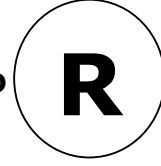




IN THE HIGH COURT OF KARNATAKA, AT DHARWAD



DATED THIS THE 27TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CRIMINAL APPEAL NO. 100429 OF 2025 (C)

BETWEEN:

MALATESH @ MANTESH
S/O CHANDRASHEKHAR SURANAGI @ HAVERI
AGE: 29 YEARS (NOW 33 YEARS)
OCC. AGRICULTURE, R/O. SURANAGI,
TQ. LAXMESHWAR, DIST. GADAG 582116.

- APPELLANT

(BY SRI K.M. SHIRALLI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA THROUGH
SHIRAHATTI POLICE STATION,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, BENCH DHARWAD.

2. HONNAPPA S/O DURUGAVVA TALAGERI
AGE: 35 YEARS (NOW 39 YEARS)
OCC. COOLIE, R/O. SURANAGI,
TQ. LAXMESHWAR, DIST. GADAG 582116.

- RESPONDENTS

(BY SRI M.B. GUNDAWADE, ADDL. SPP. FOR R1;
SMT. ANURADHA DESHPANDE, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED U/SEC. 374(2) OF CR.P.C. (SEC. 415(2) OF BNSS, 2023,) SEEKING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE PASSED IN SPL. CASE (SC/ST) NO.09/2021 DATED 09.04.2025 AND 17.04.2025 BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE GADAG FOR THE OFFENCES PUNISHABLE UNDER SECTION 302 AND 201 OF IPC AND U/SEC. 3(2)(v) OF SC/ST POA ACT, 2015 & ETC.





THIS CRIMINAL APPEAL, COMING ON FOR FURTHER HEARING,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the learned counsel appearing for the appellant-
accused and the learned Additional SPP for the respondent No.1-
State and also learned counsel for the respondent No.2.

2. This appeal is filed against the judgment of conviction dated 09.04.2025 and order on sentence dated 17.04.2025 in Spl.SC/ST Case No.9/2021 passed by the Additional District and Sessions Judge, Gadag (for short "trial Court") for the offences punishable under Sections 302 and 201 of IPC and Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST POA Act" for short), whereby the Trial Court imposed sentence on the accused to undergo rigorous imprisonment for life for the offence punishable under Section 302 of IPC with fine of Rs.2,00,000/- in default to pay the fine to undergo simple imprisonment for three months; simple imprisonment for three



years for the offence punishable under Section 201 of IPC with fine of Rs.2,000/- in default to pay the fine to undergo simple imprisonment for one month and rigorous imprisonment for life for the offence punishable under Section 3(2)(V) of SC/ST POA Act with fine of Rs.2,00,000/- in default to pay the fine to undergo simple imprisonment for three months.

3. The factual matrix of the case of the prosecution is that the deceased-Mariyappa was the resident of Suranagi village and he was residing with his wife and children. The accused-Malatesh @ Mantesh S/o Chandrashekar Suranagi @ Haveri resident of same Suranagi village had illicit relationship with Manjavva, the wife of deceased-Mariyappa. Said Mariyappa started to raise quarrel with his wife whenever his wife used to talk with the accused through mobile phone. That, on 10.04.2021, evening at 7:30 pm, the accused called Mariyappa to have drinks and took him on his motorcycle bearing No.KA-26/L-7071 to the land in Sy. No.429/1A of Suranagi village. Accused-Malatesh made Mariyappa to consume excess alcohol and when Mariyappa went to sleep lying on the ground, on 11.04.2021 midnight at 12:00, the accused assaulted on the



head, forehead, right eye, face, chest, right knee of Mariyappa by using heavy bolder stone and as a result, Mariyappa went to semi-conscious stage. Believing that Mariyappa is dead, the accused brought his Tractor No.KA-26/TA-5125, tied Mariyappa on the hydraulic of the said Tractor, took him to the land in Sy. No.416/2, tried to lay him on Suranagi-Bellatti road to project his death as an accident. On 11.04.2021 midnight at 1:30 am, Mariyappa started to scream by pain and the accused assaulted on the head of Mariyappa with Tractor spanner, committed his murder and left the body on that spot. Based on the information of dead body lying in the land in Sy.No.416/2 of Suranagi village, Laxmeshwar police came to the spot and the brother of deceased-Mariyappa identified the body and lodged complaint in terms of Ex.P1 and case was registered in Laxmeshwar police station in Crime No.34/2021. The Deputy Superintendent of Police, Gadag Sub-Division took the case for investigation, conducted inquest pachanama of the dead body and sent the dead body to Laxmeshwar hospital for postmortem. He arrested Manjavva, the wife of deceased-Mariyappa and on interrogation, he came to know about the involvement of the accused in the incident and arrested the accused-Malatesh and also recorded his



voluntary statement. On the basis of the information given by the accused, the investigation officer recovered the weapons used for commission of offence and seized them under the cover of panchanama, he proceeded to the spot, conducted the spot mahazar and collected samples of blood-stained mud and ordinary mud from the spot, took photographs of the place of incident and prepared a hand sketch map of the place of incident. He then visited the Government Hospital, Lakshmeshwar, conducted the inquest panchanama of the dead body, sent requisition to the Medical Officer to conduct the postmortem report and seized articles were sent to the FSL. On the basis of the information given by the accused in the police custody, I.O. proceeded with panch witnesses to the place shown by the accused, conducted panchanama of the place where the criminal conspiracy was hatched, proceeded to the spot shown by the accused for recovery of the tractor and motorcycle used by the accused and to recover the weapons used for commission of offence. The I.O. further recorded statement of complainant as well as statements of the witnesses and staff who have participated in the investigation, collected the postmortem report, FSL report, caste certificate of the deceased and accused



and call detail records (CDRs) of the mobile phones of the accused and Manjavva. The IO further collected the certificate under Section 65(B) of the Indian Evidence Act, recorded the statement of witnesses under Section 164(5) of Cr.P.C. The Investigating Officer after conclusion of the investigation, submitted the charge sheet for the above offences. Having received the charge sheet, matter was committed to the Sessions Court. The Sessions Judge framed the charges, since the accused did not plead guilty, claims trial and prosecution recorded the statement of witnesses PW-1 to PW-26 and got marked Exs.P1 to P91 so also M.O.1 to M.O.15. The defence side also marked four documents while confronting to prosecution witnesses, i.e. Exs.D1 to D4. On closure of the evidence of the prosecution, the trial Judge recorded the statement of the accused under Section 313 of Cr.P.C. The accused denied all the incriminating circumstances but failed to lead any defence evidence.

4. The trial Judge having considered both oral and documentary evidence comes to the conclusion that it is a case of homicidal death, based on the evidence of the Doctor, PW-18



and considered the material available on record, particularly motive and recovery of the articles at the instance of the accused so also the FSL report.

5. Since the deceased belonged to the SC/ST Community, the Court invoked *Section 3(2)(v) of the SC/ST (POA) Act* and convicted the accused for the offences punishable under Sections 201, 302 of the IPC and for the other special statutory provisions of Prevention of Atrocities Act when coming to the conclusion that after inflicting the injury, when the accused was transporting the victim-injured, he woke up, and again the accused inflicted the injury to the victim with a spanner and having confirmed that he is no more, thrown the dead body at the spot and went away from the spot. Accused was arrested on the very next day and all incriminating materials were also seized at the instance of the accused and the same is corroborated by the evidence of PW-5 and convicted the accused. Being aggrieved by the judgment of conviction, the present appeal is filed.

6. The counsel appearing for the appellant vehemently contends that when the case rests upon the circumstantial



evidence, each chain link must be established and such chain link was not established, hence, the trial Court has committed an error in convicting the accused. The counsel further contends that in the cross examination, PW-2 categorically deposed before the Court that for the first time she is deposing before the Court and such statements are not made before the police. The Ex.D1 was also marked at the instance of PW-2 and the same is not taken note of by the trial Court.

7. The counsel also contends that PW-4 in his evidence, he categorically deposed that he has not given full details while giving the statement under Section 164 before the learned Magistrate, only with regard to purchase of the mobile at the instance of PW-2 deposes the same and he also categorically gives an admission that for the first time, he is deposing the same. These admissions on the part of PW-2 and PW-4 are improvement. The counsel also would submit that the trial Court has not considered Ex.D4, which was brought on record in the evidence of PW-9, Neelakanta, the brother of the deceased Mariyappa. The counsel also submits that the trial Court has not properly appreciated the evidence of PW-3, PW-6, PW-9, PW-11,



PW-12, PW-13, PW-14 and PW-15, who have turned hostile to the case of the prosecution.

8. The counsel vehemently contends that the trial Judge committed an error in appreciating the evidence of PW-2, Manjavva, wife of the deceased, PW-4 Girish, son of the deceased and PW-9, brother of the deceased. All these witnesses are interested witnesses and only based on the interested witnesses, the accused was convicted.

9. The counsel further contends that the trial Judge fails to take note of improvement in the case of the prosecution and erred in not appreciating the attendant circumstances, which are in favourable to the defence. These circumstances clearly disclose that this is a case of suspicion and there is no any cogent evidence before the Court. The counsel also vehemently contends that there are omissions and contradictions in the case of the prosecution and the same is not appreciated by the trial Court while considering the case.

10. The counsel also vehemently contends that regarding nature of injuries on the dead body of the victim, homicidal is not



in dispute. However, no chain of circumstances are proved and even motive is also not proved and there is an improvement in the case of the prosecution. Further, the counsel vehemently contends that body was not on the road and according to the accused while making his voluntary statement, he categorically stated that he left the body on the road itself. But the body was found in the land. The case of the prosecution is only based on the suspicion. The counsel also submits that blood group was not stated and the blood group, which has been ascertained through the FSL belongs to the deceased only. There is no any evidence before the Court. The counsel submits that there is no any CDR evidence and when the dog squad was called, the dog went near the other person and not the house of the accused and when such being the case, the trial Court ought not to have convicted the accused.

11. Per contra, learned Additional S.P.P appearing for the respondent No.1/State as well as for learned counsel appearing for respondent No.2 submit that their respective submissions are similar and not in dispute that it is a case of homicide. The doctor, PW18 clearly deposes the nature of injuries and there



were 9 injuries and those injuries are cut wound injuries and also RFSL report supports the case of the prosecution that whatever the incriminating articles are seized at the instance of the accused on the very next day is positive i.e., stone, spanner which were used for committing the murder and also the rope which was used for tying the injured to the tractor and also the blood stains which were found at the road, wherein, inflicted injuries are also positive and RFSL report is very clear and the same point out the role of the accused in committing the murder. The counsel also would submit that in the 313 statement of the accused, when the incriminating evidence was put to the mouth of the accused, he has not given any explanation. The counsel also submits that on the very day of the incident, phone call was made by the accused to the phone of PW-2 and also called the deceased and took the deceased on his motorcycle and made him to consume the alcohol and tetra packets were also seized at the instance of the accused and the same was pointed out by him and all these circumstances clearly disclose that the accused only committed the murder.



12. The counsel also submits that PW-2, who is none other than the wife of the deceased categorically deposed before the Court that the accused was having an illicit relationship with her and except answer eliciting from the mouth of PW-2 that for the first time she is deposing the same, nothing is elicited and contraverted the evidence of PW-2 and hence, the evidence of PW2 is very clear with regard to the motive is concerned.

13. The counsel appearing for the State and also the respondent No.2 would vehemently contend that the evidence of PW-4, son of the deceased categorically deposes that the mother i.e., PW-2 was always talking to the accused over the phone and CDR report also substantiates the same that on the very same day, phone call was made by the accused. The counsel also submits that the evidence of PW-18, PW-19, PW-25 and so also the evidence of PW-21, PW-22, PW-24 regarding recovery and investigation, who are the official witnesses who conducted the investigation also supports the case of the prosecution.

14. In reply to this argument, counsel appearing for the appellant would submit that there is a clear improvement in the evidence of PW-2 and PW-4 and these improvements are not



taken note of by the trial Court. The counsel further submits that when PW-4 was examined under Section 164(5) of Cr.P.C. before the learned Magistrate, he only says about the accused only had purchased the mobile at the instance of PW-2 and not stated anything about the illicit relationship and the same is an improvement in the evidence of PW-2 and PW-4. The counsel also would vehemently contend that when the body was lying in different place as not stated by the accused and the same is a suspicious circumstances and that benefit of doubt goes in favour of the accused. Hence, he prays this Court to acquit the accused.

15. Having heard the counsel appearing for the appellant and also the counsel appearing for the respondents and also considering the material available on record, the points that would arise for the consideration of this Court are:

- 1) *Whether the trial Court committed an error in convicting the accused for the offences punishable under section 302, 201 of IPC and Section 3(2)(V) of SC/ST (Prevention of Atrocities) Act and whether it requires interference of this Court?*



2) *What order?*

16. Having heard the respective counsel and also the material available on record, particularly both oral and documentary evidence, we have given our anxious consideration to both oral and documentary evidence.

17. No doubt, the case of the prosecution is mainly based on the circumstantial evidence and there is no any direct evidence before the court. When such being the case, the Court has to take note of the principles laid down in the judgments of the Apex Court reported in **(1984) 4 SCC 116** in the case of ***Sharad Birdhichand Sadra Vs. State of Maharashtra*** while considering the case of murder, five important circumstances to be established and the same is restated, if failed to prove the possession of the poison or failed to prove the circumstances particularly, motive and also the other circumstances which point out that accused only committed the murder, question of convicting the accused doesn't arise. The Apex Court in a recent judgment reported in **(2023) 11 SCC 255** in the case of ***Subramanya Vs. State of Karnataka***, also held as under:



"M. Penal Code, 1860 - Ss. 302, 201 and 34 - Circumstantial evidence -Conditions that to be fulfilled by the prosecution - Reiterated Held:

The following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Supreme Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence.



In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused."

18. Having considered the principles laid down in these two judgments, the five golden principles constitute the panchaseela of the proof of a case based on circumstantial evidence. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts. As the circumstances lead to particular inferences, the Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that accused alone is the perpetrator of the crime in question.



19. First of all, the circumstances so established must be of a conclusive nature and consistent with the hypothesis of the guilt of the accused. Hence it is very clear that the inferences could be drawn considering each and every circumstances of the case.

20. This Court also would like to rely upon judgment of the Apex Court in the case of ***Leelaram (dead) Dooli Chand Vs. State of Haryana and another*** reported in ***(1999) 9 SCC 525*** and also the case reported in ***2000 SCC 322***. The Apex Court in the judgment held that in case if any lapses on the part of the investigation, that cannot be a ground to disbelieve the case of the prosecution, irregularity or illegality during the investigation does not constitute a ground to reject the prosecution case. The Apex Court also in the judgment held that with regard to corroboration is concerned, in a criminal case corroboration with mathematical niceties should not be expected particularly when appreciation of evidence is concerned. The Court has to take note of valuable piece of evidence and the said evidence could not be brushed aside, particularly in a criminal case once weapons which were used for committing the murder.



21. The Apex Court also in the Judgment reported in **(2024) 17 S.C.C 401** in the case of **Manoj Kumar Soni Vs State of Madhya Pradesh** and the case in **Criminal Appeal No.1458/2023 (Kallu Alias Habib Vs. State of Madhya Pradesh)** with regard to Section 27 is concerned, when the disclosure statement under Section 27 is made by the accused and co-accused, the evidentiary value is required to be adopted by Courts when dealing with disclosure statements and legal position also reiterated. The law on the evidentiary value of disclosure statement or Section 27 of the Evidence Act made by the accused himself is well established. The decision of the Privy Council in **Pulukuri Kottaya Vs. King Emperor 1946 SCC Online PC 47**, holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin and the accused person's awareness of such aspects. The Privy Council observed that difficulty, however great, proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into Section 27 of the Act something which is not there and admitting in evidence a confession barred by Section 26 of



the Evidence Act. That except in cases in which the possession or concealment are of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case.

22. The Apex Court in the judgment reported in **(2012) 12 SCC 158**, in a case of circumstantial evidence also, has held that chain of circumstances established against the appellant was so complete that it resulted in only one conclusion; that the guilt of the appellant accused without there being any scope or any other hypothesis. The circumstances provide the link between all the accused and the crime committed. They established the guilt of the accused, leaving no room for any other hypothesis, as the chain of events was so complete.

23. Having considered the principles laid down in the judgments referred supra, in a case of criminal trial, Court has to take note of the circumstances particularly in this case, whether each chain link is established or not. The law is set in motion based on the information given by PW2 to PW1, who is the brother of the deceased and in Exhibit P1, the brother of the deceased lodged the complaint that on information given by PW2



he went to the spot where the body was found. He categorically stated that someone who has got the ill will against his brother has committed the murder. The weapons which were used for committing the murder were also shown as thrown somewhere else. Hence based on the complaint, case was registered by PW21 for the offences punishable u/S 302, 201 of IPC at the first instance. The spot mahazar was also conducted and photos were taken as per Exhibit P2, P3 and also Exhibit P4 discloses blood stains were found on the road and Exhibit P5 and Exhibit P6 discloses the nature of injuries sustained by the deceased. Based on the complaint, investigation was started, the accused was apprehended on the very next day, his voluntary statement was recorded as per Exhibit P15 and on the very next day the accused led the I.O. as well as the PW5. He pointed out in his voluntary statement where he took the deceased in his motorcycle and also the place where he inflicted the injury so also transporting of the body in the tractor which belongs to him and also it is his statement that when he was transporting the injured, on coming to the conclusion that he is no more, but when the injured woke up and made the sound, he inflicted the injury with his tractor spanner and left the body at the spot and



took his tractor and parked the same in his land and also recovery of stone which was used to inflict the injury at the first instance and also the rope which was used tying the body to tractor to transport the same was used at his instance and so also the spanner which was used to inflict the injury, was seized at the instance of the accused.

24. The evidence of PW5 is consistent with regard to leading of PW5 and also the I.Os to the spot where he inflicted the injury and transported the injured in the tractor as well as tractor, motorcycle and other incriminating articles which were seized at the instance of the accused were also sent to the FSL and FSL report at Exhibit P84 discloses that blood stain was detected in Article No. 1, 3, 4, 5, 7, 8, 10 and 11 and those articles are mud seized at the spot and tar pieces where the injured was inflicted injury in the road and also the seized cloth, T-shirt, pant and also the stone which were seized, so also the sample mud and also spanner which was used, so also the rope and all these articles stained with blood. The opinion of the RFSL is also very clear that articles number 1, 3, 4, 5, 7, 8, 10 and 11 were stained with human blood and belongs to 'AB' blood group.



Those blood groups are found in the cloth of the injured and also the weapons which were used for committing the murder.

25. The counsel appearing for the appellant would vehemently contend that there is no blood group of the deceased is ascertained. But the fact is that the blood stains which were found in the cloth of the accused and also the weapons are 'positive' and all belongs to the same 'AB' group. Hence the contention of the counsel appearing to the appellant that the RFSL report cannot be accepted, finds no water in the said submission.

Relative Witness:

26. The evidence of PW5 is consistent with regard to the recovery is concerned and though counsel for the appellant would contend that PW5 is a relative, but merely because he is a relative witness, his evidence cannot be discarded. It is settled law that even if relative witness is the recovery witness and their evidence cannot be disbelieved. The Apex Court in the case of ***Laltu Ghosh Vs. State of West Bengal***¹ and also in the

¹ AIR 2019 SC 1058



judgment of ***Md. Rojali Ali Vs. State of Assam***² and ***State of MP Vs. Chhakkilal***³ has held that *the testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim of the offence. In such a case, court has to adopt a careful approach in analysing the evidence of such witness, and if the testimony of the related witness is otherwise found credible, accused can be convicted on the basis of testimony of such related witness.* Even in the judgment of ***Mukesh Vs. State for NCT of Delhi & Others***⁴, the Larger Bench of the Apex Court has held that even if no witnesses are available for the recovery and no witnesses come forward to be a pancha, held in paragraph Nos.449 and 450 that *while making recoveries pursuant to the disclosure statement of the accused, it is a rule of caution evolved by the judiciary, which aims at protecting the right of the accused ensuring transparency and credibility in the investigation of a criminal case and also held that when recovery is made pursuant to the statement of the accused, seizure memo prepared by the Investigating Officer need not mandatorily be attested by independent witness and*

² AIR 2019 SC 1128

³ AIR 2019 SC 381

⁴ AIR 2017 SC 2161 (Three-Judge Bench)



even referred the judgment of ***State (Govt. of NCT of Delhi) Vs. Sunil***⁵ and it was held that *non-attestation of seizure memo by independent witnesses cannot be a ground to disbelieve recovery of articles' list consequent upon the statement of the accused*. It was further held that *there was no requirement, either under Section 27 of the Evidence Act or under Section 161 Cr.P.C. to obtain signature of independent witnesses. If the version of the police is not shown to be unreliable, there is no reason to doubt the version of the police regarding arrest and contents of the seizure memos*. In the case on hand, not only the IO evidence is very clear with regard to the recovery and the disclosure statement was made by the accused and also even though PW5 is a relative witness of the victim and his evidence is consistent and there is a clear evidence of recovery at the instance of the accused. The recovery is proved at the instance of the accused.

⁵ (2001) 1 SCC 652



Last Seen Witness & Motive:

27. The other contention of the accused is that there was no last seen witness. But in the case on hand, it has to be noted that PW4, who is the son of the deceased, categorically deposed that at around 7 to 7.30 p.m., the accused called over phone and hence, his father had left the house saying that the accused is calling him and he will go and come back, however, he did not turn up in the night. Apart from the evidence of PW4, PW2, who is none other than the wife of the deceased, has also categorically deposed with regard to the motive is concerned for committing the murder of her husband. PW2, who comes before the Court, categorically says that she was having an illicit relationship with the accused and the accused had expressed that he is going to take away the life of her husband. But PW2 categorically informed the accused that not to do away with the life of her husband and husband is taking care of her and in spite of it, the accused committed the murder. No doubt, the counsel appearing for the appellant brought to the notice of this Court that for the first time PW2 is deposing before the Court that there was an illicit relationship and the same is an improvement.



But the fact is that PW4-son of the deceased, categorically deposed that the accused used to call his mother and the same is also evident from the CDR, which discloses that there was a phone call on the date of incident i.e. at around 7.28 p.m. and the same corresponds with the evidence of PW4 and he categorically says that on receipt of the phone call only, the deceased left the house and to corroborate the same, 65B Certificate is also obtained from the Nodal Officer and the same is produced before the Court. Though the Nodal Officer is not examined, but 65B Certificate is marked through PW22 and there is no any contraverting the evidence of PW22 that he had not collected the same from the Nodal officer and the evidence available before the Court, that too digital evidence is very clear that there is a Certificate under Section 65B and the same is placed before the Court. It is also important to note that the evidence available before the Court is very clear with regard to the motive is concerned and motive is also proved and except eliciting the answer from the mouth of PW2 also that there is an improvement that the statement is made before the Court for the first time, no other material to disbelieve the evidence of PW2. But with regard to the incriminating circumstances is



concerned, nothing is elicited from the mouth of PW2. No doubt, PW2, PW1, PW5 are the interested witnesses and this Court already pointed out that even if interested witnesses are only the witnesses, the Court has to examine the same with due care and caution and nothing is elicited from the mouth of these witnesses by the defence.

Incriminating Evidence:

28. The other circumstances before the Court is that in 313 statement, elaborately, the trial Judge brought the incriminating evidence against the accused with regard to the evidence of the prosecution witnesses and in 313 statement, the accused did not state anything except stating that he is going to lead defence evidence, but not led any defence evidence and the evidence of the prosecution witnesses is not contraverted or rebutted by the defence either by leading any defence evidence and also no explanation is offered. PW21, who speaks about having received the information, went to the spot and also received the complaint and registered the case based on Ex.P1 and further investigation was conducted by PW22 and PW24.



PW24 conducted the major investigation with regard to the recoveries concerned.

Homicidal:

29. The other circumstance is, the case of homicidal and the same is not seriously disputed by the defence and having considered the PM report, which is marked as Ex.P55, there were seven injuries and injuries are also in the nature of cut wound injuries and though it is the defence of the accused that it is a case of accident, but the case of the prosecution is that the accused pretended that it was an accident and also made an attempt to screen the evidence and hence invoked the offence under Section 201 of IPC. But having taken note of the nature of injuries and also the evidence of the doctor-PW18, it is clear that it is a case of homicidal.

30. Having perused all the circumstances clearly disclose that the accused only committed the murder and the same was within the special knowledge of the accused, he only made the disclosure statement on the very next day on his arrest and all incriminating materials were seized at the instance of the accused. The circumstantial evidence of homicidal, recovery,



motive, ill-will and disclosure statement was also proved and when all such materials were taken note of by the trial Court, we do not find any force in the contention of the counsel appearing for the appellant that no chain of circumstances is proved against the accused. The principles which have been laid down in the judgment of **Leelaram's** case referred above is very clear that *in a case of criminal trial, the Court also cannot expect mathematical niceties and there cannot be a photographic evidence before the Court. But only each link must be established.* In the case on hand, each link has been established and RFSL report also goes against the accused and blood group, though it is contented that not ascertained, but the cloth of the deceased as well as incriminating articles, which were seized at the instance of the accused, are also stained with the very same blood group 'AB' and the same also discloses that the accused only committed the murder of the deceased. Hence, we do not find any grounds to come to other conclusion as contended by the counsel for the appellant that it is a case of suspicion.

31. Now with regard to invoking of Section 3(2)(va) of SC/ST(POA) Act is concerned. PW2, wife of the deceased,



categorically deposed that she belongs to the SC community and the accused belongs to Lingayath community and the same is also spoken by the IO. So also, PW4-son of the deceased, deposed before the Court that the deceased belongs to the SC community and the accused belongs to Lingayath community and to prove the same, document of Ex.P22 and P52 is also marked and it clearly discloses that deceased belongs to the SC community and when such being the material available before the Court and even there is no denial in the cross examination of evidence of PW2 and PW24 that the deceased not belongs to the SC community and also accused not belongs to the Lingayat community and trial Court also taken note of the said fact into consideration. When all such material available before the Court, we do not find any force in the contention of the counsel appearing for the appellant that the benefit of doubt ought to have been extended in favour of the accused and there is no such circumstance warranted in the case on hand and all the circumstances point out the guilt of the accused and hence we do not find any force in the contention of the counsel appearing for the appellant. Hence, we answer the point as 'negative'.



32. In view of the discussions made above, we pass the following:

ORDER

- i) The appeal filed by the appellant-accused is ***dismissed***.
- ii) The judgment of conviction and order of sentence passed by the trial Court against the accused is confirmed.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

YAN/RKM/BVV/JTR
CT-CMU
LIST NO.: 1 SL NO.: 16