

Venkatappa vs the State of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Jun-26-2024

Judge : Ashok S. Kinagi,Rajesh Rai K

Appeal No. : CRL.A/200242/2023

Appellant : Venkatappa

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH R
DATED THIS THE 26TH DAY OF JUNE, 2024 PRESENT THE
HON'BLE MR. JUSTICE ASHOK S. KINAGI AND THE HON'BLE MR.
JUSTICE RAJESH RAI K CRIMINAL APPEAL NO.200174 OF 2017
(374) C/W CRIMINAL APPEAL NO.200165 OF 2022 (374) CRIMINAL
APPEAL NO.200242 OF 2023 (374) IN CRL.A. NO.200174 OF 2017
BETWEEN: RAJU S/O ANTAPPA KARANKOT, AGE: MAJOR, OCC:
LABOUR, R/O: SANGAM KALAN (TELANGANA)

Digitally signed by TQ: TANDUR, DIST: RANGAREDDY,
BASALINGAPPA ANDRA PRADESH. SHIVARAJ DHUTTARGAON

APPELLANT Location: HIGH (BY SRI SANJAY KULKARNI, ADVOCATE) COURT OF KARNATAKA AND: THE STATE OF KARNATAKA THROUGH CHINCHOLI POLICE STATION, REPRESENTED BY: ADDITIONAL STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENCH AT KALABURAGI, KALABURAGI - 585 107. RESPONDENT (BY SRI SIDDALING P. PATIL, ADDL. SPP) -2- THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE, PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 12.07.2017 PASSED BY THE III-ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT KALABURAGI, IN SESSIONS CASE NO.122/2015 AND SET THE APPELLANT/ACCUSED AT LIBERTY IN THE INTEREST OF JUSTICE. IN CRL.A.NO.200165 OF 2022 BETWEEN: SRINIVAS @ SENU S/O NARASAPPA BHAKTAMPALLY, AGE: MAJOR, OCC: LABOUR, R/O: SANGAM KALAN (TELANGANA), TQ: TANDUR, DIST: RANGAREDDY, ANDRA PRADESH. APPELLANT (BY SRI B.C.JAKA, ADVOCATE) AND: THE STATE OF KARNATAKA THROUGH CHINCHOLI POLICE STATION, REPRESENTED BY: ADDITIONAL STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENCH AT KALABURAGI, KALABURAGI - 585 103.

RESPONDENT (BY SRI SIDDALING P. PATIL, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE, PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 12.07.2017 PASSED BY THE III-ADDITIONAL DISTRICT AND SESSIONS JUDGE AT KALABURAGI, IN SESSION CASE NO.122/2015 AND SET THE APPELLANT/ACCUSED AT LIBERTY IN THE INTEREST OF JUSTICE. -3- IN CRL.A. NO.200242 OF 2023 BETWEEN: VENKATAPPA S/O NARASAPPA BHAKATAMPALLY, AGE: MAJOR, OCC: LABOUR, R/O: SANGAM KALAN (TELANGANA), TQ: TANDUR, DIST: RANGAREDDY, ANDRA PRADESH. APPELLANT (BY SRI SANJAY KULKARNI & SRI

S.V.DESHMUKH, ADVOCATES) AND: THE STATE OF KARNATAKA THROUGH CHINCHOLI POLICE STATION, REPRESENTED BY: ADDITIONAL STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENCH AT KALABURAGI, KALABURAGI - 585 107. RESPONDENT (BY SRI SIDDALING P. PATIL, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE, PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 12.07.2017 PASSED BY THE III-ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT KALABURAGI, IN SESSION CASE NO.122/2015 AND SET THE APPELLANT/ACCUSED AT LIBERTY IN THE INTEREST OF JUSTICE. THESE CRIMINAL APPEALS COMING ON FOR FINAL HEARING, THIS DAY, RAJESH RAI K. J., DELIVERED THE FOLLOWING: -4-

JUDGMENT

These three appeals by convicted accused Nos.1 to 3

are directed against the judgment of conviction and order

of sentence passed in S.C.No.122/2015 dated 12.07.2017 by the Court of III Additional District and Sessions Judge at Kalaburagi, wherein the learned Sessions Judge has convicted the accused for the offences punishable under Sections 394, 302 r/w Section 34 of IPC and consequently sentenced them to undergo imprisonment for life and also to pay a fine of Rs.5,000/- each. In default of payment of fine, they shall suffer simple imprisonment for six months for the offence punishable under Section 302 r/w Section 34 of IPC.

2. Since the accused sentenced for the major offence punishable under Section 302 of IPC for life, no separate sentence is imposed on them for the offence punishable under Section 394 of IPC. -5-

3. Factual matrix of the prosecution case for

consideration before the Sessions Court is that, on 24.10.2014 at about 10:00 a.m., PW.10-Gangaram espied three cadavers while he was passing through the road by the side of the house of deceased-Yallappa. Immediately,

he had informed the same to PW.1-Pentappa (complainant) who is the nephew of (i.e., brothers son) of deceased Yallappa that, on the intervening night of 23.10.2014 and 24.10.2014, some unknown miscreants had murdered his uncle Yallappa, his aunt Satyamma and their adopted son Bhojaraj by assaulting with wooden sticks on them.

4. On the basis of said information, PW.1 along

with his relatives rushed to the house of the deceased- Yallappa and witnessed the dead bodies of Yallappa, Satyamma and their adopted son Bhojaraj laying in the pool of blood. Hence, PW.1 lodged the complaint before the respondent-Police on 24.10.2014 as per Ex.P1 and FIR has been registered in Crime No.150/2014 dated -6-

24.10.2014 for the offence punishable under Section 302 of IPC against unknown persons by PW.21. Subsequently, the Investigation Officer i.e., PW.19 conducted further investigation. During the course of investigation, he obtained IMEI number of the mobile phone of deceased- Yallappa i.e., 911320650035520. On the basis of it, he tracked down the SIM used in the mobile of the deceased-

Yellappa i.e., +91 8465015024 and gathered the information regarding the user details of the SIM. Upon receipt of the informations afore narrated, PW.19 sent requisition to CW.20-Nodal Officer for issuing call details register. Thereafter, PW.20 obtained CDR and issued Customer Application Form pertaining to the said SIM. Accordingly, on 06.11.2014, PW.19 received customer application form and on verification, it is found that the mobile was transacted further to one CW.19-Gaibappa of Sangam Kalan village, Tandur Taluk, Rangareddy District, Andhra Pradesh. Hence, PW.19 along with PW.9 and CW.11 travelled to Andhra Pradesh to trace out the

-7- genesis of the crime and visited the house of CW.19- Gaibappa. On enquiry, CW.19 produced the mobile of deceased-Yallappa as per M.O.1 and the same was seized under Ex.P9-Mahazar on 14.11.2014 in the house of CW.19.

5. Thereafter, on enquiry, CW.19 informed PW.19

that the said mobile was sold to him by accused No.1- Srinivas and accordingly, he directed PW.19 and his men towards the house of accused No.1. As per the same, PW.19 along with panchas, PW.9 and CW.11, arrested accused No.1 and recorded his voluntary statement as per Ex.P32, wherein he disclosed about the commission of the crime along with accused Nos.2 and 3. Later, PW.19 recovered blood stained clothes of accused No.1 worn at the time of commission of offence under Ex.P10-mahazar as per M.Os.19 and 20. Thereafter, accused No.1 lead PW.19 to the house of accused No.3. Accordingly, PW.19

arrested accused No.3 and recorded his voluntary statement as per Ex.P33 and also recovered his blood -8-

stained clothes worn at the time of commission of the crime as per M.Os.21 and 22 under Ex.P11-mahazar. Accused No.3 also exhibited the motor bike which was used for the commission of offence i.e., motor bike bearing Registration No.AP-10-AB-0609 as per Exs.P12 to P15. Thereafter, accused Nos.1 and 3 and PWs.19 and 9 went to the place of accused No.2 i.e., Rizwan Stone Polishing Machine at Tandur-Karanakot house and PW.19

arrested accused No.2 and recorded his voluntary statement as per Ex.P34 and also seized the blood stained clothes of accused No.2 under Ex.P16 as per M.Os.23 and

24. Accused Nos.1 to 3, in their disclosure statements

revealed that due to their bad vices and depravity and for illegal gain, they ventured into committing the murder of deceased-Yallappa, his wife and their adopted son in their house on the intervening night of 23.10.2014 and 24.10.2014 by assaulting them with M.Os.18, 26, 27, 28 and 29. Accordingly, PW.19 conducted further investigation by recording the statement of witnesses and -9-

after obtaining necessary documents from the concerned authorities, laid the charge sheet against the accused for the aforementioned offences before the Committal Court.

6. On committal of the case before the Sessions

Court, the learned Sessions Judge framed the charges for the said offences and read over the same to the accused. However, the accused denied the charges and claimed to be tried.

7. In order to prove the charges leveled against

the accused before the Sessions Court, the prosecution in total examined 21 witnesses as PWs.1 to 21 and got marked 41 documents as Exs.P1 to P41 so also got identified M.Os.1 to 30.

8. After completion of the prosecution witnesses,

the learned Sessions Judge read over the incriminating portion of the evidence of the material witnesses to the accused as per the provisions of Section 313 of Cr.P.C. However, the accused denied the same. The defence of - 10 - the accused is of total denial and that of false implication. The accused have neither examined any witnesses on their behalf nor got marked any documents.

9. Post assessment of the oral and documentary evidence, the learned Sessions Judge convicted the accused for the charges leveled against them and sentenced them as stated supra.

10. The validity and legality of the judgment passed

by the Sessions Court aforementioned is in called-in scrutiny by all the three accused by way of filing the separate appeals. More particularly, Accused No.3 has filed Criminal Appeal No.200174/2017, whereas accused No.1 has filed Criminal Appeal No.200165/2022 and accused No.2 has filed Criminal Appeal No.200242/2023.

11. Contentions in-detail have been advanced by Sri.Sanjay Kulkarni, Sri.B.C.Jaka and Sri.S.V.Deshmukh, learned counsel for the respective accused and Sri.Siddaling P. Patil, learned Additional State Public - 11 - Prosecutor for the respondent-State and we have heard the respective counsels at length.

12. Learned counsels for accused Nos.1 to 3 would

vehemently contend that the judgment under these appeals suffer from perversity and illegality. The learned Sessions Judge has failed to appreciate the evidence and the documents placed before it on a right perspective. According to the learned counsels, the entire case of the prosecution totally rests upon circumstantial evidence and the prosecution has failed to connect the dots so as to form a chain of link that completely directs towards the guilt of the accused. As such, inter alia he would submit that prosecution has failed to prove the guilt of the accused beyond reasonable doubt. It is their further contention that the prosecution relied on the evidence of PWs.1, 9 and 19-Investigation Officer to complete the chain of circumstantial evidence. On perusal of the evidence of those witnesses, except the homicidal death of the deceased persons, absolutely, none of the other

- 12 - circumstances are proved to connect the accused persons

in the crime. Though PW.9 is the material witness who deposed about recovery of the incriminating articles i.e., weapon and blood stained clothes of the accused which were worn at the time of commission of offence, the said recovery is not proved as per the law laid down by the Honble Apex Court in catena of judgments. Further, they would contend that there is a delay in lodging the FIR by PW.1. Though the incident has occurred in the intervening night of 23.10.2014 and 24.10.2014, complaint was lodged in the afternoon i.e., at about 1:00 p.m., on

24.10.2014. According to PW.10-the relative of the deceased, had seen the incident at about 7:30 a.m. However, he has not stepped in to lodge any complaint before the respondent-Police at the earliest point of time. Hence, the said inordinate delay caused in registration of FIR is beyond justification by the prosecution. Additionally, they would submit that the Police Constable who carried

the FIR to the jurisdictional Magistrate has not been

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examined by the prosecution. Hence, according to them, a doubt arises with regard to genesis of the case. They would further contend that, PWs.14 and 15 are the material witnesses who have allegedly stated in their 161 statement about the movement of the accused on the date of incident in front of the house of the deceased-Yallappa. However, both these witnesses have turned hostile to the case of the prosecution.

13. The counsels would also contend that, the

injuries found on the dead body as per the postmortem report could not be possible, if assaults are being inflicted with M.Os.26 and 27. They also canvass that, the prosecution failed to prove the time of the death of deceased persons. According to the postmortem report and the opinion expressed by the Doctor on the basis of the rigor mortis found on the dead bodies; he stated that the death was caused around 08 to 24 hours before

conducting the post-mortem. Such being the circumstances narrated in the evidence, the very narration - 14 -

of the incident itself is suspicious one and far from truth. They also contended that, the Investigating Officer failed to send M.O.25 i.e., empty whisky bottle seized from the place of alleged incident for FSL to determine the fingerprints on it. As such, according to the counsels representing accused persons, on coalesce of the above discrepancies pointed out submit that, the prosecution has miserably failed to prove the guilt of the accused beyond

reasonable doubt and the learned Sessions Judge convicted the accused purely on the basis of surmises and conjectures, which requires interference by this Court.

14. In order to buttress their argument, the learned

counsel relied upon the judgments of the Honble Apex Court in the case of i) Krishnan Vs. State, Represented by Inspector of Police reported in (2008) 15 SCC 430, ii) State of Rajasthan Vs. Mahesh Kumar @ Mahesh Dhaulpuria and another reported in (2019) 7 SCC 678, iii) Suresh and another Vs. State of Haryana, reported

- 15 - in (2018) 18 SCC 654. With these submissions, they prayed to allow the appeals.

15. Refuting the above submissions, learned Addl.

State Public Prosecutor would vehemently contends that the judgment under these appeals does not suffer from any perversity or illegality and the learned Sessions Judge rightly convicted the accused for the charges leveled against them after meticulously examining the oral and documentary evidence available on record in a well

reasoned judgment, which does not call for any interference by this Court. He would further contend that the prosecution proved all the circumstances in this case by leading cogent and convincing evidence of material witnesses.

16. He would further contend that the evidence of

PW.19 i.e., Investigation Officer and the mahazar witnesses PW.9 for the recovery of M.O.1 i.e., Mobile belongs to the deceased-Yallappa from CW.19, and his statement recorded under Section 164(5) of Cr.P.C. before - 16 -

the learned Magistrate as per Ex.P35 is the prime circumstance relied by the prosecution. Consequently, PW.19 the Investigation Officer visited the house of all the three accused and based on their voluntary statement, recovered the clothes worn by them at the time of incident under three mahazars and P.W.9, who is the witness to all

those mahazars clearly supported the case of the prosecution. The learned Addl. SPP would further contend that, the involvement of the accused in this case is traced by PW.19 based on the documentary evidence i.e., Call Details Record

(CDR) Ex.P.37 so also the evidence of the Nodal Officer, CDR Section, Gulbarga, who is examined as P.W.20. He would also contend that the complainant-PW.1 and PW.11 have identified the Mobile M.O.1 and have deposed that the cell phone that is seized, belongs to deceased Yallappa. In such circumstances, according to the Addl. State Public Prosecutor the involvement of the accused in the crime is clearly forthcoming. To further substantiate the guilt of the accused, the prosecution

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examined P.Ws.1 and 10. Both these witnesses have stated that, immediately after the incident, PW.10 went to the spot and spotted the cadavers of all the deceased ternion and immediately informed the same to PW.1. In turn, PW.1 visited the spot and thereafter lodged a complaint and as such, there is no such delay in lodging the complaint.

17. According to the learned Addl. State Public

prosecutor, apart from the evidence of PWs.1 and 10, the other witnesses PWs.11 and 13 also visited the incident and seen the carcass of the deceased persons laying in the pool of blood. Their oral evidence, corroborates with the medical evidence i.e., post mortem reports as per Exs.P29 to 31. Further, the evidence of P.Ws.16 and 17 i.e., employers of accused Nos.2 and 3 also reveals that after the incident, both the accused Nos.2 and 3 had remained absent for their duties. In such circumstance, adverse inference can also be drawn against the accused. He also contends that the scientific examination of the clothes of

- 18 - the deceased, accused and the weapons which were used for the commission of crime discloses that, all those articles were stained with human blood of A & O group i.e., blood group belongs to deceased-Yallappa and Satyamma. Such being the events unfolded during the course of investigation and in the evidence, the prosecution proved that accused are the perpetrators of the crime, but none else by completing the chain of crime. Hence, according to the learned Addl. State Public Prosecutor, the prosecution proved the case before the Sessions Court beyond all reasonable doubt and the learned Sessions Judge

rightly convicted the accused for the charges leveled against them. Accordingly, he prays to dismiss the appeal.

18. Having heard the learned counsel for the appellants so also learned Addl. State Public Prosecutor, the points that would arise for our consideration are: 1) Whether the judgment under this appeal suffers from any perversity or illegality? - 19 - 2) Whether the learned Sessions Judge is justified in convicting the accused for the offences punishable under Sections 394, 302 r/w Section 34 of IPC?

19. As common narrations so also the considerations are involved in the appeal on hand, we take the liberty to address both the above raised interrogatio in the forgoing paragraphs.

20. This Court being the Appellate Court, in order

to, re-appreciate the entire material on record, is obligated to re-consider the entire prosecution witnesses and the documents that are relied upon in order to arrive at justified conclusion. Accordingly, on cursory glance of the evidences deposited by the witnesses available on record, this Court would find that:- i. PW.1-Pentappa, nephew of the deceased Yallappa, lodged the complaint before the Police as per Ex.P1 on 24.10.2014 at about 1:00 p.m. He reiterated the averments made in the complaint and stated that, on 24.10.2014, PW.10-Gangaram informed him about the - 20 - death of fathers elder brother, aunt and their adopted son. Shocked with the same, he rushed to the spot and witnessed the cadavers of all the three and thereafter lodged a complaint before the jurisdictional Police. ii. PW.2- Raju, witness for inquest panchanama of deceased Yallappa so also spot mahazar drawn as per Exs.P2 and P3 respectively. Though this witness partially turned hostile to the prosecution case, he identified his signatures on Exs.P2 and P3. He also identified the photographs of the dead bodies of the deceased persons as per Ex.P2(b) to (d). iii. PW.3- Bhimarao, co-panch for inquest mahazar of deceased Yallappa as per Ex.P2 and the spot mahazar Ex.P3. However, this witness also turned hostile to prosecution case.

iv. PW.4- Babu, witness for inquest panchanama of the dead body of Satyamma as per Ex.P4. He identified - 21 - his signature on Ex.P4 so also the photographs

of the carcass of Satyamma as per Ex.P4(b) and (c). v. PW.5- Yallamma, co-panch to inquest panchanama of deceased Satyamma and she identified the photographs as per Ex.P4(b) and (c). vi. PW.6- Suryakanth is a witness for inquest mahazar of deceased Bhojaraj as per Ex.P5. He identified his signature on Ex.P5. vii. PW.7- Maragappa is a witness for seizure panchanama i.e., Ex.P.6 wherein, clothes of deceased Satyamma were seized along with gold and silver

ornaments as per M.Os.2 to 5, 6 and 7. He is also a witness for Ex.P7 i.e., seizure of clothes of deceased Yallappa as per M.Os.10 to 13 and additionally a witness to Ex.P8 i.e., seizure of clothes of deceased Bhojaraj as per M.Os.14 to 18. viii. PW.8-Hanmanth, brothers son of deceased Yallappa. According to him, PW.10 informed about the - 22 -

death of the deceased to PW.1 and thereafter he accompanied PWs.1, 13 and CW.16 to the spot and espied the dead body of deceased Yallappa, Satyamma and Bhojaraj. He also identified the employer of deceased Yallappa as per M.O.1 and cash of Rs.3,000/- which is recovered at the instance of the accused. He also identified the stick at M.O.18 which is allegedly used for the commission of crime by the accused.

ix. PW.9- Jaganath, mahazar witness to Ex.P9 i.e.,

Mobile Phone of deceased Yallappa from CW.19. Further, he accompanied PW.19 -Investigating Officer to the house of accused No.1 and also witness to the Ex.P10 i.e., seizure of clothes of accused No.1 as per M.Os.19 and 20. According to him, PW.19 and himself, along with accused No.1 went to the house of accused No.3 and based on the voluntary statement of accused No.3, a mahazar was drawn in the house of accused No.3 as per Ex.P11 and the blood stained clothes of accused No.3 seized as per M.Os.21 and 22. Thereafter, PW.19 also seized the

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motorcycle which has been used for the commission of crime as per Exs.P12 to 15. This witness also deposed about the arrest of accused No.2 and recording of voluntary statement and the seizure of the blood stains clothes of accused No.2 as

per M.Os.23 and 24 under Ex.P16. He is also witness to Ex.P17 i.e., seizure of empty Whisky Bottle from the house of Yallappa as per M.O.25.

x. PW.10 - Gangaram, neighbour of deceased Yallappa who visited the spot soon after the incident and informed the same to PW.1 telephonically. Though this witness turned hostile to the prosecution case in his chief examination, nevertheless, supported the case of the prosecution in his cross-examination. xi.

PW.11- Smt. Yallamma W/o Gangaram and also the relative of deceased Yallappa. According to her, she also accompanied PW.10 to the spot and identified the dead body of deceased Yallappa and also M.O.1 i.e., Mobile phone of deceased Yallappa. This witness also turned hostile in the examination-in-chief, regardless, - 24 - supported the case of the prosecution in her cross- examination conducted by the learned Public Prosecutor. xii. PW.12-Ramamma, neighbour of the deceased, stated that after hearing the hue and cry from the house of deceased Yallappa, she visited the house of the deceased Yallappa and saw the cadavers. xiii. PW.13-Krishna, the brothers son of deceased Yallappa (nephew) went to the spot along with PWs.1, 8 and CW.16 and saw the cadavers of deceased persons. He also identified the stick as per M.O.18.

xiv. PW.14-Pandu, the circumstantial witness, who runs the hotel in the area where the deceased resides and watched the movement of the deceased on the date of incident. However, this witness turned hostile to the prosecution case. xv. PW.15-Sangamesh, another circumstantial witness, according to the prosecution, he went to attend Pooja held during the night in the grocery shop of the area - 25 -

where the deceased persons reside and seen the movement of the accused on the date of incident, however this witness turned hostile to the case of the prosecution. xvi. PW.16-Rizwan, employer of accused No.2, deposed that, after the incident, accused No.2 did not attend for duty. xvii. PW.17-Muneer, one more labour contractor with

whom the accused No.3 was working. According to this witness, after the incident, the accused No.3 did not attend the duty. xviii. PW.18-Abdul Hameed, PSI conducted inquest mahazar of deceased Bhojaraj as per Ex.P5 and taken the photographs of dead body of deceased Bhojaraj as per Exs.P9 and 10. xix.

PW.19-Siddeshwar, the Investigation Officer,

conducted the entire investigation in the case and after obtaining necessary documents from concerned authority, laid the charge sheet before the Committal Court. - 26 - xx. PW.20-Hemanth Kumar, the then PSI of respondent-Police so also Nodal Officer, CDR Section, Kalaburagi, deposed that based on the requisition sought along with mobile number from CPI, Chincholi Circle, he had given service provider details of the mobile number so also the IMEI to the CPI i.e., PW.19 as per Exs.P37 to 39. xxi. PW.21-Murali, the then PSI of respondent Police, registered FIR against unknown person in Crime No.150/2014 based on the written complaint given by PW.1.

21. Before delving upon to analyze the evidence on

record as stated supra, this case totally rests upon the circumstantial evidence, as per the settled position of law by the Honble Apex Court way back in the year 1993 i.e., in the case of Sarbir Singh v. State of Punjab reported in 1993 Supp (3) SCC 41 held in Paragraph No.6 as under:

6. It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many - 27 -

cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilty of the accused and should be such as to exclude every hypothesis but the one sought to be proved;

(iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.

22. The above principles enunciated in the above case is also re-iterated in the case of Sharad Birdhichand Sarda v. State of Maharashtra reported in

(1984) 4 SCC 116 and laid the golden principles to prove

the case based on circumstantial evidence. The said principles also reiterated in the recent judgment of the Honble Apex Court in the case of Shankar v. State of - 28 - Maharashtra reported in 2023 SCC OnLine SC 268, wherein, the Honble Apex Court has summarized the

guidelines to convict the accused in the cases which are

based on circumstantial evidences.

23. Keeping in mind the above enunciated principles, when we analyze the evidence on record, so also the congregate of circumstances, the following are the aspects that fall out in our consideration:- HOMICIDAL DEATH OF TERNION i.e., YALLAPPA, SATYAMMA AND BHOJARAJ

24. In so far as deceased Yallappa is concerned, the

prosecution relied on the postmortem report as per Ex.P29 and also the inquest mahazar Ex.P2. On careful perusal of Ex.P29, the Doctor has opined that the death of deceased Yallappa is due to cardiovascular shock, secondary to the crushing injury to the brain. Hence, on a conjoint reading of Ex.P29, the post-mortem report and the inquest panchanama Ex.P2 coupled with the evidence of PWs.18

- 29 - and 2, the prosecution has proved the homicidal death of deceased Yallappa in this case.

25. As far as the death of deceased Satyamma is concerned, the prosecution relied upon Ex.P30, Post

Mortem conducted by CW.25 so also the inquest panchanama as per Ex.P4 drawn by PW.18 in the presence of PWs.4 and 5. On perusal of Ex.P30, the cause of death that is mentioned by the Doctor is that the death of deceased Satyamma is due to cardiovascular shock, secondary to the crushing injury to the brain. Hence, the prosecution has also proved that the Satyamma has breathed her last by way of homicidal death.

26. Insofar as the death of deceased Bhojaraj is

concerned, the prosecution has relied upon Ex.P31 i.e., postmortem conducted by CW.25 and also the inquest panchanama i.e., Exs.P5. On perusal of Ex.P31, the Doctor has opined that the death of deceased Bhojaraj is due to cardiovascular shock, secondary to the crushing injury to - 30 - the brain. Hence, on perusal of Exs.P31 and P5 the prosecution has proved that the deceased Bhojaraj also died due to homicidal death. Nevertheless, the defence has not seriously disputed the homicidal death of the deceased ternion in this case. PLACE OF DEATH AND LODGING OF COMPLAINT BY PW.1

27. As per PW.10, immediately after the incident,

he informed the death of the ternion to PW.1 and PW.1 in- turn rushed to the spot which is situated 85 kilometers from his house and thereafter lodged the complaint. The other witnesses also deposed similarly that of PWs.1 and 10 that they saw the cadavers in the house which were laying in the pool of blood covered with bleeding injuries. No other explanation either in 313 statement or by leading defence evidence forthcoming by the defence about the homicidal death of deceased ternion.

- 31 - ARREST AND SEIZURE OF MOBILE-M.O.1 BELONGS TO DECEASED YALLAPPA

28. The Investigation Officer-PW.19 had taken

much pain to nab the accused in this case. On careful scrutiny of the evidence of PW.19, though the FIR registered against the unknown persons based on the complaint lodged by PW.1, he conducted the investigation by obtaining IMEI

number of the mobile of deceased Yallappa. Thereafter, he sent requisition to PW.20 for issuance of Customer Application Form pertaining to that SIM. On perusal of the same, it was revealed that the said SIM was in the name of one Ambika W/o Gaibappa i.e., CW.19, the resident of Baktampalli, Sangam Kalan village, Tandur Taluk, Ranga Reddy District (AP).

29. Subsequently, PW.19 along with PW.9 and

CW.11 visited the house of CW.19-Gaibappa and recovered the said mobile phone marked as M.O.1 under the mahazar drawn as per Ex.P9 and CW.19 also disclosed that M.O.1 i.e, mobile of deceased Yallappa was sold by - 32 -

accused No.1-Srinivas to him. Accordingly, PW.19 apprehended all the three accused and recovered their blood stained clothes which worn at the time of incident at different mahazars based on their voluntary statement as discussed supra. On careful examination of the evidence of PW.19 together with the documents i.e., the Customer Application Form pertaining to the mobile of deceased Yallappa with IMEI numbers as per Exs.P37 and 38 respectively so also the Customer Application Form of wife of CW.19 namely Ambika as per Ex.P39, it is clear that in

order to connect the accused in the crime, the prosecution

placed documentary evidence in addition to the oral testimony of PW.19- Investigation Officer and the evidence of PW.20 the Nodal Officer who issued the above documents. This is a major circumstance which the prosecution relied to connect the accused in the crime. SALE OF DECEASED YALLAPPAS MOBILE TO CW.19 BY ACCUSED NO.1. - 33 -

30. The next circumstance which prosecution relied

is the 164 statement of CW.19-Gaibappa as per Ex.P35 from whom the recovery of M.O.1 was effected by PW.19 and identification of M.O.1 i.e., mobile of deceased by PWs.1 and 10 the nephews of deceased. Though CW.19 is not examined before the Court, nevertheless in his statement under 164 of Cr.P.C., he has categorically stated that the said mobile was sold by accused No.1 to him after

the incident. The said statement corroborates with the documentary evidence of Exs.P37, 38 and 39.

CALL DETAILS PERTAINING TO THE MOBILE (M.O.1) OF DECEASED YALLAPPA

31. The next circumstance which the prosecution

relied is the call detail records (CDR) provided by PW.20 the Nodal Officer as per Exs.P37 and 38. To further buttress the evidentiary value of the same, we rely on the decision of the Honble Apex Court in the case of Mohd. Arif @ Ashfaq v. State (NCT of Delhi) reported in - 34 -

(2011) 13 SCC 621, wherein the Honble Apex Court in Paragraph No. 60 has held as under:-

60. It has come in the evidence that the active mobile phone has two components i.e. the mobile instrument and the SIM card. Every mobile instrument has a unique identification number, namely, instrument manufactured equipment identity (for short IMEI number). Such SIM card could be provided by the service providers either with cash card or post-paid card to the subscriber and once this SIM card is activated the number is generated which is commonly known as mobile number. The mobile service is operated through a main server computer called mobile switching centre which handles and records each and every movement of an active mobile phone like day and time of the call, duration of the call, calling and the called number, location of the subscriber during active call and the unique IMEI number of the instrument used by the subscriber during an active call. This mobile switching centre manages all this through various subsystems or sub-stations and finally with the help of telephone towers. These towers are actually base transceiver stations also known as BTS. Such BTS covers a set of cells each of them identified by a unique cell ID. A mobile continuously selects a cell and exchanges data and signalling traffic with the corresponding BTC.

Therefore, through a cell ID the location of the active mobile instrument can be approximated.

32. Further, in another decision of the Honble Apex court in *Gajraj v. State (NCT of Delhi)* reported in - 35 -

(2011) 10 SCC 675, the Honble Apex Court in paragraph No. 16 has held as under:-

16. The evidence produced by the prosecution is based on one irrefutable fact, namely, every mobile handset has an exclusive IMEI number. No two mobile handsets have the same IMEI number. And every time a mobile handset is used for making a call, besides recording the number of the caller as well as the person called, the IMEI numbers of the handsets used are also recorded by the service provider. The aforesaid factual position has to be kept in mind while examining the prosecution evidence.

33. In order to better emphasize the case on hand

this Honble Court would find it relevant to refer to the decision of the Honble Apex Court in the case of *State (NCT of Delhi) v. Navjot Sandhu*, reported in (2005) 11 SCC 600, wherein Paragraph Nos.205 and 206 reads as under:

205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two - 36 -

Explanations to the section, which explain the ambit of the word conduct. They are:

Explanation 1.-The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.-When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute conduct unless those statements accompany and explain acts other than statements. Such statements accompanying the acts are considered to be evidence of *res gestae*. Two illustrations appended to Section 8 deserve special mention: (f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence - the police are coming to look for the man - 37 -

who robbed B, and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

206. We have already noticed the

distinction highlighted in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr PC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as conduct under Section 8 irrespective of the fact whether

the

statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In Om Prakash case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14)

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[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.

34. To connect the legal propositions, this Court would also emphasize upon the decision in the case of Sukhar v. State of U.P., reported in (1999) 9 SCC 507, wherein in Paragraph Nos.6 to 9 reads as under:-

6. Section 6 of the Evidence Act is an

exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus: Under the present exception [to hearsay] and utterance is by - 39 -

hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been

made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued.

7. Sarkar on Evidence (15th Edn.) summarises the law relating to applicability of Section 6 of the Evidence Act thus: 1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such

facts are part of a transaction which

is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past. - 40 -

3. The declaration and the act may

be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & c the declarations of all concerned in the common object are admissible.

4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.

8. This Court in *Gentela Vijayavardhan Rao v. State of A.P.* [(1996) 6 SCC 241 : 1996 SCC (Cri) 1290] considering the law embodied in Section 6 of the Evidence Act

held thus: (SCC pp. 246-47, para 15)

15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue as to form part of the same transaction that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it

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is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.

9. In another recent judgment of this Court

in *Rattan Singh v. State of H.P.* [(1997) 4 SCC 161 : 1997 SCC (Cri) 525] this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: (SCC p. 167, para 16)

[T]he aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration A to Section 6 makes it clear. It reads thus: (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact. (emphasis supplied)
Here the act of the assailant intruding into the courtyard during - 42 -

dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by

proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.

35. On collective reading of the judgments cited

supra, with the case on hand and on perusal of Exs.P37 and 38, it can be observed that, M.O.1-cell phone which belongs to the deceased Yellappa, has travelled out of the State, when he is laying in a pool of blood breathing his last breath. Thereafter, it can also be seen that, post reaching the State of Andhra Pradesh it has been transacted further to CW.19 who has in turn used the phone which aided the PW.19-Investigation Officer to reach out to the user. Hence, if this evolved circumstance is seen from the angle of the law propounded in Paragraph Nos.205 and 206 of the decision in Navjot Sandhu case supra would clearly show the conduct of the 1st accused to

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carry the cell phone to Andhra Pradesh and then selling it to CW.19 and subsequently, the statement of CW.19 was though not examined before the Sessions Court, but if the same is seen from the angle of the judgment in Navjot Sandhus case ibid read with the decision of the Honble Apex Court in Paragraph Nos.6 to 9 of Sukhar case supra, would make it amply clear that the narration of CW.19 which was the subsequent event in continuance of which, was directly connected to the conduct of the accused in selling the M.O.1 with an intention of wrongful gain and then PW.19-Ingvetsigation Officer on the statement of CW.19 reaching out to Accused No.1 and on his statement recovering the blood stained cloths of the accused No.1 which the accused was wearing at the time of commission of the crime and he also directing the Investigation Officer as to the accused No.2 and 3, in addition to which they falling absent to their duty, would all the way connect every dots under the provisions encarved in Sections 6 and 8 of the Indian Evidence act r/w Section 27 of the

- 44 - Indian Evidence Act, so as to say that, except the fact that accused No.1 sold the mobile phone to CW.19 and then he directed the PW.19-Investigation

Officer towards the accused, no other interpretation that can be drawn in relation to the nature of recovery of M.O.1 from CW.19 is concerned. RECOVERY OF BLOOD STAINED CLOTHES OF ACCUSED NOS.1 TO 3

36. The prosecution also relied the circumstance of

recovery of blood stained clothes of accused and the weapon used by them to commit the murder of deceased under different mahazars drawn by PW.19 in the presence of PW.9 based on the voluntary statement of accused.

37. According to PW.19, accused No.1 volunteered

as per Ex.P32 and his blood stained clothes were recovered as per M.Os.19 and 20. Further, accused No.3 also volunteered before PW.19 as per Ex.P33 and his clothes and motorcycle were seized under mahazar Ex.P11 as per M.Os.21 and 22 and Exs.P12 to 15. Further, - 45 - accused No.2 also volunteered before PW.19 as per Ex.P34 and his blood stained clothes were seized under mahazar Ex.P16 as per M.Os.23 and 24. For all the above mahazars PW.9 is the witness who has supported the case of the prosecution. Hence, the prosecution proved this circumstance beyond all reasonable doubt. SCIENTIFIC EXAMINATION OF BLOOD STAINS FOUND IN THE CLOTHES OF ACCUSED AND DECEASED SO ALSO THE WEAPONS USED FOR THE COMMISSION OF CRIME.

38. One more circumstance which prosecution

relied upon is the Scientific/FSL examination of the blood stained clothes of the accused, deceased and the weapons i.e., M.O.18-stick and M.O.28-slab stone. On perusal of the FSL report Ex.P36, it clearly depicts that all the items sent for FSL were stained with human blood i.e., O and A group blood i.e., the blood belongs to deceased Satyamma and Bhojaraj. The clothes and the weapons recovered at the instance of the accused must have been

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worn and used by accused at the time of commission of crime, otherwise there arises no such possibility of those cloths being stained with the deceased blood

and in addition to it, the recoveries of those cloths were also from Andhra Pradesh, near the place where the accused persons were residing which is evidently away from the scene of crime and there arises no different explanation to recovery of the cloths at the instance of the accused persons.

39. It is pertinent to mention at this juncture, the

Doctor who conducted the autopsy over the carcass, clearly deposed that the death is caused due to the crush injuries on the head. The Investigation Officer seized two stones from the spot as per MO.28 and MO.29 so also the sticks MOs.26 and 27 which stained with human blood of A and O group as discussed supra. Hence, this portion of medical evidence corroborates to the recovery of the weapons i.e., stone and sticks by the Police based on the disclosure statement made by the accused.

- 47 - MOTIVE FOR THE INCIDENT

40. The next circumstance which the prosecution

relied is the motive for the alleged incident. As per the prosecution, the accused committed this brutal act for illegal gain. After the incident, the accused took the mobile of deceased Yallappa and sold the same to wife of CW19- Ambika for Rs.200/-. The prosecution proved that, after the incident the accused have also stolen Rs.3000/- from the house of deceased Yallappa. In such circumstances, the prosecution proved the motive for commission of crime i.e., for illegal gain which is established by the evidence of PW.9 and PW.19.

ABSENCE OF THE ACCUSED FOR THEIR WORK AFTER THE INCIDENT

41. The next circumstance which prosecution relied

is, the absence of accused for their work after commission of the murder. PW.16 and PW.17 the employer of accused Nos.2 and 3, in their evidence categorically deposed that - 48 - accused Nos.2 and 3 remained absent for their work after the incident. However, the accused failed to explain their absence for work after the incident.

42. The learned counsels for the appellants would

vehemently contend that there is a delay in lodging the complaint by PW.1. As discussed supra, PW.1 was residing 85 kilometers away from the house of deceased and after the incident, PW.10 informed him and he rushed to the spot and lodged the complaint at about 1:00 p.m. Due to these facts, the delay now called-in for examination has arisen. Hence, we are unable to accept the contention of the learned counsels for the appellants. The learned counsels for the accused argued much on missing chain link of circumstance since there are material contradictions in the evidence of witnesses examined before the Court so also some of the circumstances are not proved by the prosecution, since the material witness PWs.14 and 15 were turned hostile to the prosecution case. Nevertheless,

as discussed supra, the prosecution successfully - 49 - established the above circumstances and as such, we are unable to accept the contention of the learned counsels for the appellants. The Honble Apex Court in the case of Raj Kumar Singh v. State of Rajasthan reported in (2013) 5 SCC 722 held in Paragraph 43 as under:-

43. while appreciating the evidence of a

witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinise the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the

evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. 9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution - 50 -

version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. It is in fact, the entirety of the situation which must be taken into consideration. While appreciating the evidence, the court must not attach undue importance to minor discrepancies, rather must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereotype investigation. After exercising such care and caution, and sifting through the evidence to separate truth from untruth, embellishments and improvements, the court must determine whether the residuary evidence is sufficient to convict the accused.

43. The learned counsels for the appellants also

argued that PWs.1 and 10 are the close relatives of the deceased, their evidence cannot be relied since they are partisan witness. The Honble Apex Court in the case of Ravasahebgouda Alias Ravasahebgouda v. State of Karnataka reported in (2023) 5 SCC 391, held that the evidence of sole related eyewitness can be basis for conviction, particularly when there is no vagueness in his/her testimony with respect to the act committed by the

- 51 - accused. The Honble Apex Court in Para No.17 of the said

judgment held that:

17. It is clear that it is the quality and not the quantity of the witnesses that matters. Further in Paragraph No.25 of the said judgment, it is stated that a witness being a close relative is not a ground enough to reject his/her testimony. Mechanical rejection of an even partisan or interested

witness may lead to failure of justice. The principle of falsus in uno, falsus in omnibus is not one of the general applications.

44. Hence, considering the above decision and law laid down by the Honble Apex Court, the evidence of PWs.1 and 10 cannot be discarded only for the reason that they are the relatives of the deceased.

45. In the instant case, there are multiple murders

i.e., almost all the members of a family is done to death for a motive which evinces total depravity and meanness for gains of assailants. On careful perusal of evidence of the witnesses, we find that the murders were particularly horrifying, as the entire family had been done away in the - 52 -

night hours when they were in the deep sleep. Among them, the deceased Yallappa and his wife Satyamma are aged about 61 and 55 years and the manner in which the murder is committed in an extremely brutal, grotesque, diabolical manner so as to arouse intense and extreme indignation of the community. After commission of such a brutal act, the accused stolen Rs.3,000/- from the house of deceased and a mobile phone belongs to deceased Yallappa and in turn sold the same to CW.19 for Rs.200/-. The mental status of the accused post murder also appears that they are habitual offenders. On a query to the learned Addl. SPP, he would submit that, there are

other criminal cases including murder case pending against accused No.1 at Andhra Pradesh. While appreciating the evidence placed by the prosecution, the Court should adopt the method of scrutinizing the evidence on right perspective by considering the facts and circumstances of the case. Though the case rests on circumstantial evidence, there is no such bar to rely the - 53 -

circumstance of documentary evidence fingering the guilt of accused persons. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstance are

relevant facts which would enter into the area of consideration. In the case on hand, the accused who belongs to Andhra Pradesh State, came to Chincholi, Karnataka and committed the murder of three innocent persons for illegal gain. The said brutal act of the accused

proved by the prosecution by relying the relevant circumstance of a conclusive nature and tendency. The circumstance relied by the prosecution discussed supra, are consistent only with hypothesis of the guilt of the accused. Except the accused, none else have committed the murder of deceased ternion for any reason. Even otherwise, the accused failed to either put forward or prove such defence which would break the chain and

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would give a different interpretation than that of what is pleaded by the prosecution. In such circumstance, we are of the view that the golden principles laid down by the Honble Apex Court in the case of Sharad Birdhichand Sarda stated supra and subsequent judgments are proved and the learned Sessions Judge rightly convicted the accused for the charges leveled against them. Hence, we find no good ground to interfere with the judgment of conviction and order of sentence. Accordingly, we answer

point No.1 in the negative and point No.2 in the affirmative and proceed to pass the following:

ORDER

i. Criminal Appeal Nos.200174/2017, Sd/- JUDGE Sd/- JUDGE HKV List No.: 1 SI No.: 1 Ct;Vk

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