

**Halappa Bharama Gavanale and Another Vs. the State of Karnataka,
Represented by Its State Public Prosecutor**

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Represented by Its State Public Prosecutor**

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Court : Karnataka Dharwad

Decided On : Oct-20-2011

Judge : Manjula Chellur & V. Suri Appa Rao

Appeal No. : Crl.A.No. 2740 of 2011

Appellant : Halappa Bharama Gavanale and Another

Respondent : The State of Karnataka, Represented by Its State Public Prosecutor

Advocate for Pet/Ap. : For the Appellants: Ashok R. Kalyanashetty, Advocate.
For the Respondent: Mahesh Wodeyar, AGA.

Judgement :

Suri Appa Rao, J

1. This appeal is filed under section 374 (1) of the Code of Criminal Procedure against the Judgment of conviction and order of sentence dated 8th July, 2011 in S.C. No. 6/2011 on the file of the Fast Track Court-I, Chikodi, whereby the appellants who are accused Nos.1 and 2 have been convicted for the offence under Section 302 r/w section 34 of I.P.C., sentencing them to undergo imprisonment for life and to pay fine of Rs. 5,000/- each, in default of payment of fine to undergo simple imprisonment for five months.

2. The relevant facts leading to filing of this appeal are as follows:

The 1st appellant - Halappa Bharama Gavanale is the father of 2nd Appellant - Rama Halappa Gavanale. The family of the deceased No.1 Kallappa owned a land in Hulloli, but he shifted his family to Umarani about 6 years back. The accused and the deceased owned sheep and the accused were grazing their sheep in the land of Thabagouda Shivagouda Patil - PW-9. The accused were halting their sheep in the land of PW-9 for two months and they were giving one sheep every year as per the terms and conditions but that they did not comply with the said conditions. Therefore, PW-9 did not allow them to graze their sheep and permitted the deceased Kallappa to graze his sheep in the land of PW-9 with the same conditions. Therefore, the accused Halappa Bharama Gavanale and his son Rama Halappa Gavanale had enmity with the deceased Kallappa.

3. While so, on 02.08.2010 at about 8.00 A.M. the accused picked up quarrel with the deceased Kallappa and his son deceased Narasappa in front of the house of PW-15 - Devaray Mayappa Itnale at Hulloli for borewell water threatened the deceased Kallappa and deceased Narasappa for grazing the sheep in the land of Pw-9. Thereafter, at about 10.30 A.M. when the deceased Kallappa and his son deceased Narasappa were grazing their sheep in the land of PW-9 both the appellants/accused with the common intention of committing murder went to the land and picked up quarrel with them. Accused No. 1 Halappa Bharama Gavanale assaulted the deceased Kallappa with axe on his head, neck, back and accused No.2 assaulted the deceased Narasappa with axe on his head and hands, due to which both Kallappa and Narasappa suffered severe injuries. At that time PW-3 - Siddappa Shankar Itnale and PW-10 - Rayappa Balappa Jiddimani who were going to their lands on the motorcycle saw the sheep of the deceased grazing in the adjacent land and also saw the accused taking away the sheep hurriedly being afraid of the incident. They stopped the motorcycle and saw the deceased Kallappa and deceased Narasappa lying in the land of PW-9. They immediately went to Umarani and informed PW-12- Umesh Ramappa Itnale, who in turn informed the same to PW-13 - Gurusidda Mayappa Itnale who informed the same to PW-1 - Gowravva Kallappa Mayappagol, wife of the deceased Kallappa and mother of deceased Narasappa. After that PW-13 - Gurusidda Mayappa Itnale,

one Halappa and PWs 10 and 11 went to the place of incident at about 2.30 P.M. and found the dead body of deceased Kallappa and Narasappa near tank with bleeding injuries. They immediately called PW-18 - Shrikant Appanna Yadrami to bring his tempo trax and took the victims to the Government Hospital, Chikodi. The deceased Kallappa died at about 4.00 P.M. while undergoing treatment. The deceased Narasappa was taken to K.L.E. Hospital, Belgaum for further treatment, but he also died after ten days while undergoing treatment on 12.08.2010 at 12.10.P.M.

4. PW-1 Gowravva and her son Shankar rushed to the Hospital and on the same day at 18.00 hours PW-1 lodged the complaint before PW-24 - Shashikant B. Kamble, PSI, Chikodi registered the same in Crime No. 299/2010. He immediately dispatched the FIR to the concerned Magistrate, visited the Hospital along with the complainant, conducted inquest over the dead body of the deceased Kallappa in the presence of PW-2 - Veerupaxi and Murgeppa and sent the dead body for Post-mortem examination.

5. PW-26 - K.V. Shridhar, Inspector of Police took up further investigation on 03.08.2010, visited the scene of offence, prepared spot panchanamma in the presence of PW-4 - Ramappa Devappa Itnale and Ajit, seized the blood stained mud samples, a pair of chappal, lunch bag and wooden piece. He also prepared rough sketch of the scene of offence, recorded the statements of the witnesses. On 12.08.2010 he received death intimation of Narasappa from K.L.E. Hospital, Belgaum, Thereafter, he visited the Hospital and conducted inquest over the dead body of the deceased Narsappa in the presence of PW-3 - Siddappa Shankar Itnale and one Mahesh and sent the dead body for post-mortem examination. He also seized the clothes of the deceased Narasappa produced by the Constable in the presence of PW-3 - Siddappa and PW-5 - Balappa Ayeppa Gavanale under a panchanamma. He also secured the statements of the witnesses. On 21.08.2010 at about 11.00 A.M., the accused had disclosed about the commission of the offence before PW-7 - Basagouda Gangappagouda Patil and PW-8 - Ishwaragouda Ningouda Patil at Raibag Bus Stand and sought for their help, they advised the accused to approach the Police. Thereafter, PW-26 recorded the statements of both PW-7 and PW-8.

6. On 22.08.2010 the Sub-Inspector of Police S.H. Ambhoji along with Head constable caught hold of the accused near Nagaramunoli Bus Stand and produced them at about 9.00 A.M. before the Circle Inspector of Police - PW-26 who arrested the accused and recorded their voluntary statement regarding the commission of offence and also recovered axes and clothes from the house of the accused in the presence of PW-5 and PW-6 under the cover of panchanamma. Thereafter, he produced the accused before the Court. Pw-25-Dr.S.S. Gadade, Medical Officer, Chikodi who conducted the post-mortem of the dead body of the deceased Kallappa has opined that the death of Kallappa was due to Hyperolumic Neurogenic, shock leading to cardio respiratory arrest secondary to multiple fracture and multiple injuries of skull, diffused cerebral haemorrhage cut exposed trachea. PW-17 - Dr. Harish S. Gouda, Medical Officer, K.L.E. Hospital, Belgaum, who conducted post-mortem examination over the dead body of the deceased Narassappa opined that the death of Narasappa was to due to Intracranial haemorrhage with associated injuries to the Brain as a result of head injury.

7. PW-26 - K.V. Shridhar sent the recovered articles i.e. blood stained mud sample, pair of chappal, lunch bag, clothes of the deceased, axes to RFSL, Belgaum. After receipt of post-mortem report he filed charge-sheet against the accused.

8. The Learned Fast Track Judge, Chikodi after hearing the Public Prosecutor and the Learned Counsel for the accused framed charges for the offence under Section 302 r/w Sec. 34 of I.P.C.

9. The plea of the accused is total denial.

10. In order to bring home the guilt of the accused for the aforesaid offence, the prosecution has examined PWs 1 to 26 and relied on documents Ex.P1 to P51 and MOs 1 to 17.

11. Considering the evidence of the prosecution witnesses, confession statement of the accused, recovery of the articles MOs 13 to 17, the Learned Fast Track Court - I Judge, Chikodi found the accused guilty of the offence under Section 302 r/w section 34 of I.P.C. and passed the above order of conviction and sentence.

12. Aggrieved by the order of conviction and sentence passed by the Fast Track Court - I, Chikodi, the appellants/ accused Nos. 1 and 2 have filed this appeal.

13. On 13.09.2011 when the appeal is taken up for hearing, the Learned counsel for the appellant No.2 has submitted an application under section 7 (a) of the Juvenile Justice (Care and Protection of Children) Act, 2000 stating that the 2nd Appellant - Rama Halappa Gavanale was a minor not only at the time of commission of alleged crime but also at the time of trial and disposal of the case, but the Trial Court did not consider this aspect though it was brought to the notice of the Trial Court. When the Learned Additional SPP was directed to file objections on the application filed by the Learned Counsel for the appellant No.2, the Learned Additional SPP had filed the Birth Certificate of appellant No. 2 - Rama Halappa Gavanale along with a certified copy of the birth certificate and fairly admitted that the 2nd appellant was born on 21.06.1994 and he was aged about 16 years, 1 month and 11 days and had not completed the age of 18 years on the date of filing of the appeal. Therefore, we have directed the concerned Prison Authority to shift the 2nd Appellant to Juvenile Board and the matter is posted to 29.09.2011 for further hearing.

14. As the 2nd appellant - Rama Hallappa Gavanale has not completed the age of 18 years by the date of offence and by the date of judgment of conviction and order of sentence passed by the Trial Court, the judgment and order of conviction passed by the Trial court in S.C. No. 6/2011 on the file of Fast Track Court - I is set - aside in so far as the appellant No.2 is concerned. The State is directed to place the records before the Juvenile Justice Board of enquiry under Juvenile Justice (Care and Protection of Children) Act, 2000 and this appeal is proceeded against the accused No. 1/appellant No.1 - Halappa Bharama Gavanale.

15. We have heard the Learned Counsel for the 1st appellant Sri. Ashok R. Kalyanashetty and the Learned Additional SPP for the State. We have been taken through the evidence of the prosecution witnesses and the impugned judgment.

16. According to the prosecution, the death of deceased Kallappa and his son deceased Narasappa was homicidal. In order to prove the homicidal death of the deceased Kallappa, the prosecution examined PW-2 - Virupaxi Kallappa Kavatagi,

PW-24 - Shashikant B. Kamble, PSI of Chikodi, PW-25 - Dr. S.S. Gadade, Medical Officer attached to Chikodi Government Hospital and relied on Ex.P2 - inquest panchanama and Ex.P25 - Post-mortem report.

17. Pw-2 Virupaxi has stated in his evidence that the police called him to Chikodi Government Hospital on 03.08.2010 and when he was present at the time of inquest over the dead body of the deceased Kallappa he also noticed the injuries on the head, neck and cheek of Kallappa. Pw-12 Umesh Ramappa Itnale, PW-13 - Gurusidda Mayappa Itnale were also present along with him who attested Ex.P2 - inquest panchanamma. PW-24 - Shashikant B. Kamble the Sub-Inspector of Police, Chikodi has stated in his evidence that on 02.08.2010 he received complaint - Ex.P1 from PW-1, registered the same as Crime No. 299/2010 and he immediately went to the Government Hospital to conduct inquest over the dead body of the deceased Kallappa, prepared Ex.P2 - panchanama in the presence of witnesses. PW-25 - Dr. Sharanappa has stated in his evidence that on 02.08.2010 at 9 'O' Clock he conducted post-mortem examination on the dead body of the deceased Kallappa and found the following injuries:

- a) Cut lacerated wound measuring 4 inches long x 1 inches width x 1 inch width present over the neck;
- b) Cut lacerated wound with fractured skull measuring 5 inches length x 2 inches width x 1 inch depth present in the occipital region;
- c) Cut lacerated wound, measuring 5 inches length x 2 inches width x 1 depth present over the right lateral aspect of skull;
- d) Cut lacerated wound measuring 4 inches length x 2 inches width x 1 inch depth present over the right ear;
- e) Cut lacerated wound measuring 5 inches length x 1 inch width x 1 inch depth present over frontal aspect of skull;
- f) Cut lacerated wound measuring 3 inches length x 1 inch width x 1 inch depth present over the left eye brow; and

g) Cut lacerated wound measuring 3 inches length x 1 inch width x 1 inch depth present over the parietal aspect of the skull.

He further stated that on dissection, he noticed the membranes were congested and haemorrhage in brain, chest sternum was intact and congested, body parts above the chest were intact, in the neck, trachea was cut and exposed, lungs were intact, heart was intact and congested, partially digested food was present in stomach, liver was intact, kidney was intact and he opined that the death was the result of acute haemorrhage, cardio-respiratory arrest, multiple injuries of skull and cerebral haemorrhage as per Ex.P25 - post mortem report. He also submitted that the death was 7 to 8 hours prior to the post-mortem examination and the injuries could be caused if assaulted with MOs 16 and 17. The evidence of PW-25 clearly indicates that the death of deceased was due to multiple injuries and due to acute haemorrhage. Thus, by the evidence of PW-2, PW-24 and PW-25 the prosecution could be able to prove that the death of the deceased Kallappa was homicidal.

18. In order to prove the homicidal death of the deceased Narasappa, the prosecution has examined PW-3 - Siddappa Shankar Itnale, PW-17 - Dr. Harish S.Gouda and PW-26 - K.V. Shridhar, Sub-Inspector of Police. PW-3 has stated in his evidence that on 12.08.2010 the Police called him to Belgaum and he was present at the time of inquest over the dead body of the deceased Narasappa at K.L.E. Hospital along with another panch witness Mahesh. He further stated that he found the dead body of Narasappa with injuries on his neck, face and head. He attested Ex. P4 inquest panchanama.

19. PW-17 - Dr. Harish S. Gouda, Assistant Professor, Government Hospital, Belgaum has stated in his evidence that on 12.08.2010 at 4.45 P.M. he conducted post-mortem examination over the dead body of the deceased Narasappa and found the following injuries:

- a) Sutured wound right frontal area, top of the head and neck, right scapular;
- b) Switchets were removed and edges were eppromimated;
- c) Two switchet wounds on right eyelid and left hand;

d) Two suitcases on the right scapular.

On dissection of the body he noticed there was bleeding in layers of head scars, corresponding to external injuries, two depressed comminuted fractures on the right frontal and clavicle bone, left parietal. There were multiple linear fracture of cranial fossa, fracture of left zygomatic bone, extra dural clot on left parietal bone, diffused bilateral subarachnoid haemorrhage on the brain, contusion on left parietal bone of cerebrum, multiple contusions on left, temporal lobes, laceration under surface of left frontal lobe cerebral oedema, brain was congested, fracture of right scapula and other organs were also congested. He further stated that the death of the deceased Narasappa was due to intracranial haemorrhage associated with brain injuries as a result of head injury. Ex.P11 is the post-mortem examination report.

20. PW-26 - K.V. Shridhar, Circle Inspector of Police, Chikodi has stated in his evidence that on 12.08.2010 he received information about the death of deceased Narasappa at the Hospital and immediately he went to the Hospital and conducted the inquest - Ex.P4 over the dead body of the deceased Narasappa in the presence of PW-3 - Siddappa and one Mahesh. Thereafter, he sent the dead body of the deceased Narasappa to the Medical Officer for post-mortem examination. The Medical Officer - PW-17 has clearly stated in his evidence that the death of the deceased Narasappa was due to Intracranial haemorrhage associated with brain injuries as a result of head injury. Thus, by the evidence of PWs 3, 17 and 26, the prosecution has proved that the death of Narasappa was homicidal.

21. The next point for consideration is:

“Whether the accused Halappa Bharama Gavanale is responsible for causing the death of Kallappa and Narasappa along with his son - Rama Halappa Gavanale: (A-2)?

22. Admittedly, there are no eye witnesses to the incident the prosecution therefore relying on the following circumstantial evidence to connect the accused with the crime:

1. The accused was grazing their sheep in the land of PW-9 - Thabagouda Shivagouda Patil prior to the incident as the accused failed to comply with the terms and conditions. PW-3 allowed the deceased to graze his sheep with the same terms and conditions. Therefore, the accused bore grudge against the deceased;

2. On 02.08.2010 at about 8.00 A.M. The accused picked up quarrel with the deceased Kallappa and Narsappa in front of the house of PW-15 - Devaray Mayappa Itnale and threatened the accused with dire consequences for grazing sheep in the land of PW-9;

3. PW-10 - Rayappa Balappa Jiddimani and PW-11 - Siddappa Sidram Jiddimani found the deceased Kallappa and Narasappa lying with injuries in the land of PW-9 and they also found the accused taking away their sheep hurriedly;

4. On 21.08.2010 at about 11.00 A.M. the accused made extra judicial confession before PW-7 - Basagouda Gangappagouda Patil and PW-8 - Ishwaragouda Ninagouda Patil about the commission of the offence at Rayabagh Bus stand and sought their help;

5. On 22.08.2010 the accused were arrested and produced before PW-26 and basing on their confession statement, PW-26 seized MOs 13 to 17 from the house of accused in the presence of the panch witnesses PWs 5 and 6

23. In order to prove the first circumstantial evidence, the prosecution examined PW-9 - Thabagouda Shivagouda Patil, owner of the land. PW-9 in his evidence has stated that the accused were grazing their sheep in his land with a condition that their sheep has to halt in his land for two months and to sacrifice one sheep to God. The accused did not abide by such condition PW-9 gave the land to the deceased Kallappa for grazing his sheep on the same conditions. Therefore, the relationship between accused and deceased Kallappa were not cordial on account of grazing of sheep. He further deposed that on 02.08.2010 he got information that deceased Kallappa and Narasappa were assaulted in his land. In the cross-examination he denied the suggestions that the deceased Kallappa and Narasappa were found on the hill with injuries and not in his land. He also further

denied that the hill were the deceased were found with injuries is only fit for grazing sheep.

24. The Learned Counsel for the appellant submitted that there is a big hillock near the land PW-9 and there is no particular space for grazing sheep. This land belonging to PW-9 is patta land and he was raising crops. There is large extent of hillock belonging to Government for grazing sheep and there is no need for the accused to graze his sheep and that the accused never grazed their sheep in the land of PW-9 and that the evidence of PW-9 is false. He further submitted that the accused are having 6 acres of agricultural land and they are cultivating the said land and they did not own any sheep to graze in the land of PW-9. It is further submitted that a candidate supported by PW-9 was defeated in the panchayath elections and as the accused did not support his candidate the accused was falsely implicated in this case. In the cross-examination PW-9 has admitted that his candidate lost in the panchayath elections. It is further submitted that PW-9 is influential person in the area; he has worked relentlessly to foist false case against the accused.

25. Learned Additional SPP submitted that the accused bore grudge against the deceased as the accused were not allowed to graze their sheep in land of PW-9. Except the evidence of PW-9, the prosecution did not choose to examine the neighbours of the land and failed to produce any documentary evidence to prove that prior to the incident the accused used to graze their sheep in the land of PW-9 and that PW-9 allowed the deceased to graze his sheep in his land. Admittedly, PW-9 is not an eye witness to the incident and after he came to know about the incident he went to the Hospital to see the dead body of the deceased. In the cross-examination he has clearly stated that he met the Police two or three times with regard to this case to give statement. The evidence of PW-9 clearly shows that his candidates had lost in the panchayath elections. When the accused are contending that they did not support the candidate of PW-9 in the panchayath elections and he has not placed any relevant documents in the absence of any independent corroborative evidence with regard to the grazing of sheep by the accused prior to the incident the evidence of PW-9 that he allowed the deceased to graze his sheep in his land cannot be believed. If PW-9 did not allow the

accused to graze their sheep in his land the accused would bear grudge against PW-9 but not against the deceased. Thus, there is no evidence that the deceased was responsible for cancellation of the agreement between PW-9 and accused for grazing sheep. Ex.P1- complaint given by PW-1-wife of the deceased Kallappa it is mentioned that on the date of incident at about 10.30 A.M. the deceased Kallappa and his son Narasappa took the sheep for grazing. In the afternoon at about 1.30 P.M., PW-11 - Siddappa Siddram Jiddimani and PW-10- Rayappa Balappa Jiddimani who are related to her informed Umesh Ramappa Itnale who is also related to her about the incident. In the complaint, it is clearly mentioned that their sheep were grazing in some one's land and they were unattended and the deceased Kallappa and Narasappa assaulted some one and they have got near them. Thus Ex.P1 - complaint is silent about the accused grazing the sheep prior to the incident and the deceased were allowed to graze the sheep by PW-9 in the place of accused. In the evidence also PW-1 has not stated about PW-9 allowing the deceased to graze the sheep cancelling the permission given to the accused prior to the incident. In the evidence PW-1 has admitted that the accused had 6 acres of land and they were growing sugarcane, groundnut and jowar crop and there is no relationship between the accused and their family and that the accused did not come in contact with them personally or in any matter. She further admitted that she has no information regarding the land of PW-9. She further admitted that PW-9 was the Chairman of the Gram Panchayath for the 5 to 10 years and they used to go to the house of PW-9 and supported PW-9 in the Election. She further admitted that 15 days prior to the incident PW-9 was defeated in the election. Her evidence further shows that they originally belongs to Hulloli village, her husband got three brothers by name Siddappa, Halappa and Ramappa and one Vithal. Her husband was not given share in the ancestral property and that they came from Hulloli village to Umarani to eke out their livelihood by rearing sheep. She also admitted that PW-12 - Umesh, PW-13 - Gurusidda, PW-15 - Devaray Mayappa and PW-3 - Siddappa are closely related to her. Out of them PW-13 and PW-15 are her younger brothers. She also admitted that they got acquaintance with other witnesses PW-7, PW-8 and PW-9 and that the relationship between their family and PWs 7 to 9 are very cordial. In view of the above facts and circumstances, we are of the view that the prosecution has failed to prove that the accused bore

grudge against the deceased for grazing his sheep in the land of PW-9.

26. PW-3 - Siddappa - cousin brother of PW-1 and PWs 13 and 15 who are the younger brothers of PW-1 have stated in their evidence that the deceased used to graze the sheep in the land of PW-9. Except the evidence of PWs 13 and 15 who are closely related to PW-1 and the deceased, the prosecution did not chose to examine the neighbouring land owners of PW-9 to prove that the accused used to graze the sheep after some time PW-9 allowed the deceased to graze his sheep and there was quarrel between the accused and the deceased in that connection. In the absence of any independent corroborative evidence regarding grazing of sheep in the land of PW-9 it is not safe to place any reliance on the interested testimony of PWs 9 , 13 and 15. Ex.P1 - complaint given to the Police by PW-1 immediately after the incident is silent about the grazing of sheep by the deceased and about the quarrel between the accused and the deceased in that connection. In view of the above facts and circumstances, we are of the view that the prosecution has failed to prove the above circumstantial evidence with regard to grazing of sheep in the land of PW-9 by the accused and also by the deceased.

27. The prosecution has failed to prove the motive on the part of the accused to commit the crime. According to the prosecution, the accused picked up quarrel with the deceased in front of the house of Pw-15 - Devaray Mayappa Itnale and threatened the deceased Kallappa and his son Narasappa who are grazing their sheep in the land of PW-9. To prove this circumstantial evidence, the prosecution examined PW-15 - Devaray Mayappa Itnale, who is no other than the younger brother of PW-1. PW-1 has clearly admitted in her evidence that this witness and Gurusidda are her younger brothers. In the evidence PW-15 has stated that 5 to 6 months prior to the incident at about 8 or 9 A.M., while he was sitting in front of the house, the deceased Kallappa and Narasappa were going to the borewell which is adjacent to his house the accused quarreled with the deceased. He went and asked them that why they were quarrelling and told them not to quarrel. Then the accused told Kallappa and Narasappa to bring the sheep to Maddi and that they would see. After that the deceased Kallappa and Narasappa took their sheep to Maddi and at about 12.00 Noon he came to know that some body assaulted Kallappa and Narassappa. After that he went to Government Hospital, Chikodi and

came to know that Kallappa died and Narasappa was shifted to K.L.E. Hospital, Belgaum and after 10 to 12 days Narasappa also died. The evidence of PW-15 is also silent about PW-9 allowing the deceased to graze the sheep cancelling the permission given to the accused. His evidence shows that there was quarrel between the accused and the deceased and that the accused threatened the deceased to bring the sheep to Maddi but not to the land of PW-9. In Ex. P1 - complaint given by PW-1 on the same day immediately after the incident it is alleged that some unknown accused, for unknown reasons with unknown weapon have assaulted the deceased Kallappa Mayappa Mayappagol and Narasappa. The complaint is received by the Police on 02.08.2010 at about 12.00 hours. Admittedly PW-15 after came to know about the incident immediately went to the Government Hospital, Chikodi where the deceased Kallappa died and Narasappa was shifted to K.L.E. Hospital, Belgaum. If really there was quarrel between the deceased and the accused in the morning on the same day between 8 or 9 A.M. and when the accused threatened the deceased with dire consequences that if he brings the sheep to Maddi, PW-15 would certainly inform the same to the Police or PW-1 immediately after coming to know about the incident. Till 21.08.2010 the accused was not suspected in this case though PW-15 was examined by the Police on the next day of the incident. Therefore, the evidence of PW-15 who is closely related to the complainant appears to be not worthy of acceptance in the absence of any independent corroborative evidence. PW-15 has clearly admitted in his evidence that the villagers used to draw water from the bore-well in the morning hours which is situated in the village by the side of his house. If really there was quarrel between the accused and the deceased and another, the villagers must have witnessed the same. But the prosecution did not choose to examine the other neighbours of the PW-15 and any independent witnesses to prove the earlier incident of quarrel between the accused and the deceased at about 8 or 9 A.M. on the same day. PW-15 has also not stated in his evidence about the accused also taking their sheep at the time of quarrel. His evidence shows that after the quarrel Kallappa and Narasappa took sheep to Maddi and he has not stated that the accused also following the deceased along with sheep. Therefore, in the absence of any independent corroborative evidence, it is not safe to place any reliance on the interested testimony of PW-15 on this circumstantial

evidence relied on by the prosecution.

28. According to prosecution, PW-10 - Rayappa Balappa Jiddimani, PW-11 - Siddappa Sidram Jiddimani found the deceased Kallappa and Narasappa lying with injuries and also found the accused taking away the sheep hurriedly. The complainant - PW-1 has clearly stated in her evidence that PW-10 - Rayappa, Ajit and Umesh and Gurusidda - PW-13 have matrimonial connection with their family. PW-11 - Siddappa sidram Jiddimani is her cousin. PW-10 -Rayappa has stated in his evidence that he does not know the relationship between the deceased Kallappa and the accused. About nine months back in the afternoon when himself and PW-11 - Siddappa had been to the land the sheep of the deceased Kallappa was grazing in the land of Siddappa, PW-11 asked him whom the sheep belonged to and he said that the sheep belong to Kallappa. Siddappa - PW-11 told him that somebody seem to have fallen there and to have a look and that they have fallen in the property of Gowda. But he did not go to the place where they had fallen instead went to Gurusidda and gave him the information. Even before informing PW-13 they informed Umesh - PW-12 who in turn telephoned to Gurusidda - PW-13. All of them went to the place and found the deceased Kallappa and Narasappa with injuries. After that they shifted the injured to the Government Hospital in Chikodi in a Trax. He also stated that they were informed at the Hospital that Kallappa died and Narasappa was taken to the Belgaum Hospital but he also died after 10 days.

29. PW-11 - Siddappa Sidram Jiddimani has stated in his evidence that he does not know whether there was quarrel between the accused and the deceased on the date of incident. Himself and PW-10 - Rayappa were on the way to the land at about 1.30 hours they saw from a distance that the sheep entered into his land and he went to drive them out, a cow was standing there and the deceased Kallappa and Narasappa were found in the land of PW-9 at a distance of 10 feet away with injuries. They informed Umesh about the incident. PW-12 informed PW-13 - Gurusidda. According to the prosecution, the witnesses found the deceased Kallappa and Narasappa lying at the land of PW-9 with injuries and also they found the accused hurriedly taking away their sheep. But in the evidence, PW-10 and PW-11 have not stated about the presence of the accused near the place

where the deceased Kallappa and Narasappa were found lying with injuries and taking away their sheep hurriedly. Moreover, they have stated that they do not know whether there was quarrel between the deceased and the accused.

30. It is the case of the prosecution that the deceased was grazing the sheep in the land of PW-9, but the evidence of PWs 10 and 11 shows by the time he went to the land they found the sheep belonging to the accused grazing in the land of PW-11 - Siddappa and that Siddappa inquired PW-10 as to whom the sheep belonged and PW-10 told PW-11 that sheep belonged to the deceased, then he drove away the sheep and found Kallappa and Narasappa were lying in the land of PW-9 with injuries. PWs 10 and 11 have not at all stated about the presence of the accused near or around the scene of offence, taking away sheep hurriedly. Their evidence is therefore not useful to the prosecution to prove his circumstantial evidence that the accused were found taking away the sheep hurriedly after the incident. The conduct of PWs 10 and 11 not going to the place where the injured are lying with injuries appears to be unnatural.

31. Next circumstantial evidence relied on by the prosecution is the extra judicial confession alleged to have been made by the accused before PW-7 - Basagouda Gangappagouda Patil and PW-8 - Ishwaragouda Ningouda Patil about the commission of the offence on 21.08.2010. To prove the alleged extra judicial confession statement of the accused, the prosecution examined PWs 7 and 8. PW-7 Basagouda Gangappagouda Patil in his evidence has stated that the deceased Kallappa and his family members are residing in Umarani Village for the last 5-6 years, they were taking sheep for grazing in Hillock. About 9 months back Kallappa and Narasappa were murdered and he does not know as to who committed the murder. He further stated that himself and PW-8 - Ishwaragouda gone to Raibag and when they were at Raibag Bus Stand at about 2.00 P.M. The accused Halappa and Ramu met them and they told the accused that their names are being heard in the murder and that the accused said that they were not aware of it. Thereafter, they left from there, the accused were in fear when they met them. PW-7 further stated that the accused did not inform them that they have committed murder of Kallappa and Narasappa and they did not ask them to protect them. This witness has turned hostile to the prosecution case and he did

not support the prosecution case about the alleged extra judicial confession made by the accused admitting the commission of offence.

32. PW-8 Ishwaragouda has stated in his evidence that on 21.08.2010 when himself and PW-7 gone to Raibag at about 10.30 A.M. and when they came to the Bus stand the accused came there and told them that they have committed murder of Kallappa and asked them to protect them. The accused told them that they have murdered Kallappa for grazing sheep and they told that they cannot do anything in the matter and asked them to approach the Police. Thereafter, they gave statement to the Police. In the cross-examination PW-8 has admitted that he is related to PW-7-Basagouda. His statement was taken by the Police on 21.08.2010. He further stated that he do not know that accused was staying at Bettamaladinni, the place of his father-in-law. PW-1- Gowravva - wife of the deceased Kallappa has clearly stated in the evidence that their family have good relationship with PWs 7 and 8. PW - 7 has clearly admitted in his evidence that the accused met him and PW-8 at Raibag Bus Stand after completion of their work at about 2.00 P.M. when both of them were at Raibag Bus Stand when the accused met them. PW-7 has stated that himself and PW-8 informed the accused that their names are being heard in murder case for which the accused stated that they were not aware of the same. In the cross-examination PW-7 denied the suggestion that the accused met them at the Bus Stand and admitted the commission of offence. Admittedly, PWs 7 and 8 are not holding in any official position in the village and they are not related to the accused. More over, they are closely associated with the family of the deceased as per the evidence of PW-1. It is not the case of the prosecution the accused separately met PWs 7 and 8 and made extra judicial confession about the commission of the offence. The evidence of PWs 7 and 8 clearly shows that when both of them were together at the Raibag Bus Stand the accused came there. PW- 7 did not support the case of the prosecution and PW-8 has supported the prosecution case about the extra judicial confession made by the accused.

33. The Learned Counsel for the accused submitted that extra judicial confession is a valuable piece of evidence and it cannot be considered in the absence of any corroborative evidence. It is further submitted that PWs 7 and 8 are closely

associated with the family of the deceased. Therefore, their evidence cannot be believed as there are political factions in the Village. Hence, the evidence of PW-8 that the accused had made statement about the commission of the offence and that too 19 days after the incident cannot be believed.

34. Learned Additional SPP submitted that though PW-7 did not support the prosecution case about the extra judicial confession made by the accused the evidence of PW-8 can be believed to base a conviction against the accused. In support of this contention the Learned Additional SPP relied on a decision in the case of INSPECTOR OF POLICE, TAMIL Nadu vs. JOHN DAVID (2011) 5 SCC 509 . The Honorable Supreme Court held that:

“If circumstantial evidence logically and rationally points towards guilt of accused, minor loopholes and irregularities cannot defeat conviction - Failure to explain one of circumstances cannot be fatal to prosecution case.”

Relying on the above decision, the Learned Additional SPP submitted that subsequently the accused were arrested basing on the statement given by PWs 7 and 8 and the weapons and clothes were recovered on the basis of confession statement of the accused, therefore, the circumstantial evidence relied by the prosecution is sufficient to connect the accused with the crime.

35. Admittedly, there is no evidence on record that the accused were found absconding from the date of incident. If really, the accused had intention to disclose the commission of the offence before PWs 7 and 8 or any other persons in the Village they would inform the PWs 7 and 8 or any other persons in the Village itself and they need not go all the way to Raibag Bus Stand to inform to PWs 7 and 8 about the commission of the offence after 19 days. Right from the registration of the FIR against unknown persons, the accused were not at all suspected at any point of time till they were arrested on 22.08.2010. Therefore, there is no occasion for the accused to make the statement before PWs 7 and 8 that too at the Bus Stand of another Village.

36. In the evidence PW-1 - wife of the deceased Kallappa has admitted that PWs 10,11,12,13 and 15 are closely related to her, PWs 13 and 15 are her younger

brothers, PWs 11 and 12 are her cousins. She also admitted that PWs 7 and 8 are well acquainted with her family and the relationship between them are very cordial. The evidence of PWs 7 and 8 with regard to the extra judicial confession made by the accused is not consistent and corroborative. PW - 7 did not support the case of the prosecution and he turned hostile to the prosecution case. His evidence clearly shows that the accused never confessed about the commission of offence. Therefore, the alleged extra-judicial confession cannot be believed.

37. In ROOPSENA KHATUN VS. STATE OF WEST BENGAL AIR 2011 SC 2256, the Honorable Supreme Court while considering the evidence with regard to the extra-judicial confession observed thus:-

“Exact words of accused have not been uttered by any of witnesses. Even if confession was made before more than three witnesses. It cannot be considered as incriminating evidence against accused. Therefore, conviction is proper.”

38. In the instant case, the prosecution examined PWs 7 and 8 to prove the extra-judicial confession; their evidence is not convincing and corroborative with regard to the exact words stated by the accused before them about the commission of the offence. PW - 7 did not support the prosecution case and clearly stated in his evidence that the accused did not inform them when himself and PW - 8 were at the Bus Stand at Raibag that they have committed murder of deceased Kallappa and Narasappa and also they did not request them to protect them. Though PW-8 gave different version supporting the prosecution his evidence does not inspire confidence as he was not at all holding official post in the Village and he has not closely acquainted with the accused to confess about the offence after 19 days that too at a different Village.

39. According to the prosecution, the accused were arrested on 22.08.2010 by PW -22 - Shidrayi, Sub-Inspector of Police, when they were found at Nagaramunnolli Bus Stand and produced them before PW-26 - Circle Inspector of Police PW-26 seized MOs 13 to 17 from the house of the accused.

40. PW - 26 has stated in his evidence that on 22.08.2010, PW - 22 arrested and produced the accused before him and he recorded their voluntary statement and

that the accused have stated about the commission of the offence. Accordingly, he along with PW-5 - Balappa and PW-6 - Basappa went to the house of the accused, seized two axes and blood stained clothes as per Ex.P9 -panchanama. According to him, MOs 14 and 15 are clothes and MOs 16 and 17 are the axes seized by him in the presence of the panch witnesses. PW-5 - Balappa did not support the prosecution case about the seizure of axes on the confessional statement of the accused. PW-5 has stated Police called him and other panch witness Basappa to chikodi, when they went to the Police Station the accused were present at the Police Station. The accused took them to their house, there their photos were taken thereafter, they returned. He has stated that he does not know if accused produced axe from hut, MOs 14 and 15 are the clothes and MOs 16 and 17 are axes. In the cross - examination, PW - 5 has stated that the accused were made to stand, clothes were given in their hands and photo was taken. He also stated that axes were given in the hands of each of the accused.

41. PW- 6 Basappa has stated in his evidence that about 9 months back he had gone to the Police Station. At that time the accused were present at the Police Station. He was told that the accused have objects with them and he was asked to come for giving evidence. They all went to Umarani, they were taken to the land of accused in Umarani, from Chikodi. The accused Halappa and Ramappa produced two axes and two shirts from the hut, they were blood stained and they were given to the Police and Police seized the same under panchanamma. Balappa was also present at the time of drawing Ex. P9 - Panchanamma and attested by him. In the cross-examination he denied the suggestions that the accused did not produce any axes and clothes and that he has not seen anything and that his signature was obtained by the Police and PW - 9 and that he was taken to the Police by PW - 9 - Thabagouda in a motorcycle and took his signature on panchanamma. He further denied the suggestions that he gave false evidence as tutored by PW-9 - Thabagouda, B.A. Patil and Kamath, Advocates. He admitted in the cross - examination that himself and PW -9 came to the Court and Kamath, Advocate was present in the Court who is related to PW - 9. The prosecution examined to PWs - 5 and 6 to prove the seizure of axes and clothes. According to PW - 5, the accused took them to their house and gave clothes and he does not know whether accused produced the axes. His evidence further shows that axes and clothes

were given to the hands of the accused and photos were taken. Therefore, it is clear from the evidence of PW-5 that some axes and clothes were placed in the hands of these accused and photos were taken as if they were seized at their instance. According to PW- 6, the accused took them to their land in Umarani from Chikodi and produced MOs 14 to 17, whereas the evidence of PW- 5 shows that the accused took them to their house. PW -26 has stated in his evidence that he went to seize the axes and clothes from the house of the accused in the presence of PW -7. Thus, the evidence of PWs 5,6, and 26 is not consistent and corroborative in material particulars about the seizure of MOs 14 to 17. Therefore even that circumstance loses its significance.

42. PW-26 has stated in his evidence that he sent the seized articles MOs 14 to 17 to RFSL, Belgaum. Though deceased Narasappa was alive for ten days no steps have been taken to record the dying declaration of Narasappa while he was undergoing treatment in K.L.E. Hospital, Belgaum. The Investigating Officer did not chose to record his statement and there is no evidence on record to prove that the deceased Narasappa was not capable of giving any dying declaration. The Investigating Officer ought to have addressed the Medical Officer whether the deceased Narasappa was in fit state of mind to record his dying declaration.

43. The Learned Counsel for the accused submitted that as the deceased Narasappa has given different version about the injuries caused to him and his father, the prosecution did not chose to record his statement and this case is foisted against the accused at the instance of PW-9 and others due to the political factions in the Village. Admittedly, the deceased Narasappa was treated at K.L.E. Hospital, Belgaum till 12.08.2010, the prosecution did not chose to examine the Medical Officer who treated the injuries found on the person of Narasappa to prove the nature of injuries found on the person of Narasappa to prove the nature of injuries received by him. The prosecution examined only PW-17 - Dr. Harish S. Gouda, who conducted post-mortem examination on the dead body of the deceased. PW-17 found sutured wounds on the person of deceased Narasappa. The Learned Counsels for the accused submitted that if really the deceased Kallappa and Narasappa were attacked with axes like MOs 16 and 17 they would certainly receive incised wounds but no incised wounds were found on the person

of Kallappa and Narasappa. The injuries found on the body of Narasappa are all sutured wounds and injuries found on the other deceased Kallappa are lacerated wounds which in our opinion may not be possible with axes produced by the prosecution. In the cross-examination, PW-17 who conducted post-mortem examination on the dead body of the deceased Narasappa has stated that the Chikodi Police have not supplied any documents about his opinion for cause of injuries with regard to the weapon as he was not supplied with any weapon for his opinion with regard to the injuries mentioned in the post-mortem report. He also admitted in the cross-examination that he was supplied with only summary sheet and not other documents to show the condition of the victim at the time of treatment. Therefore, he did not say margin, edge, vital changes of the wound when they were sutured. He further stated that he cannot say whether those were incised wounds and that the injuries were simple. He further admitted in the cross-examination that "it is true that none of 7 injuries of my report discloses the cut injuries. It is true that the skull fracture usually will be resulted in assaulted in heavy of blunt object or fell from height." He also admitted that sharp edged objects or weapons will cause only incised wounds but not lacerated wounds.

44. The evidence of PW-25 shows that the deceased Kallappa received lacerated cut injuries. In the cross-examination, PW-25 has admitted that none of the injuries mentioned in the post - mortem report are incised wounds. He further admitted that the incised wounds may be caused with sharp edged weapons / objects. In the cross-examination, PW-26, the Investigating Officer has admitted that he did not try to find out the cause of death of Kallappa by writing letter to the Medical Officer and he did not make correspondence with the Hospital during the treatment period of Narasappa and also did not give any letter requesting for treatment and he has not obtained opinion or letter for recording the dying declaration of Narasappa. He denied the suggestions that Narasappa was in a position to give statement during the period of treatment and immediately he did not record the statement as he was afraid that he would come to know who were the real culprits if the statement of Narasappa was recorded so as to involve the accused herein at the instance of PW -9. He also denied the suggestions that they carried the clothes and axes to the house of the accused and planted them and took photos to create false evidence. He also admitted in the cross - examination that he did not

obtain opinion of the Medical Officer by sending axes to him. The prosecution has produced Ex.P20 - FSL Report issued by Dr. Geetha Lakshmi, Scientific Officer, Regional Forensic Science Laboratory, Mangalore, while acknowledging items 1 to 14 which contains liquid blood sample. It has been mentioned under note "Serology Report will be sent in due course". But the prosecution failed to produce Serology Report which is fatal to the case of the prosecution.

45. PW-25 - Dr. Sharanappa has clearly admitted in his cross - examination that the injuries mentioned in the PM report relating to the deceased Kallappa may be caused due to assault by blunt object. In the further cross-examination he denied the suggestions that cut injuries would not cause with weapon like MOs 16 and 17. Therefore, in view of the evidence of PWs 17 and 25, lacerated injuries found on the person of the deceased Kallappa and the sutured wounds found on the deceased Narasappa may not be possible with the weapons like MOs 16 and 17. The contention of the prosecution that the clothes and axes - Mos 14 to 17 contains human blood cannot be accepted in the absence of Serology report. The evidence of PWs 5 and 6 who are the Panch witnesses to the alleged seizure of MOs 13 to 17 at the instance of the accused also do not inspire confidence.

46. In SHEO SHANKAR SINGH vs. STATE OF JHARKHAND AND ANOTHER AIR 2011 SC 1403, the Honorable Supreme court held:

"Where prosecution relies upon circumstantial evidence on the one hand proof of motive is given the importance it deserves, for, proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the Court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an

eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses.”

47. In the instant case, the prosecution failed to prove the motive for the accused to commit the offence. Absolutely, there is no evidence on record that there were disputes between the accused and the deceased with regard to the grazing the sheep in the land of PW-9. PW-1 complainant herself stated that there is no enmity between their family and the family of the accused. The other witnesses also did not speak anything about the motive for commission of the offence. On the other hand, the evidence of PW-1 is that there were disputes between her husband and his brothers with regard to the partition of the joint family properties, due to which he shifted his residence to Umarani Village and eking out his livelihood. When the prosecution is solely relying on the circumstantial evidence it has to establish that the circumstances proved lead to one and only conclusion towards guilt of accused, circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.

48. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established and the circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else.

49. In the instant case, the circumstantial evidence adduced by the prosecution as already discussed above is not sufficient to connect the accused with the crime. We are therefore, of the view that the prosecution failed to prove any of the circumstances against the accused No. 1. The appellant No.1. The appellant No.1 is therefore entitled for benefit of doubt.

50. In the result, the appeal against the appellant No.1/ accused No. 1 is allowed and the judgment of conviction and order of sentence dated 8th July, 2011 passed in S.C. No. 6/2011 is hereby set-aside. The appellant No. 1 / accused No.1 shall

be set at liberty forthwith if he is not required in any other case. Fine amount if paid by him shall be refunded to him.

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