishes the involvement and active participation of all the accused persons, i.e., accused

Nos.2 to 4 have caught hold of the hands and legs of the deceased and accused No.1 assaulted him on his neck and stomach by using MO No.1.

43. The learned Additional SPP relied upon some of the judgments in support of his submission reported in 2010 AIR SCW5685 in Dharnidhar vs State Of U.P. & Ors, wherein the Honble Apex Court has laid down the position of law with regard to the duties of the Court to deal with the evidence of the interested witnesses.-. 43 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
44. Four accused were involved and PW11 and PW12 particularly have stated in their testimony about involvement of accused nos. 1 to 4 and have ascribed the role of each accused Nos.1 and 2 to 4. That means, incident of assault which has occurred at the hands of four accused by means of deadly weapon and same is claimed to be seen by the brother and father of the deceased. That means, presence of all the accused is not disputed at the scene of offence by PW11 and PW12. So also immediately after arrival of other witnesses who are stated to be hearsay witnesses, complainant PW11 has stated about the assault on the person of deceased by all these accused persons. So when PW11 and PW12 are the eye witnesses have stated about the assault by the accused on the person of the deceased, their evidence is to be accepted.

45. It is held by the Allahabad High Court reported in 2022 SCC OnLine All 345 in Chhunna V/s State of U.P., that A close relative who is a natural witness of a crime cannot be recorded as an interested witness. In - 44 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017
para 43 of the judgment it is observed by the Allahabad High Court that It is settled that, the testimony of single eye witness can be acted upon if otherwise reliable and corroboration required only when his evidence is open to doubt and suspicious. A close relative, who is a natural witness, cannot be recorded as an interested witness. The term interested postulates that, the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because some animus with accused for some other reason. It is held that testimony of solitary witness has to be examined with great

care and circumspection.

46. If the evidence of PW11 and PW12 is scrupulously and cautiously perused, though they were cross-examined at length by the defence but have withstood the test of cross-examination. Yet in another judgment of Honble Apex Court in Criminal Appeal No.2132 of 2011 in Thatireddigari Maheswara Reddy V/s State of Andhra Pradesh decided on 08.07.2024, - 45 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 in para 6 of the judgment the Apex Court observed that, Only because an eye witness is a member of the deceaseds family, per se, the evidence of such a witness cannot be discarded. If the evidence of an eyewitness who is a close relative of the deceased is cogent, reliable and credible, it can always be relied upon.

47. In view of our discussion with regard to the evidence of various witnesses, it can be stated that principles laid down in the aforesaid judgments can very well be made applicable to the present facts of the case. The learned trial Court has considered all these aspects and has come to the conclusion that, these accused Nos.1 and 4 are guilty of committing the offence under Section 302 R/w 34 of IPC. Section 149 of IPC has been wrongly mentioned by the trial Court. Accused Nos.2 and 3 are absconding. There was active participation of all the accused persons and in furtherance of their common intention. These accused Nos.2 to 4 caught hold of the hands and legs of the deceased and allowed accused No.1 - 46 - NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017 to assault with MO No.1 on the neck and the stomach of the deceased. So therefore, when such evidence is placed on record by the prosecution, it can be never be stated that, the defence of the accused is proved in accordance with law. The learned trial Court has considered all these aspects and evaluated the evidence placed on record by the prosecution in proper manner. We do not find any factual or legal error committed by the trial Court in finding the accused guilty for the aforesaid offence. There is no merit in these appeals and these appeals are liable to be dismissed. Accordingly, the aforesaid point is answered in favour of the prosecution and against the accused Nos.1 and 4 the appellants in these appeals.

Resultantly, we pass the following:

ORDER

i) Criminal Appeals No.200113/2017 and 200133/2017, are hereby dismissed.-. 47
- NC:

2024. KHC-K:7573-DB CRL.A No.200133 of 2017 C/W CRL.A No.200113 of 2017

ii) The judgment of conviction and order of sentence passed against the appellants i.e. accused Nos.1 and 4 dated 28.03.2017 in SC No.73/2015 by the IV Addl. Sessions Judge, Vijayapura, is hereby confirmed. iii) Send back the trial Court records along with a copy of this judgment to the trial Court as well as to the Superintendent of Jail for information. Sd/- (S. SUNIL DUTT YADAV) JUDGE Sd/- (RAMACHANDRA D. HUDDAR) JUDGE SMP List No.:

1. SI No.: CT: PS

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