



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE M.G.S.KAMAL

CRIMINAL APPEAL NO. 833 OF 2019

C/W

CRIMINAL APPEAL NO. 593 OF 2019

CRIMINAL APPEAL NO. 617 OF 2019

CRIMINAL APPEAL NO. 904 OF 2019

CRIMINAL APPEAL NO. 1622 OF 2019

CRIMINAL APPEAL NO. 833 OF 2019

BETWEEN:

SRI. BHASKAR @ RAJU
S/O LATE VENKATESH
AGED ABOUT 25 YEARS
R/AT NO.31, SHANKARMUTT ROAD
KALKERE, RAMAMURTHYNAGAR
BANGALORE-560 043.

... APPELLANT

(BY SRI. MOHAN KUMAR D., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY RAMAMURTHYNAGAR POLICE STATION
REP. BY STATE PUBLIC PROSECUTOR
BANGALORE-560 016.

... RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT/ORDER DATED 11.03.2019, PASSED BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY IN S.C.NO.922/2010-CONVICTING THE APPELLANT/ACCUSED NO.4 FOR THE OFFENCE P/U/S 120B, 109, 449, 201, 302 AND 380 R/W 34 OF IPC.

CRIMINAL APPEAL NO. 593 OF 2019

BETWEEN:

RAMESH
S/O LATE SUBRAMANI,
AGED ABOUT 46 YEARS, (NOW 56 YEARS)
R/O NO.79, GOMATHI NILAYA,
BANJARA LAYOUT ENTRANCE,
HORAMALU, BANGALORE-560 013.

... APPELLANT

(BY SRI. HEMACHANDRA R. RAI., ADVOCATE)

AND:

STATE OF KARNATAKA
BY RAMAMURTHYNAGAR POLICE STATION,
BANGALORE-560 016.
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.

... RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 11.03.2019 PASSED BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN S.C.NO.922/2010 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S 120B, 109, 449, 201, 302, 380 R/W 34 OF IPC.

CRIMINAL APPEAL NO. 617 OF 2019**BETWEEN:**

SRI. LOKESH @ LOKI
S/O LATE RAMAIAH
AGED ABOUT 24 YEARS,
R/AT NEAR OLD AGE HOME,
GRAVEYARD ROAD,
HORAMAVU VILLAGE,
RAMAMURTHY NAGAR,
BANGALORE-560 043.

... APPELLANT

(BY SRI. JAIRAJ G., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY RAMAMURTHYNAGAR
POLICE STATION
REP BY STATE PUBLIC
PROSECUTOR
BANGALORE-560 016.

... RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2)
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT/ORDER DATED
11.03.2019, PASSED BY THE LXVI ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE, BENGALURU CITY IN
S.C.NO.922/2010, CONVICTING THE APPELLANT/ACCUSED
NO.2 FOR THE OFFENCE P/U/S 120B, 109, 449, 201, 302 AND
380 R/W 34 OF IPC.

CRIMINAL APPEAL NO. 904 OF 2019**BETWEEN:**

MURALI
S/O LAKSHMAN,
AGED ABOUT 20 YEARS,
RESIDING AT NEAR EASHWAR TEMPLE,
BIDARAHALLI VILLAGE,

BANGALORE EAST TLAUK,
BANGALORE-560 043.

... APPELLANT

(BY SRI. K. RAVISHANKAR., ADVOCATE)

AND:

STATE OF KARNATAKA
BY RAMAMURTHYNAGAR POLICE STATION,
BANGALORE.
BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560 001.

... RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 11.03.2019 PASSED BY THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN S.C.NO.922/2010 - CONVICTING THE APPELLANT/ACCUSED NO.3 FOR THE OFFENCE P/U/S 120(B), 109, 449, 201, 302 AND 380 R/W 34 OF IPC.

CRIMINAL APPEAL NO. 1622 OF 2019

BETWEEN:

THE STATE OF KARNATAKA
THROUGH RAMAMURTHYNAGAR POLICE STATION,
BANGALORE, REPT. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS
BENGALURU - 560 001.

... APPELLANT

(BY SRI. VIJAYAKUMAR MAJAGE SPP-II)

AND:

1 . RAMESH
S/O LATE SUBRAMANI,
AGED ABOUT 54 YEARS,
R/AT BANJARA LAYOUT ENTRANCE,

JAYANTINAGAR, HORAMAVU,
BANGALORE - 560 043.

- 2 . LOKESH @ LOKI
SO LATE RAMAIAH,
AGED ABOUT 33 YEARS,
R/AT NEAR OLD AGE HOME,
GRAVEYARD ROAD,
HORAMAVU VILLAGE,
RAMAMURTHYNAGAR
BANGALORE- 560 043.
- 3 . MURALI
S/O LAKSHMAN
AGED ABOUT 29 YEARS,
NEAR EASHWAR TEMPLE,
BIDARAHALLI VILLAGE,
BANGALORE EAST TALUK - 560 043.
- 4 . BHASKAR @ RAJU
S/O VENKATESH,
AGED ABOUT 34 YEARS,
NO 31, SHANKARMUTT ROAD,
KALKERE, RAMAMURTHYNAGAR,
BANGALORE - 560 043.

... RESPONDENTS

(BY SRI. HEMACHANDRA R. RAI., ADVOCATE FOR R1;
SRI. JAIRAJ G., ADVOCATE FOR R2;
SRI. K. RAVISHANKAR., ADVOCATE FOR R3;
SRI. MOHAN KUMAR D., ADVOCATE FOR R4)

THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2)
CR.P.C PRAYING TO MODIFY THAT PORTION OF THE
IMPUGNED JUDGMENT AND ORDER OF SENTENCE DATED
11.03.2019, PASSED BY THE LXVI ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE, BENGALURU IN S.C.NO.922/2010, FOR
THE OFFENCE P/U/S 109, 120B, 201, 380, 449, 302 R/W 34 OF
IPC BY ENHANCING THE SENTENCE AND IMPOSE DEATH
SENTENCE TO THE ACCUSED/RESPONDENTS FOR THE
OFFENCE P/U/S 302 OF IPC.

THESE CRIMINAL APPEALS HAVING BEEN RESERVED ON 25.09.2025 FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **M.G.S. KAMAL J.**, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE M.G.S.KAMAL

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE M.G.S.KAMAL)

Criminal Appeal No. 593/2019 is by accused No.1-Ramesh, Criminal Appeal No.617/2019 is by accused No.2-Lokesh @ Loki, Criminal Appeal No.904/2019 is by accused No.3-Murali and Criminal Appeal No.833/2019 is by accused No.4 -Bhaskar @ Raju, being aggrieved by the Judgment and order dated 11.03.2019 passed in S.C.No.922/2010 on the file of LXVI Additional City Civil and Sessions Judge, Bengaluru City (hereinafter referred to as `trial Court') by which appellants-accused Nos.1 to 4 have been convicted for the offences punishable under Sections 120-B, 109, 449, 201, 302 and 380 read with Section 34 of IPC and have been sentenced to undergo imprisonment as under:

| | |
|---|---|
| Accused No.1-Ramesh | <p>(i) Life imprisonment and to pay fine of Rs.10,000/- for the offences punishable under Sections 120B, 302 of IPC.</p> <p>(ii) Life imprisonment for the offence punishable under Section 109 IPC for abetting accused No.2 to 4 in commission of offence punishable under Section 302 of IPC.</p> |
| <p>Accused No.2-Lokesh @ Loki,</p> <p>Accused No.3-Murali,</p> <p>Accused No.4-Bhaskar @ Raja</p> | <p>(i) Life imprisonment and to pay fine of Rs.10,000/- each for the offences punishable under Sections 120B, 302 of IPC.</p> <p>(ii) Life imprisonment for the offence punishable under Sections 449 read with 34 of IPC.</p> <p>(iii) Life imprisonment for the offence punishable under Sections 302 read with 34 of IPC.</p> <p>(iv) Imprisonment for seven years and pay fine of Rs.10,000/- each for the offence punishable under Sections 201 read with 34 of IPC.</p> <p>(v) Imprisonment for seven years and pay fine of Rs.10,000/- each for the offence punishable under Sections 380 read with 34 of IPC.</p> |

Criminal Appeal No.1622/2019 is by the State seeking enhancement of sentence.

2. These appeals were heard and reserved and same are disposed of by this common Judgment and order.

Genesis of the case:

3. A complaint dated 23.10.2009 came to be filed by one Dr. Kushal K Das before the Inspector of Police, Ramamurthynagar Police Station, Bengaluru, which reads as under:

Date: 23.10.09

From,

Dr. Kushal K. Das (47 yrs),
S/o Mr. B.B. Das,
Ibrahim Roza Road,
12/672, Ibrahim Roza Road,
L.B. Shastrinagar,
BIJAPUR-586101.

Phone:(Resi)08352-271257
(Mob)-9448194257

Office: Professor of Physiology,
Al-Ameen Medical College,
Bijapur-586108.

To,
The Inspector of Police,
Rammurthynagar Police Station,
Bangalore-560016.

Subject: Information regarding my brother's
and his family's whereabouts as no
communication from them since 21.10.09
morning.

Sir,

I would like to inform you that my younger brother, Mr.Rahul Das and his family staying at No.6, 80/3, Jayanthi Nagar Extn., 2nd cross, Horamavu, Bangalore-43 are not found in communication to us as well as his employees, since, 21.10.2009 morning.

Personally, I have visited this place on March 2009 first week. Later me and my family communicate with Mr.Rahul Das and his family through mobile(s) and Land phone. I personally wished Happy Deepavali to my sister-in-law (Mrs. Pushpalatha Das, aged 38 years) on 18.10.2009.

On yesterday (22.10.2009) Mr. Suvan, one of my brother's worker call me and inform me that Mr Rahul Das, Mrs.Pushpalatha Das are not responding their cell phone since Wednesday (21.10.2009) morning.

I have arrived in Bangalore from Bijapur (torn) 23.10.09 (today) morning and immediately come to my brother's residence at Horamavu and found it locked (as I was told by Mr. Rahul Das worker). Immediately I went to Ramamurthy Nagar Police Station and reported the officer (not clear) along with the Police Officer and his team I have come to the residence of Mr.Rahul Das, I have once again found the door were locked. We have entered (along with Police Officer) after breaking the door of 1st floor and after entering inside the house along with Police Officers we have found that the dead bodies (partially decomposed) of my younger brother Mr. Rahul Das, his wife Mrs. Pushpalatha Das and their child Ms. Agnisha Das (age 8 yrs) are in the bathroom of ground floor. I think they are being murdered by somebody in their residence. Kindly take necessary action while investigating this case.

Thanking you in anticipation...

With regards,
Sincerely,
Sd/-
(Dr. Das)

Received the complaint on 23.10.09 at 11.00 Hrs and registered case in Cr.No.349/09 U/s 302 I.P.C

Sd/-
PI

Case of the prosecution:

4. Pursuant to the above complaint, first information report dated 23.10.2009 came to be registered in Crime No.349/2009 initially for the offence punishable under Section 302 against "unknown persons". After the investigation respondent-police filed charge sheet dated 13.01.2010 presenting its case as under:

That one Rahul Das, was earlier a tenant under accused No.1-Ramesh, a resident of Banjara Layout, Ramamurthy Nagar. That said Rahul Das had suspected illicit relationship between his wife - Pushpalatha Das and accused No.1. Though Rahul Das had shifted his residence to II cross, Jayanthinagar accused No.1 continued his relationship. Rahul Das had insisted accused No.1 not to have any contact either with him or his wife and not to visit his house. Enraged by this, accused No.1 with an intention of eliminating Rahul Das hatched conspiracy with accused No.2-Lokesh @ Loki, accused No.3-Murali, and accused No.4-Bhaskar @ Raju and offered to pay a sum of Rs.1,00,000/- to each of them to execute the conspiracy and paid a sum of Rs.10,000/- to each accused as advance. That on 20.10.2009 at about 5.30 p.m. accused No.1 called accused Nos.2 to 4 near Tea Stall of one Naresh Patel which is situated near the house of Rahul Das and instructed them that Pushpalatha Das, wife of Rahul Das had gone to drop their daughter Agnisha Das to tuition and Rahul Das was alone at home and in furtherance to the conspiracy instigated accused Nos.2 to 4 to commit murder of Rahul Das. Accordingly, accused Nos.2 to 4 went to the house of Rahul Das situated at II Cross, Jayanti Nagar and throttled him till he fell unconscious. Thereafter took him to bathroom and immersed his head in a bucket filled with water tied his both legs to the tap with towel and killed him. While they were leaving the spot Pushpalatha and Agnisha Das, entered into the house. Accused Nos.2 to 4 apprehending the danger of being caught smothered both of them by pressing pillow on their face and killed them as well. Thereafter immersed their bodies in a bath tub in the bathroom causing disappearance of evidence of murder by smothering. They took away jewels from the dead bodies and cash of Rs.11,500/- and mobile phones.

5. Thus charge sheet was accordingly filed for the offences punishable under Sections 109, 120-B, 201, 302 read with

Section 34 of IPC. Since the accused persons pleaded not guilty sought to be tried, trial was conducted.

6. Prosecution examined 56 witnesses as PWs.1 to 56, exhibited 183 documents as Exs.P1 to P183 and marked 87 material objects as M.Os.1 to 87. In the statement recorded under Section 313 Cr.P.C accused persons denied the incriminating evidence produced against them. They did not however lead any evidence in their defence.

7. Trial Court on appreciation of evidence held the accused persons guilty of charges framed against them and sentenced them to undergo imprisonment as noted above. Being aggrieved by the same accused persons are before this Court.

Submissions of the learned counsel for the Appellants:

8. Sri.Hemachandra R. Rai, learned counsel appearing for accused No.1 (appellant in Crl.A.No.593/2019) submitted:

8.1) Initial case of the prosecution was murder for gain purportedly committed by accused Nos.2 to 4. It was only improved thereafter by implicating accused No.1 by adding alleged aspect of illicit relationship between him and deceased Pushpalatha Das.

- 8.2) Accused Nos.2, 3 and 4 were arrested on 28.10.2009. Accused No.1 was arrested on 02.11.2009 that is after six days of arrest of the accused Nos.2, 3 and 4. Voluntary statement of accused Nos.2, 3 and 4 was recorded on 28.10.2009 as per Exs.P.141, 144, 145 respectively where there is no mention of involvement of accused No.1. The said statement only indicate the case of murder for gain. That three days thereafter investigation officer recorded further voluntary statement of accused No.2 on 30.10.2009 as per Ex.P149 wherein the accused No.1 has been implicated. However, no such further voluntary statement of accused Nos.3 and 4 have been recorded. If at all accused No.1 had conspired with accused Nos.2 to 4 there was no possibility of such implication of accused No.1 only in the further voluntary statement of accused No.2 alone without accused Nos.3 and 4 speaking anything about the same.
- 8.3) PW-11 -Dr.Kushal Das- complainant and brother, and PW.35 -B.B.Das the father respectively of deceased Rahul Das in their deposition have categorically stated that accused No.1 was a close acquaintance to the family of the deceased and was frequenting their house. That

accused No.1 and his wife were invited and had even participated on the birthday celebration of Agnisha Das. That even on the date when the bodies were found in the house of the deceased and until their cremation accused No.1 was present and assisted PW.11 and PW.35 in the process. They had never expressed any doubt against the accused No.1. That it is only when the further statement of accused No.2 was recorded on 30.10.2009 the investigation officer implicated accused No.1 into the case adding the aspect of illicit relationship.

- 8.4) PW.11 in his first three statements recorded during investigation has not mentioned anything about the illicit relationship. PW.11 for the first time during his examination-in-chief had spoken about deceased Rahul Das confiding with him about accused No.1 having illicit relationship with Pushpalatha Das.
- 8.5) That according to PW.56- ACP N Narasimhaiah, he had obtained information from one Giriprakash-CW.14 by speaking to him through the mobile phone of PW.38- Sakri-PSI of Banaswadi police regarding illicit relationship. Said Giriprakash has not been examined. PW.56 has pleaded ignorance about he knowing about

said Giriprakash. Thus, the whole theory of illicit relationship is concocted and fabricated.

- 8.6) Out of 25-30 employees of Rahul Das only PW.1 -Pramila and PW.10-Mehaboobanna Suban have been examined. PW.1 has turned hostile and not supported the case of the prosecution. PW.10 has not spoken anything regarding the illicit relationship. The other two witnesses namely PW.9 -Pandidorai, local resident and PW.12-Ramana, furniture businessman have also completely turned hostile on the aspect of alleged illicit relationship.
- 8.7) PW.55 the Investigation Officer in his cross examination has admitted that PWs.1, 10, 11 and 35 had never mentioned the name of accused No.1.
- 8.8) That except the said witnesses prosecution has not produced any evidence in the nature of call records to prove the circumstance of illicit relationship. Prosecution has also not examined other relatives of deceased Rahul Das who admittedly had two sisters. Though brother of Pushpalatha Das has been cited as CW.45, he has also not examined.

8.9) Theory of conspiracy which was allegedly hatched amongst accused Nos.1 to 4 has not been established by the prosecution as required under law. PWs.4, 5, 13, 18, 30 and 31 who have been examined by the prosecution to prove conspiracy have turned completely hostile.

8.10) Thus, accused No.1 is a complete stranger to accused Nos.2 to 4 and has been falsely implicated by the prosecution and morally convicted by the trial Court.

Hence, seeks for acquittal of accused No.1.

9. Sri.G.Jairaj, learned counsel for accused No.2 -Lokesh @ Loki (appellant in Crl.A.No.617/2019) submitted that:

9.1) Prosecution has produced its evidence in the nature of recovery of material objects M.Os.6 to 16 and 38 to 45 as per Mahazar Ex.P17 and Ex.P18 attributing involvement of accused No.2. The witnesses to the said mahazar namely PW.14 and PW.15 have turned hostile and have not supported the case of the prosecution. PW.15 during his examination-in-chief has pleaded his inability to identify the accused persons present before the Court. As such, the prosecution has failed to prove the

circumstance of recovery of articles at the instance and from accused No.2.

- 9.2) The Chance finger print allegedly found on whisky bottle purportedly seized by the prosecution from the spot produced as M.O.72 matching with that of the accused No.2 is unreliable. That no mahazar was drawn while taking the chance finger print as required under law.
- 9.3) There is no evidence of finger print samples of accused No.2 having been taken. That in the list of articles sent for Finger Print examination by PW.48 there is no mention of whisky bottles. That in the report on examination of crime scene produced at Ex.P66 which was prepared by PW.48 at 11.45 a.m. on 23.10.2009 there is no mention of any whisky bottle being found on the dining table at the spot. Thus, the whole theory of prosecution finding chance finger prints of the accused No.2 is not believable.
- 9.4) Alternatively, he submits that even if there were any finger prints found from the spot of the incident, accused No.2 was earlier working under Rahul Das and was admittedly visiting the house of the deceased. That

according to the deposition of PW.35 - B.B. Das accused No.2 had even attended the birthday party of Agnisha Das on 20.09.2009 and as such there are possibilities of such finger prints found on the spot.

- 9.5) PW.16 and PW.17 witnesses to Ex.P21-mahazar which was drawn while lifting the finger print by PW.48 have turned hostile.
- 9.6) PW.51 in his cross-examination has admitted that he is not sure as to which of the two bottles shown at item Nos.3 and 7 of the list was sent for forensic lab verification. Even if it was sent, there was possibility of same having been handled by PW.51 and others. Evidence of this nature therefore is not reliable.
- 9.7) Though hair and blood sample of the accused No.2 was subjected to DNA profiling, as per the report and evidence of PW.52 it is established that the report did not indicate anything against accused No.2.
- 9.8) That the accused No.2 was at the spot of the incident from the day one of complaint. His presence has been spoken to by PWs.1, 2, 4 and 6. That he was taken to police station by the police for further enquiry and was

kept in illegal detention upto to 28.10.2009 when he was formally shown to be arrested. The purported extra judicial confession of accused No.2 with PW.9 - Pandidorai on 26.10.2009 cannot be relied upon inasmuch as accused No.2 was in the police custody since 23.10.2009 even as per the evidence of PWs.1, 2, 4 and 6 though formal arrest is shown to have been made on 28.10.2009, therefore the extra judicial confession is highly doubtful.

- 9.9) Learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **KULDIP SINGH VS STATE OF DELHI** reported in **2004(1) Crimes 13 (SC)**.

Hence, seeks for acquittal of accused No.2.

10. Sri. Ravishankar, learned counsel appearing for accused No.3-Murali (appellant in Crl.A.No.904/2019) submitted:

- 10.1) That the entire prosecution case is based on scientific evidence in the nature of DNA profile/report on hair and blood samples. That though the said evidence appears to have been proved scientifically but has not been proved legally.

10.2) That no permission from the Magistrate has been obtained before taking hair and blood samples of accused persons as required under provisions of the Prisons Act. That DNA report does not reveal the process and details of analysis.

10.3) That recovery of gold articles M.Os.28 to 37 as per Ex.P30 at the instance of the accused No.3 has not been proved as the witnessess to the said mahazar PW.23 and PW.24 have turned hostile.

10.4) The chain of circumstances has not been established.

10.5) Learned counsel relies upon following citations in support of his contentions:

1. 2025 SCC Online SC 1074 -Renuka Prasad Vs. State Represented by Asst. Superintendent of Police
2. 2024 SCC Online SC 3383 - Ranadeep Singh @ Rana and Another Vs State of Haryana and Others
3. Crl.A.No.1004/2017-Sri. Thimmabovi Vs. State of Karnataka
4. 2014 Supreme(SC) 300-Prakash Vs. State of Karnataka
5. 2024 Supreme (Online) (Ori) 4666-Pata @ Pratap Puri Vs. State of Odissa
6. (2018) 8 SCC 24-Sonvir @ Somvir Vs. State of Delhi
7. (2023) 1 SCC 83 - Rahul Vs. State of Delhi
8. Crl.A. No.793-794/2022 - Rajesh and Another Vs. State of Madhya Pradesh

9. Crl.A.No.1667-1668/2021 Irfan @ Bhayu Mevati Vs. State of Madhya Pradesh
10. Crl.A.No.1672/2019 - Kettavellai @ Devakar Vs State of Tamilnadu

11. Sri. Mohan Kumar, learned counsel for the accused No.4 (appellant in Crl.A.No.833/2019) submitted:

- 11.1) That the alleged illicit relationship between accused No.1 and Pushpalatha Das has not been proved and established by the prosecution. None of the witnesses have spoken about the same.
- 11.2) The theory of last seen propounded by the prosecution relying upon the evidence of PW.6 is of no avail as the said witness has completely turned hostile.
- 11.3) Recovery of gold articles as per MOs.17 to 27 in terms of Ex.P27 mahazar has not been proved. The panch witnesses PW.21 and PW.22 have completely turned hostile.
- 11.4) Lifting of Chance finger prints from the spot has also not been proved as the panch witnesses PW.16 and PW.17 have turned hostile.
- 11.5) The DNA report with regard to matching of hair sample recovered from the spot as per Ex.P24 is of no avail as

the very recovery of the hair sample has not been proved. PWs. 19 to 20 who are the witnesses to Ex.P24 have turned completely hostile.

11.6) That there has been no identification of gold jewellery in the manner known to law. The conduct of the accused persons is also relevant in that if it was murder for gain, they would not have kept the jewellery with them as claimed by the prosecution.

11.7) According to the report of PW.48 and evidence of PW.46 and inquest report at Ex.P12 the articles found on the body of the victim namely ear-ring was intact. Recovery and seizure of ear-ring -M.O.46 and M.O.25 have not been proved. According to PW.50 - Dr.B.M.Nagaraj -M.O.25 the ear-ring was removed from the dead body of Pushpalatha Das. As such, investigation officer recovering M.O.25 from the possession of accused No.4 cannot be accepted.

11.8) That the conviction merely based on the evidence of PW.52 and PW.53 is unsustainable.

Hence, seeks for allowing of the appeal.

Submissions of learned Special Public Prosecutor:

12. Sri. Vijayakumar Majage, learned SPP-II justifying the impugned judgment and order submitted that:

- 12.1) Though the case is based on the circumstantial evidence the prosecution has proved and established the case beyond reasonable doubt.
- 12.2) Admittedly accused No.2 was the former employee of Rahul Das whose employment was terminated and he had nurtured vengeance. Motive for commission of offence is evident in accused No.1 being the conspirator roping in accused No.2.
- 12.3) Involvement of accused No.2 has been established from the chance finger prints found on the whisky bottle that was recovered from the spot as per Ex.P10.
- 12.4) That PWs.10, 11, 16 and 17 have spoken about seizing of the whisky bottle from the spot which is marked as M.O.72. PW.53 has spoken about lifting of chance finger prints found on whisky bottle and three tumblers and he giving opinion as per Ex.P122 to Ex.P126. The

evidence of PW.51-FSL officer clarifies the chance finger prints taken from M.O.72.

- 12.5) PW.39, PW.10 and PW.55 has spoken about drawing up of Ex.P10 which has the reference to the presence of whisky bottle at the spot, the same is corroborated with the evidence of PW.11.
- 12.6) That during the cross-examination of PW.55, suggestions have been made on behalf of accused Nos.2 and 4 regarding seizure of two bottles, which strengthens the case of prosecution regarding existence of bottle at the spot. The bottle recovered at the instance of accused No.3 is marked as MO.37 through PW.11, while the bottle found at the spot is marked as M.O.72 through PW.53. The chance finger prints which were taken from M.O.72 tallied with the fingerprints of accused No.2.
- 12.7) Visit of the fingerprint expert and lifting of chance fingerprints has been spoken to by PW.2, PW.53 and PW.55. Though panch witnesses PW.15 and PW.16 have turned hostile in the light of reports produced at Ex.P122 to Ex.P126 and report at Ex.P124 and the letter

of investigating officer as per Ex.P127 to Ex.P133 case of the prosecution regarding evidence and proof on the fingerprints of the accused Nos.2 to 4 stands established.

- 12.8) That as per Ex.P24, eighteen articles were sent for FSL and the DNA report on sample hair is produced at Ex.P116, in that it is established that the hair found on the bedsheet at the spot of the incident belonged to accused Nos.3 and 4 and that the hair in the hands of victim-Angisha Das belong to accused No.4.
- 12.9) That there has been no delay or mishandling of the articles/items sent for FSL examination, which is evident from the evidence of PW.47 and PW.48.
- 12.10) Though collection of hair sample is denied, collection of blood sample is not denied by the accused persons.
- 12.11) The DNA report with regard to matching of the hair collected from the spot with that of the blood samples of the accused No.3 and 4 is undeniable. This is further corroborated with the evidence of PWs.2, 10, 11, 32, 39, 47, 48, 50, 52 and 53, with documentary evidence

as per Ex.P45 to Ex.P47, Ex.P65 to Ex.P106, Ex.P111 to Ex.P114, Ex.P165, Ex.P172 and Ex.P173.

12.12) The aforesaid medical and scientific evidence have clinched the case of the prosecution with regard to the involvement of accused Nos.2, 3 and 4 in commission of offence. That though there are minor discrepancies in identifying and marking material objects, the same shall not be construed as prosecution not having established the case.

12.13) That PW.9 has spoken about accused No.2 confiding about commission of offence. His evidence needs to be read in the light of recovery of gold articles M.Os.6 to 15 and M.Os.38 to 45 at the instance of PW.35. The gold articles marked at M.Os.28 to 37 have been recovered at the instance of accused No.3. While the gold articles at M.Os.17 to 27 have been recovered at the instance of accused No.4. The said gold articles have been identified by PW.11 and PW.35 completing the chain of circumstance.

12.14) He relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Chethan Kumar Shetty Vs.**

State of Karnataka passed in **Crl.A.No.933/2012** with reference to lifting of chance fingerprints from the movables found at the scene not requiring to seize the movable articles for the purpose of examination of fingerprints, though there is no guideline prescribed to the same. Hence, seeks for dismissal of the appeals.

12.15) In support of the appeal filed by the state he submits that the case falls under rarest of rare category. The manner in which the offence is committed shocks the conscience of the society at large. As such, accused persons deserve higher punishment. Since the prosecution has proved the premeditated action of the accused persons in hatching the conspiracy and executing the same without any mental or emotional disturbance, there is no probability of accused persons reforming themselves. Hence seeks for allowing the appeal.

13. Heard both side and perused the records.

14. Points that arise for consideration are :

- "(i) Whether on the facts and in the circumstance of the case trial Court is justified in convicting and sentencing accused Nos.1 to 4 for the offences punishable under Sections 109, 120-B, 201, 449, 302 read with Section 34 of IPC?*
- (ii) Whether the Judgment and order of the trial Court suffers from perversity warranting interference?"*

15. Admittedly, the case of the prosecution is based on circumstantial evidence. Following are the circumstances relied upon by the prosecution:

15.1) **MOTIVE** : Illicit relationship between accused No.1 and victim-Puspalatha Das.

15.2) **CONSPIRACY**: Accused No.1 engaging accused No.2 who in turn roped accused Nos.3 and 4 in conspiring to kill victim-Rahul Das.

15.3) **RECOVERY**:

- (i) of gold articles as per M.Os.6 to 15, mobile phone as per M.O.16 and gold chain, tata indica mobile, four notes of 500 face value and five notes of 1000 face value, broken mobile pieces, one SIM card, half burn mobile SIM card, ashes of burnt CD and SIM card as per M.Os.38 to 45 and two

wheeler as per Ex.P.148 based on the voluntary statement of accused No.2.

- (ii) of gold articles as per M.Os.28 to 35, mobile phone – M.O.36 and whisky bottle as per M.O.37 based on the voluntary statement of accused No.3.
- (iii) of gold articles at MO.17 to MO.27, motorcycle Ex.P.152 and Ex.P.153.
- (iv) Joint recovery of broken mobile hand set and half burn SIM card and ash vide mahazar Ex.P.33 and Ex.P.34 marked as M.Os.42 to 45.

15.4) **LAST SEEN THEORY:**

15.5) **FINGER PRINTS:**

- (i) Lifting of chance fingerprints from the whisky bottle and three tumblers found at the scene of offence.
- (ii) Fingerprint and FSL report as per Exs.P122 to 133 to establish the fingerprints of accused Nos.2 to 4.

15.6) **DNA REPORT:**

- (i) Recovery of hair from the bedsheet found at the scene of offence and from the right hand palm of victim-Agnisha Das.
- (ii) Report regarding matching of hair and blood samples of accused Nos.3 and 4, as per Ex.P.116.

Discussions, Analysis and findings on the evidence adduced by the prosecution:

16. Regarding Motive:

16.1) Case of the prosecution is that during the year 2002, victim-Rahul Das and his family was occupying first floor portion of the residential building belonging to accused No.1 situated at Banjara Layout, Horamavu. That accused No.1 who was residing in his house situated near Oil Mill road of Banaswadi was frequenting the tenanted house occupied by victim-Rahul Das and his family and had gradually developed illicit relationship with victim-Puspalatha Das, which was the cause for unrest in the family of victim-Rahul Das and first vacating the said tenanted house during the year 2004-05 and relocating the family by constructing his own house at 2nd Cross, Jayanati Nagar, Horamavu. That despite shifting of his residence, accused No.1 had continued his relationship with victim-Pushpalatha Das.

16.2) To prove this circumstance, the prosecution has relied upon the evidence of PW.1-Pramila, PW.3-Narasimha, PW.11-Dr.Kushal K Das, PW.12-Ramana and PW.35-B.B.Das, PW.55-N Mahesh, Investigating Officer, PW-56-Sri. Narasimhaiah, Assistant Commissioner of Police.

Of these witnesses PW.1, PW11, PW12 and PW35 are the acquaintance and the relatives of the victim-Rahul Das.

16.3) PW.1-Pramila was working as a Typist under victim-Rahul Das. The said witness has completely turned hostile and has not supported the case of prosecution. However, in the cross-examination by the prosecution parts of her further statement recorded under Section 161 of Cr.P.C on 03.11.2009 have been marked as Ex.P1 to Ex.P1(g). In the marked portions of said statement, it is shown as she having spoken to about accused No.1 being intimate with victim-Pushpalatha Das due to which victim-Rahul Das was extremely upset. That despite victim-Rahul Das shifting his residence and office, accused No.1 continued his relationship with victim-Pushpalatha Das. However, even in the cross examination by the prosecution she has completely denied all suggestions of she having given any such statements before the Police.

16.4) PW.11-Dr.Kushal Das is the complainant and brother of victim-Rahul Das. In his deposition he has stated that initially victim-Rahul Das was tenant under accused

No.1 and was residing in first floor of his house at Banjara layout, Horamavu. That victim-Rahul Das vacated the tenanted house belonging to accused No.1 and started to reside in his newly constructed house at Jayanthi Nagar, Horamavu. That when he enquired the reason for shifting of residence, victim-Rahul Das had informed him about the illicit relationship between accused No.1 and his wife-victim-Puspalatha Das. That he had advised victim-Rahul Das to speak to their father B.B Das-PW.35.

In the cross-examination PW.11 has admitted that in the statement given to the police he has not stated either about the illicit relationship between accused No.1 and victim -Pushpalatha Das or regarding victim-Rahul-Das wanting to vacate the house of accused No.1 as early as possible in view of said illicit relationship. He has further admitted that the victim-Rahul Das had purchased a site in Jayanthi Layout in the year 2001 and after constructing a house thereon he had re-located after vacating the tenanted house belonging to accused No.1 in the year 2004. He has also admitted that upon the instruction of his father he himself had

requested accused No.1 to help him in cremation of dead bodies of Rahul Das, Pushpalatha Das and Agnisha Das.

- 16.5) PW.12 -Ramana, a furniture vendor is an acquaintance of victim-Rahul Das. He has turned hostile and has denied he having any knowledge with regard to illicit relationship between accused No.1 and victim-Pushpalatha Das. Portion of statement given by him before the police in this regard has been marked as Ex.P15(a) to P15(f). In the cross examination said witness has admitted that upon the request of PW.11- Dr.Kushal Das, accused No.1 and four others had helped him in cremating the dead bodies. That accused No.1 was present throughout. That accused No.1 and his wife had attended birthday celebration of Agnisha Das.
- 16.6) PW.35-B.B.Das, the father of victim -Rahul Das in his deposition has spoken about the intimate relationship between accused No.1 and victim-Pushpalatha Das. He has also spoken about frequent quarrel in the family on this issue.

In the cross examination he has stated that there were 25 to 30 employees working in the office of victim-Rahul Das. That victim-Rahul Das constructed his new house in Jayanthi Nagar and after vacating the tenanted house he started residing there. That victim-Rahul Das and his family were earlier residing in the house belonging accused No.1 which consisted of ground floor and first floor and victim-Rahul Das was residing in the first floor. That accused No.1 and his family were invited by victim-Rahul Das and his wife to all the birthday celebration of victim-Agnisha Das. Accused No.1 did not attend the last birthday celebrated in the year 2009 but only his wife had attended. That his wife (mother of victim-Rahul Das) was also residing with victim-Rahul Das and she passed away in his newly constructed house. That accused No.1 had extended all the assistance even during her cremation. Accused No.1 and his wife were there till the end. He has admitted that victim-Rahul Das and accused No.1 were close friends. He has admitted that he was in Guwahati when this incident took place and he was informed by his son Dr.Kushal Das. That he had immediately contacted accused No.1 over phone and had requested him to give

all possible help including assistance in cremating dead bodies. That he had visited the police station about 7 to 8 occasions and on 03.11.2009 the police had recorded his first statement, one month thereafter they recorded another statement. He has admitted that he has not given statement before the police as found at para 2 and 3 of page 2, para 2 of page No.3 and para 2 of page 4, and para 1 of page 6 of his statement recorded on 03.11.2009.

- 16.7) PW.1, PW.11, PW.12 and PW.35 have admitted that they never stated anything concerning relationship of accused No.1 and victim-Pushpalatha Das in their statement before the police.
- 16.8) PW55- The investigating officer in his deposition has stated that till recording of further statement of accused Nos.2 to 4 on 30.10.2009 he had no suspicion on accused No.1 and none of the relatives of the deceased had expressed any suspicion. That when he recorded the statement of Pramila -PW1 and Mehaboobanna- PW-10 on 23.10.2009 had not made any mention regarding accused No.1. PW.11 Kushal Das was also present at the spot while recording the statement of PWs.1 and 10

and he has also not stated anything about accused No.1. That the nephew of victim-Pushpalatha Das namely Manu (CW-45) has given his statement on 23.10.2009. Even said Manu has not stated anything about accused No.1. That he had spoken to PW.35 - B.B.Das on several occasions after 02.11.2009 and even he has not spoken anything about accused No.1. He has pleaded ignorance about accused No.1 being present between 23.10.2009 and 24.10.2009 with PW11. Victim-Pushpalatha Das had a mother, younger brother and sisters and there was no impediment for him to subject them for enquiry. That PW.11 who had given complaint and statement and further statement on 23.10.2009 and 26.10.2009 had not made any allegation against accused No.1. That he gave his last statement on 03.11.2009 and has not sought for any action to be taken against accused No.1. That, similarly, PW.35-B.B.Das, gave his statement on 03.11.2009 and has not made any allegation against accused No.1. That on learning about the incident all the employees of victim-Rahul Das had come to the spot and none of them have spoken about any illicit relationship between accused No.1 and victim-Pushpalatha Das. That he

learnt about victim-Rahul Das and his family being tenant under accused No.1 in the year 2002. That accused No.1 and his family members were not residing in the building in which victim-Rahul Das was the tenant. That he has not enquired any other tenants or the neighbours except Giriprakash. That he has not obtained any call details between victim-Pushpalatha Das and accused No.1. That he has not enquired any of the neighbours of Jayanthinagar new extension layout. That he had enquired between 23.08.2009 to 28.10.2009 with all the employees of victim-Rahul Das and none of them have spoken about the illicit relationship between accused No.1 and victim-Pushpalatha Das. That the special squad and crime squad of his station has not given any information regarding the illicit relationship. He has admitted that PW.11 -Kushal Das has not given any statement regarding deceased informing about he intending to relocate his house due to illicit relationship between accused No.1 and victim-Pushpalatha Das. So also PW.35-B.B.Das speaking about the intimate relationship between accused No.1 and his daughter-in-law victim-

Pushpalatha Das and his advise to both his son and daughter-in-law to move on in life.

16.9) In addition to the aforesaid evidence of PW.1, PW.11, PW.12 and PW.35, PW.55-Sri. N.Mahesh-the Investigating Officer has deposed that he learnt about accused No.1 being close to the family of deceased on and after 30.10.2009, when he enquired PW.3-N.Narasimhaiah and one Sri.Giriprakash-CW.14.

16.10) PW.3-N. Narasimhaiah aged about 73 years as on the date of recording evidence, is a purported social worker assisting the Police with his team of 25 youths in maintaining law and order in Ramamurthynagar. According to prosecution during the year 2006 while said witness was on his night rounds, had met victim-Rahul Das on two occasions and in such meetings victim-Rahul Das had confided with him about accused No.1 having illicit relationship with his wife-victim-Pushpalatha Das. The said witness has not supported the case of the prosecution and has completely denied the very statement purportedly made by him marked at Ex.P3.

Admittedly PW.3, assists police in peace keeping in the locality. Though he has turned hostile, it is incomprehensible that victim-Rahul Das would have confided with some stranger, allegedly doing night rounds just in his very first meeting.

16.11) Adverting to the statement of Sri. Giriprakash-CW.14, according to the prosecution, same has been recorded by PW.55 on 25.12.2009. Contents of said statement indicate that Giriprakash-CW.14 was purportedly a tenant under accused No.1 and was acquainted with victim-Rahul Das and his wife victim-Pushpalatha Das. That on 01.11.2009, said Sri Giriprakash received a call from someone identifying himself as a media person enquiring him regarding the illicit relationship between accused No.1 and wife of Rahul Das and he having given some information regarding the same. It also indicate that the said conversation contained in a compact disk (CD) was played on a laptop and he identified his voice and the voice of the person who spoke to him under the pretence of media person.

16.12) PW-56-Sri. Narasimhaiah, Assistant Commissioner of Police in his evidence has stated that on 01.11.2009 he

pretending himself to be a media person had spoken through the mobile phone of PW38- Sri. Sakri, CPI of Banaswadi bearing No.9448490999 to one Giriprakash-CW.14, on his mobile bearing No.9591352508 seeking information regarding the triple murder. That in response, said Giriprakash-CW.14 is stated to have informed him that he was a tenant under accused No.1 and had also given information regarding accused No.1 having illicit relationship with victim-Pushpalatha Das. That he had recorded the said conversation on the mobile phone records of PW38-Sri. Sakri, and later converted into a CD. That on 25.12.2009, he had handed over the said CD to PW.55-Mahesh which is subject matter of PF No.109/2009.

In the cross-examination, PW-56-Sri. Narasimhaiah has stated except he speaking to Giriprakash-CW.14, he has not undertaken any investigation. But he has supervised the investigation being in regular contact with the Investigating Officer. He has spoken about three teams having been formed on 23.10.2009, to search and identify the accused who had committed the said triple murder, but he does not remember the names of the

officers and personnel part of the said teams. He admits that PW38-Sri.Sakri, CPI of Banaswadi was not an investigation officer of the said case. That he spoke through the mobile phone of PW38-Sri. Sakri as his mobile was under repair and he could not record the conversation.

That only PW38-Sri.Sakri and himself were present when he had the conversation with said Giriprakash-CW.14. That he had no impediment in having such conversation in the presence of investigating officer of the case. That he does not remember as to any entry having been made in the case diary on 01.11.2009, when he had such conversation with Giriprakash-CW.14. That he did not give such information on the very same day to the investigating officer, but he gave the CD to the investigating officer on 25.12.2009. That he has not given any report regarding handing over such CD to investigating officer or any statement in this regard. That he got the mobile number of Giriprakash-CW.14 through one of police personnel of Ramamurthy Nagar Police Station, but he does not remember the name of police personnel. That he got the number through his

oral order. That he has not taken the statement of said Police personnel regarding he furnishing the mobile number and address of Giriprakash-CW.14. That he has not summoned said Giriprakash-CW.14 to his office after having spoken to him. That the investigating officer has not taken the statement of Giriprakash-CW.14 in his presence. He has not taken the statement of technician who converted the mobile recording to the CD. That while, transferring the said mobile recorder to CD only himself, technician and PW38-Sri. Sakri, CPI were present. That there was no difficulty in doing the same in the presence of investigating officer. That he has not taken the statement of PW38-Sri. Sakri, CPI of Banaswadi. That he has not seen said Giriprakash-CW.14.

16.13) PW.55- Mahesh Investigating officer, in his cross-examination recorded on 06.09.2018 has deposed that he has not personally spoken to said Giriprakash-CW.14. It was PW-56-Sri. Narasimhaiah, Assistant Commissioner of Police who had spoken to said Giriprakash-CW-14 and had recorded the conversation between him and Giriprakash-CW-14 on a mobile

recorder. That he and PW.55 and said Sri.Narasimhaiah, ACP had jointly subjected said Giriprakash-CW.14 for enquiring in the office of said ACP. That the mobile conversation has been recorded in a CD in the office of ACP, Narasimhaiah. At that time, PW38- Sri. Sakri, CPI of Banaswadi was also present. He pleads ignorance about the name of the technician who had recorded the mobile conversation on the CD and that he has not examined the said technician.

16.14) The said Giriprakash has been cited as chargesheet witness No.14. However, he has neither been examined nor the CD containing his conversation with PW.56 has been produced.

16.15) PW.38 -N.B.Sakri in his deposition has not whispered anything whatsoever regarding PW.56 speaking to Giriprakash (CW.14) through his mobile or regarding call records. PW55 in his cross examination has admitted that PW.38 in his statement has not spoken about PW.56 speaking to Giriprakash (CW.14) over his mobile.

16.16) Trial Court has noted that during recording of the evidence of PW.55 on 29.06.2019, the clerk of property division had informed the Court that the said CD was not found, as such it was ordered to be searched and produced. But no information has been furnished to the Court regarding the search result.

16.17) From the perusal of aforesaid deposition of PW.1, PW.3, PW.11, PW.12, PW.35, PW.55 and PW.56 following emerges:

- (i) during the year 2002 victim-Rahul Das, was a tenant under accused No.1 in respect of first floor of the house of accused No.1 at Banjara Layout.
- (ii) That victim-Rahul Das constructed his own house at Jayanthi Nagar and shifted to the newly constructed house in the year 2004.
- (iii) That accused No.1 was close friend of victim-Rahul Das. That accused No.1 and his family were frequently visiting the house of victim-Rahul Das including attending functions such as birthday celebrations of victim-Agnisha Das.

- (iv) PW.11 and PW.35 were also aware of the close friendship of accused No.1 and victim-Rahul Das and their families. This family friendship had prompted PW.35 to call up accused No.1 requesting him to render assistance in cremation of dead bodies of victims.
- (v) Accused No.1 had also been supportive when wife of PW.35 had passed away in the house of Rahul Das at Jayanthi Nagar.
- (vi) That accused No.1 was present at the spot throughout till the cremation of the bodies of the victims.
- (vii) PW.11 and PW.35 in their statements given before the police on 23.10.2009 and 03.11.2009 respectively have not whispered anything about the illicit relationship between accused No.1 and victim-Pushpalatha Das.
- (viii) No other relatives either of Victim -Rahul Das or of victim-Pushpalatha Das have been enquired.

- (ix) No explanation as to the prosecution not securing call records, if any between accused No.1 and victim-Pushpalatha Das.
- (x) deposition of PW.55 and PW.56 would clearly indicate exaggeration and embellishment in the case of prosecution in making non-existing circumstances an existing one. No credibility can be attached with this version of PW.55 and PW.56 regarding they obtaining information regarding alleged illicit relationship from Giriprakash-CW.14, in the absence of any acceptable and plausible evidence produced in this regard.

16.18) It is settled position of law that when the prosecution witness did not refer any role played by the accused in their statement to the police during investigation, accused cannot be convicted for the offence alleged on the basis of improvements made by the witnesses during the trial. Thus, from the above it is clear the motive circumstance namely "illicit relationship" between accused No.1 and Pushpalatha Das has not been proved and established by the prosecution.

17. **Regarding conspiracy:**

- 17.1) According to the prosecution Accused No.1 engaged accused No.2 who in turn roped accused Nos.3 and 4 in conspiring to kill victim-Rahul Das. To prove the same, the prosecution has examined PW.4-Venu, PW.5-Nagesh-driver, PW.13 Naresh Patel, PW.18- Venkatesh-contractor, PW.30- Mahesh- Auto driver, PW.31-Jayanthilal- a chance witness, waiting for the bus in the bus stop opposite to Ramamurthy Nagar Police Station.
- 17.2) PW.4-Venu, though has admitted his acquaintance with accused No.2 as they studied together in a school and residing in Horamavu, he has pleaded ignorance about victim- Rahul Das. He has denied the further case of the prosecution regarding accused No.2 grumbling about his financial condition. He has also denied the contents of his statement recorded on 22.10.2009 marked as Ex.P4 and Ex.P4(a), in which he purported to have stated that on 22.10.2009 at 5.00 p.m. accused No.2 had called him to go to accused No.1 to receive Rs.3,00,000/- and he having had tea with accused No.2 in Banjara layout and thereafter accused No.2 asking him to go home as he would go alone to meet accused No.1. He has also

denied that accused No.3 and 4 are the friends of accused No.2.

17.3) PW.5-Nagesh except admitting he having gone to the garage of accused No.4 for repairing his bike and seeing accused No.2 visiting the said garage, has denied further case of the prosecution. He has denied that in his statement recorded on 3.11.2009 he having stated regarding his visit to the garage of accused No.4 and he witnessing all accused Nos. 1 to 4 discussing, and he being asked by accused No.4 to either come on the next day or to have his bike repaired from somewhere else as they were discussing about some important matter. He has also denied he over hearing them discussing something about Rahul Das and money.

17.4) PW.13- Naresh Patel has denied the investigation officer recording his statement on 3.11.2009 as per Ex.P16 regarding he having his business of Bhagavathi Tea Stall in Jayanthi Nagar extension, Horamavu. He has denied that on 20.10.2009 at about 5.00 to 5.15 p.m., accused No.1 had visited his tea stall and had cigarette by which time three boys had come to his shop and while having

tea with accused No.1 they had spoken about Rahul Das, money and completion of job etc.

- 17.5) PW.18-Venkatesh has denied he having given statement to the police on 3.11.2009 as per Ex.P22 regarding he visiting the garage of accused No.4 on 22.09.2009 for repair of his two wheeler and he witnessing three persons speaking with accused No.4 regarding some Rahul Das, Rs.1,00,000/-, Jayanthi Nagar, and accused No.4 asking him to go away and get his bike repaired through some one else.
- 17.6) Ex.P42 is spot mahazar drawn indicating the place namely, Rajeshwari Bike Works situated at Rampura Road and a tea stall at Jayantinagar Extension, Horamavu where accused Nos. 1 to 4 alleged to have hatched conspiracy to kill Rahul Das on 20.10.2009. PW30-Mahesh and PW31- Jayantilal have been cited as witnessess to the said Mahazar. Though the said witnesses have admitted their signatures found on Ex.P42, both the witnesses have turned hostile. The said witnesses have denied the entire process of drawing up of said spot mahazar at Ex.P42 and contents of their statements in that regard as per Ex.P43 and

Ex.P44 respectively. In the cross-examination both the witnesses have stated that they affixed their signatures to Ex.P42 in the police station upon instruction of the police and they have neither seen nor aware of the contents of the said document.

17.7) To establish the charge of conspiracy prosecution is required to prove:

- (i) An agreement between two or more persons
- (ii) Agreement must relate to doing or causing to be done either (i) illegal act or (ii) an act which not illegal itself but is done by illegal means

17.8) The Agreement contemplated under Section 120B of IPC can be proved either directly or through circumstantial evidence. Inference from circumstantial evidence may be drawn only when such circumstances are incapable of any other reasonable explanation. In the instant case there is no direct evidence. The circumstantial evidence led by the prosecution apart from being insufficient cannot be relied upon. When according to the prosecution the motive for commission of crime is illicit relationship between the Accused No.1 and victim-Pushpalatha Das, which itself has not been proved as held above, question of accused No.1 conspiring with

accused No.2 who in turn bringing on board accused Nos.3 and 4 to commit the crime infurtherance to the purported motive would not arise. Nothing can be inferred from the evidence adduced by the prosecution regarding meeting of mind of the accused persons on the theory of conspiracy.

17.9) The only evidence brought on record by the prosecution is the oral testimony of PW.4, PW.5, PW.13, PW.18, PW.30 and PW.31 who have not supported the case of prosecution in any manner whatsoever. No call records evidencing any phone calls amongst accused Nos. 1 to 4 for the relevant period have been produced.

17.10) The only two circumstances which the prosecution brought on record against accused No.1 are "illicit relationship" and "conspiracy". Prosecution having failed to prove and establish both these circumstances, conviction and sentence against the accused No.1 is unsustainable.

Regarding recovery:

18. Recovery of articles such as gold jewellery, whisky bottle, mobile phone, sim cards, cash and two wheelers have been the

circumstances which the prosecution has relied upon to bring home the guilt of accused Nos. 2 to 4.

Articles recovered at the instance of accused No.2:

18.1) Ex.P17 is the seizure mahazar drawn on 28.10.2009, while seizing ten items of gold articles, a Samsung mobile phone and a TVS Star Sport two wheeler bearing Reg.No.KA-53-Q-462.

18.2) Prosecution has examined PW.14-Ramaiah, landlord of accused No.2 as a witness to aforesaid seizure mahazar-Ex.P17. The said witness in his deposition recorded on 23.11.2011 has stated that accused No.2 was his tenant paying a rent of Rs.2,500/- per month. That on 28.10.2009 police had brought accused No.2 to his house. One Ramachandran (CW.27) and Sagaya Raj (PW-34) had also come along with the police. That accused No.2 informed about the gold article that were in his cupboard and had accordingly presented the same. That he and the Police had seen the said gold articles. Police had taken the same into their custody. Apart from the gold articles police have also seized a two wheeler. He has identified the mahazar drawn in this regard as

per Ex.P17 and his signature at Ex.P17(a). He has identified the gold articles which were already marked as MO.6 to MO.15 and Samsung mobile phone marked as MO.16.

The said witness in the cross-examination recorded on 24.01.2012 has stated that police had come to his house prior to drawing up of the panchanama and had demanded him to pay Rs.2,000/- that was paid by accused No.2 towards the rentals. That a month later he had given the said amount of Rs.2,000/- to the police and it is not recorded in writing. He has further stated that police had come to his house prior to drawing up of the mahazar and had got the house opened at 11 p.m. The lock was opened by a key maker. He does not remember his name. That the key maker has not signed the panchanama. That police had stayed in the said house upto 2.00 a.m. and thereafter had kept the said house under watch. That he was sitting outside the house while the police were seizing the articles inside the house of accused No.2 and he has not seen what transpired inside the house. That there are neighbouring houses, but the police have not called any of the neighbours as witnesses.

On a question regarding weight of the gold articles seized by the police, he replied that he has not seen the gold articles. That he has not seen if the police had sealed and had affixed chit containing his signature. He has stated that he has given the statement as per the instruction of the police. He does not remember if the police had taken photograph while carrying out seizure of gold articles. He has not seen the police seizing the mobile from the house of the accused No.2. He does not remember if accused No.2 was brought by the police on the said day.

18.3) Ex.P18 is the Panchanama drawn on 30.10.2009, contents of which would indicate that accused No.2 had taken police along with PW.15- H.R. Gopala Krishna and Vishwachari-CW.32, and had presented plain golden necklace like chain marked as MO.38 and Tata Indica mobile phone marked as MO.39 and cash of Rs.2,000/- marked as MO.40 (four notes of Rs.500/- each) taken by him from the house of deceased, which he had given to his landlord Ramaiah on 22.10.2009.

18.4) PW.15-Gopalakrishna is witness to the aforesaid Panchanama-Ex.P18. He is also witness to seizing of Pulsar two wheeler bearing Reg No.KA-03-HB-8838,

under Ex.P19 at the instance of accused No.4. The said witnesses in his deposition has stated that on 30.10.2009 PW.55-N.Mahesh, Inspector of Police of Ramamurthy Nagar Police station had asked him to be a witness to panchanama and accordingly he had gone to the police station where Lokesh and Bhaskar amongst the other accused were present in the Police Station, but since it has been two years, he is not able to specifically identify, amongst accused present before the Court as to who is Lokesh and who is Bhaskar. That Lokesh had taken them to his house at Horamavu belonging to one Sri. Ramaiah. When they went inside, Lokesh had presented a chain like necklace and a mobile and cash of Rs.2,000/-, which he had given to Ramaiah, the landlord. The police had seized the said articles under Ex.P18 to which he had affixed his signature.

In the cross examination, the said witness has stated that he was introduced to PW.55-N.Mahesh, Inspector as he was a member of Protection Committee of Ramamurthy Nagar. That he has given informations to the police in about 8 to 10 cases. That CW.32-Vishwachari is also one of the members of the Protection Committee and the

police have investigated in all the reports that they have given. That peace committee meetings are held once in two or three months. He has further stated that while leaving the station along with him inspector and CW.32-Vishwachari and a police constable and the accused were present. Two accused persons had come, whom the police had shown to him. He does not know if accused by name Murali was shown to him. He does not remember if the name of Murali was mentioned in the panchanama, but it contained the name of Bhaskar and Lokesh. That before leaving the police station, neither the Police Inspector, nor the Constables, nor another Panch-witness-CW.32-Vishwachari, nor the driver, nor the accused and himself had conducted any body search of each other and had not taken out any of their belongings.

He did not know if the police knew the address of accused No.2. But he has not noticed if police were already present before they went to into the house of the accused No.2. That though he had gone inside the house, but he did not know from where the accused had taken out the articles. That he had not examined the gold necklace and the mobile personally. But he was shown. He did not know the weight of the golden chain. He has

not even examined if it was a gold chain or not. He has admitted that there are thousands of mobile phones like M.O.39. That he has not seen if MO.39 had 2 or 3 sim cards or it had inbuilt sim card. He has also not examined if the said mobile phone was in working condition or not. He has also admitted that, gold necklace as of MO. 38 is available in jewellery shops. That he did not remember if his signature was taken on the sealed cover in which the said articles were kept. He does not remember the constable who had written the panchanama. That he affixed the signature as the police had asked him to sign.

18.5) Ex.P38 is the mahazar drawn on 03.11.2009, recovering cash of Rs.5,000/- in the office of Srinivas Motors of R.K. Syndicate. PW.28-Narasimhamurthy, PW.29-Venkatesh and PW.33-Mahendra witness to seizure mahazar-Ex.P38 under which cash -MO.41 were recovered at the instances of the accused No.2.

18.6) PW.28-J.Narasimhamurthy whom the prosecution has examined as witness to said Ex.P38 has turned hostile. However, during the cross-examination by the prosecution, he has admitted that PW.29-Venkatesh

had given the receipt as per Ex.P39 and five notes of one thousand value each, which is marked as MO.41.

18.7) In the cross examination, he has deposed that upon the instructions of the police he has affixed his signature on the mahazar and he does not know anything about the contents of the same. Similarly, he does not know the details of the mahazar and who else have signed the said mahazar. He does not know as to who presented Ex.P39 and MO.41 before the police and does not know who has given Ex.P39 and to whom does M.O.41 belong.

18.8) PW.29-Venkatesh in his deposition has stated that he is working as a collection manager in RK Finance Company and that they render financial assistance in purchase of vehicles. That the accused No.2 had purchased a two wheeler during 2008-2009, but he does not remember the date. He was paying monthly instalment of Rs.1,600/- and they were issuing receipts in that regard. That during November 2009 police had come along with accused No.2 and asked him to return the money paid by the accused No.2, which he had returned along with the receipt, which is marked as Ex.P39. He does not remember the denomination, but they were totally in a

sum of Rs.5,000/-. He would not be able to identify the said currency notes. That accused No.2 had deposited money prior to 29.10.2009 as mentioned in Ex.P39, but he does not know whom did the money belong to. The said witness has turned hostile.

In his cross-examination PW.29 has admitted that there are 13 employees working under Srinivasa Motors and apart from them there are three collection agents. He admitted that he was not giving any loan for the people who purchased two wheelers from Srinivasa Motors, but he was facilitating loan from other financiers. Apart from RK Finance, he was also facilitating finance from other agents. Everyday Srinivasa Motors was selling about 5 to 6 vehicles and would not be able to identify the persons who purchased such vehicles. That they were issuing receipts if instalments were paid to their finance company. But the police have not taken him or CW.37/(PW-33)-Mahendra or CW.39/(PW-28) - J.Narasimhamurthy along with the accused to RK Finance. Similarly, Police have not come to their company along with people from RK Finance and taken any details. That minimum instalment payable in respect

of 100 CC two wheeler was Rs.5,000/-, he would not be able to tell specifically that accused No.2 had purchased the two wheeler from the said shop as several people used to come and purchase the two wheelers. Since the police had informed him that the accused No.2-Lokesh had purchased the two wheeler, and had instructed him to affix his signature, he had affixed his signature on Ex.P39. He has admitted that he is not aware about the receipts or about the currency notes which were before the Court. He has admitted that he requires police assistance for them to run smooth business.

18.9) PW.33-Mahendra, in his deposition has stated that he has been working as Manager in Srinivas Motor Service Station that he has not seen accused Nos.2 to 4 but he has seen accused No.2 as he was brought to the service station by police about 2 years ago. That the police had asked him to return the money paid by accused No.2 by showing a receipt and the police have not recorded anything in writing at the spot. Rs.5,000/- was paid to the police by his owner Yathish and he does not know the denomination. That he had affixed his signature on Ex.P38. and he can identify receipts and amount which

is marked as Ex.P39 and M.O.41 respectively. The said witness has turned hostile.

In the cross-examination he has deposed that the company has appointed several persons to collect the money and people go to places to collect the money. He has pleaded ignorance as to who collected Rs.5000/- under receipt Ex.P39. That the amount collected would be deposited in the company's account on the same day. That he paid Rs.5,000/- to the police which was collected on 03.11.2009. The said amount is as per MO.41.

18.10) PW.34-Sagayaraj who has been examined by the prosecution is witness to:

- (i) Ex.P17 under which 10 gold items -MO.6 to 15 and a mobile phone MO.16 and a two wheeler bearing registration no.KA-52-Q-462 were seized from accused No.2;
- (ii) Ex.P27, under which 11 items of gold articles which are marked as MO.17 to 27 were seized from the house of accused No.4;
- (iii) Ex.P30 under which gold articles as per MO.28 to 35 and a Nokia mobile phone as per MO.36 and a liquor bottle of Royal Stag as per MO.37 was seized from the house of accused No.3 who has turned hostile; and
- (iv) Ex.P48 under which an ear ring was seized from accused No.4.

The said witness has turned hostile and has not supported the case of prosecution.

Recovery of articles at the instance of accused No.3

18.11) Ex.P30 is the mahazar drawn on 30.10.2009 at the instance of accused No.3-Murali. The said mahazar indicates that the Investigation officer had recovered eight gold items marked as MO.28 to MO.35 and a Nokia Mobile phone as per MO.36 and a Royal Stag whisky bottle as per MO.37.

18.12) PW.23-Ramamurthy-Tailor in Bidrahalli Village of Hoskote Taluk, PW.24-Venkatesh-Grama Panchayat Waterman and PW.34-Sagaya Raj are the witnesses to seizure mahazar-Ex.P30 the said witnesses have completely turned hostile and have not supported the case of the prosecution. They have denied any recovery made by the police at the instance of accused No.3 in their presence. They have deposed that they affixed their signatures on Ex.P30 since the police had informed them that they are taking the accused No.3 from his home to the police station.

Recovery of articles at the instance of accused No.4:

18.13) Ex.P27 is purportedly the mahazar drawn on 29.10.2009 recovering 11 gold articles marked as

MOs.17 to 27, based on the voluntary statement of accused No.4 from his house. PW.21-Anjanamurthy, PW.22-Muddappa and PW.34-Sagaya Raj are the witnesses to said seizure mahazar as per Ex.P27.

18.14) PW.21-Anjanamurthy has been examined as the panch-witness to Ex.P27, under which accused No.4 had allegedly handed over 11 items of the gold articles, which are marked as MOs.17 to 27. The said witnesses has turned hostile and has not supported the case of the prosecution. In the cross-examination said witness denied that he was witness to two mahazars which are drawn on 23.10.2009. He has denied under the said two mahazars, police seizing whiskey bottle and glass tumblers in the presence of fingerprint experts and also police seizing some electronic items.

18.15) PW.22-Muddappa, who has been examined by the prosecution as a witness to seizure mahazar as per Ex.P27 under which gold articles marked as MOs.17 to 27 were purportedly seized, has turned hostile and not supported the case of the prosecution and says that he has affixed his signature upon the instruction of the police.

- 18.16) Ex.P48 is the mahazar drawn on 15.11.2009 in the police station regarding purported seizure of ear-ring M.O.25 from accused No.4, in the presence of witnesses, namely, Sunil CW.46, Jagadish CW.47 and PW.34-Sagayaraj. Contents of Ex.P48 indicate that one of the two ear-rings belonging to victim-Pushpalatha Das was stolen by the accused persons and the other was left on the dead body. That the ear-ring recovered from accused No.4 under Ex.P48 tallies with the one left behind on the dead body. CWs.46 and 47 have not been examined. PW.34 has not supported the proceedings under Ex.P48.
- 18.17) In Ex.P.66 report of crime scene, PW.48 has reportedly noticed anklets, metal bangle and earring on the dead body of victim- Pushpalatha. There is no mention with regard to only one earring being found on the dead body. Even in Ex P12 inquest report there is no mention regarding missing earring of victim-Pushplatha Das. PW.55 the investigation officer has admitted this aspect of the matter.
- 18.18) Ex.P19 is a seizure mahazar drawn on 30.10.2009 under which Pulsar two wheeler bearing Reg.No.KA-03-

HB-8838 used by him prior to commission of offence was allegedly seized at the instance of accused No.4. PW.15-H.R.Gopalakrishna and CW.32- Viswachari are the witnesses to the said mahazar.

18.19) PW.55 has admitted that two wheelers seized in the case belong to the accused Nos.2 and 4.

JOINT RECOVERY:

18.20) Ex.P33 and Ex.P34 are drawn on 31.10.2009 and 01.11.2009 respectively at the instance of accused No.2 to 4 regarding recovery of broken mobile hand set and sim cards and half burnt sim cards marked as MOs.42 to 45. PW.25 and PW.26 are the witnesses to the said recovery. They have not supported the case of the prosecution.

CONDUCT AND APPREHENDING OF ACCUSED:

18.21) According to prosecution Accused No.1- Ramesh was arrested on 02.11.2009 as per report at Ex.P61 at Tamarind Circle within the jurisdiction of Ramamurthy Nagar Police Station. Accused No.2 -Lokesh was arrested on 28.10.2009 as per report at Ex.P59 while he

was trying to escape near Dr.Rajkumar Samadi within the jurisdiction of Nandini Layout. Accused No.3-Murali was arrested on 28.10.2009 as per report at Ex.P107. Accused No.4-Bhaskar @ Raja was arrested on 28.10.2009 as per Ex.P57 from Shankarmutt temple, Kalkere village.

18.22) Contrary to the above, PW.11 -Dr. Kushal Das in his evidence has stated that accused No.1 had rendered all assistance in cremation of the dead bodies. That he extended the assistance upon the instructions given by his father PW.35. PW.12 Ramana in his evidence has admitted that accused No.1 and four other persons had assisted in cremation of the dead bodies. Similarly, evidence of PW.1- Pramila indicates that accused No.2 was present on the very day when the police broke open the door of the place of incident along with others. The police have enquired accused No.2 along with others even in the presence of dog squad and the finger print experts.

18.23) The depositions of PWs.1, 2 and 6 show that accused No.2 was at the scene of offence and was with the police right from 23.10.2009 till his formal arrest.

PW.55 -the investigating officer has pleaded ignorance about the presence of accused Nos.1 and 2 at the spot on the very first day. He has also pleaded ignorance of accused No.1 having rendered assistance during cremation of the body.

18.24) According to the story of prosecution all the gold articles have been seized from the possession of the accused 2 to 4. If really the murder was for gain it is arduous to accept that the accused persons to have kept all the gold articles with them for over month from the date of incident.

18.25) The prosecution has heavily relied upon the aforesaid circumstances of recovery of articles at the instance of accused Nos.2 to 4. The evidence led to prove this circumstance cannot be relied upon for the following reasons:

- (i) recovery of articles has not been proved and established, as all the witnesses have not only turned hostile but have also explained the circumstances under which the said articles were recovered by the police.
- (ii) PW.14 – Landlord of accused No.2 has stated that he was sitting outside the house while the search and seizure process as per Ex.P17 was inside the

house. He has stated that he handed over the cash of Rs.2000/- to the police.

- (iii) Ex.P17 is the seizure mahazar drawn on 28.10.2009 while Ex.P18 seizure mahazar drawn on 30.10.2009. No explanation as to why the articles recovered under Ex.P18 could not be recovered under Ex.P17 while both were drawn in the house of the accused No.2.
- (iv) PW.28 and PW.29 have pleaded ignorance as to whom sum of Rs.5,000/- of cash at M.O.41 belong.
- (v) Under Ex.P27 dated 29.11.2009 police recovered 11 gold articles and left out an ear-ring which they recovered from accused No.4 under Ex.P.48 on 15.11.2009 while he was in the police custody. No explanation in this regard either.
- (vi) PW.15-H.R.Gopalakrishna and CW.32- Viswachari are the witnesses to the said mahazar. Exs.P18 and P19-is seizure mahazars drawn on 30.10.2009. Said witnesses are members of Protection Committee and have been providing information to police regarding incidence. As rightly contended by the learned counsel for appellants such witnesses are professional witnesses and their reliability is not safe without corroboration.
- (vii) Nothing is brought on record to indicate that the mobile phones and the sim cards belonged to the victims.
- (viii) Since the very recovery of articles and cash has not been proved, expecting accused Nos.2 and 4 to provide explanation regarding the said articles being in possession is redundant.
- (ix) Neither the investigating officer nor the prosecution have conducted test identification parade.

18.26) Law warrants search and seizure of incriminating material objects be made in the presence of

'independent' and 'respectable' inhabitants of the locality. This is to ensure the process of search and seizure of incriminating articles is natural and real and not artificial and planted. Investigation in the instant case particularly on these aspects apart from raising several questions also offends judicial conscience.

18.27) Thus recovery of these articles at the instance of the accused Nos.2 to 4 not having been established by the prosecution the same cannot be the basis for attributing any guilt on the part of the accused.

19. **Regarding last seen theory:**

19.1) Prosecution has examined PW.6 – Muniraju A. Goolitha, who purported to have seen accused Nos.2 to 4 together on the date of incident entering the house of the victims. Prosecution also examined PW.27 – Ramanji, who also purported to have seen accused No.3 coming out of the house of the victim and accused No.2 and 4 standing outside the house in the middle of the road, keeping the bike in a start position on 20.10.2009. Both these witnesses have turned hostile.

19.2) Necessary to note that last seen theory could be presented only when victim was last seen alive together with the accused and the duration between the time they were last seen and the time of the incident so proximate that there is no possibility of any intervening events.

19.3) The Apex Court in the case of **STATE OF U.P. VS SATHISH** reported in **(2005) SCC 114** at paragraph 22 has stated as under:

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. ***In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.....***"

(Emphasis supplied)

Thus, the prosecution has not proved the last seen theory either factually or legally.

20. **Regarding Fingerprints:**

Lifting of chance fingerprints from the whisky bottle and three tumblers from the scene of offence

20.1) According to the case of prosecution finger print expert PW.53 - Krishna Prakash T.S., who was called upon by

PW55-the investigation officer to the spot of the incident, had found chance fingerprints on a whisky bottle and three glass tumblers which were kept on the dining table. Said objects have been seized in terms of mahazar at Ex.P21 and sent for Forensic Science Laboratory for verification. PW.16-Narasimhaiah and PW.17-Muniraju are the witnesses to the said mahazar.

20.2) PW.53 – T.S.Krishna Prakash, Finger Print expert in his evidence has deposed that on 23.09.2009 on receipt of information from the control room he visited the spot and started his examination around 12.05 p.m. onwards. The chance fingerprint found by him on one of the three glass tumblers which were on the dining table was marked as "Q". Similarly the chance fingerprint found on the whisky bottle was marked as "Q1". That he found fingerprints on steel almerah which he marked as "Q2" and also found part of palm print on wooden cupboard which he marked as "Q3". All these chance fingerprints marked as Q, Q1, Q2 and Q3 were lifted by him through a cello tape and transmitted to a plastic sheet and he has taken the said chance finger/palm print to his office. He has further deposed that on 12.11.2009 the investigation officer had

forwarded the fingerprints of accused Nos.1 to 4 as well as of deceased Rahul Das for comparison. Accordingly, he conducted scientific comparison. Admitted fingerprint of accused No.2 marked as "S" tallied with that of the one found on the scene of offence marked as "Q". Admitted fingerprints of accused No.4 marked as "S1" tallied with fingerprint lifted from the scene of offence as per "Q1". Admitted fingerprints of accused No.3 marked as "S2" tallied with chance fingerprint found at the spot marked as "Q2". That the palm print found at the spot marked as "Q3" did not tally with that of the fingerprints of the accused or of deceased Rahul Das. He has given his opinion as per Ex.P122 under his signature. The letter dated 05.03.2018 seeking extension of time to submit the report is marked as Ex.P123. The covering letter submitted to the Court along with the records is marked as Ex.P124. Annexure-I and II to the opinion at Ex.P122 are marked as Ex.P125 and Ex.P126. Covering letter forwarded by the investigation officer along with admitted fingerprints of the accused is marked as Ex.P127. The admitted fingerprints are marked as Exs.P128-133. He has given his affidavit to the investigation officer

regarding his visit and inspection of the scene of offence which is marked as Ex.P134.

20.3) In the cross examination PW.53 has admitted that though he has lifted the chance fingerprints found on the objects from the scene of offence, he has not taken photographs to show from which of the objects he has lifted chance fingerprints. He has admitted that to lift any item a person has to use minimum of two fingers of his hand. That, he did not lift the fingerprints which were smudged and had taken only clear chance fingerprints. That he has not stated so in his report. He has also admitted that he has not given the names of staff members who had come to assist him in the process of lifting the chance fingerprints to the investigation officer. He has also not given the details of the instrument by which he had collected/lifted the chance fingerprints to the investigation officer. He admits that in Annexure-II to his report at Ex.P126 he has not mentioned the instrument he used to lift the chance fingerprints. But he has given the same in the report of the scene of occurrence.

20.4) That no mahazar has been drawn on 23.10.2009 while collecting the chance fingerprints from the scene of

offence and there is no mention in his affidavit at Ex.P134 as to in whose presence the same were collected. Similarly there is no mention in Ex.P134 as to the instrument through which he lifted the chance fingerprints. There is also no mention in Ex.P134 regarding the staff who assisted him in the process. That as per Ex.P134 the investigation officer was present while collecting the chance fingerprints. That he is not aware if the people had already visited the spot before his arrival.

20.5) Very theory of existence of whisky bottle M.O.72 at the scene of offence on which chance fingerprint allegedly found and tallied with the admitted fingerprint of accused No.2 has been disputed. Relevant at this juncture to refer to Ex.P66 which is a report submitted by PW.48-B.C.Ravindra -Scientific Officer on examination of crime scene. The said report is in detail. At page 2 of the said report under the heading "Examination of Main Hall" it is stated that:

".....there were three glass tumblers found lying on dining table. Out of which two glasses were filled with water and another tumbler was filled with a few millilitre of liquor. Few chapathis were found inside the hot box and a few sweet packets were also lying besides the hot box. No disturbance were seen at the dining table".

Thus, according to the said report there is no whisky bottle found on the dining table. Further at the end of the report Ex.P66 he has given list of 18 items that were found, collected and handed over to the investigation officer for further action. In that there is no mention either with regard to three tumblers or the mysterious whisky bottle.

20.6) Photograph produced at Ex.P69 partially covers the dining table where one tumbler is visible. The same does not depict the existence of whisky bottle.

20.7) PW.55 the investigation officer in his evidence has referred to PF No.84/2009 marked as Ex.P139 pertaining to M.Os.69 to 72 being three tumblers and whisky bottle purportedly recovered in terms of mahazar Ex.P21. PW.55 has admitted that PW.48 in his report at Ex.P.66 has not shown the existence of Royal Stag whisky bottle. He has admitted to the suggestion that during the investigation they had recovered two Royal Stag whisky bottles. That he had drawn mahazar regarding recovery of items from the scene of offence after expert visiting the spot but he has not taken their signatures on

panchanama. That the whisky bottle and the glass tumblers were preserved and sent to FSL examination. Also pertinent to note that PF No.84/2009 dated 23.10.2009 in which royal stag labelled glass bottle stated to have been recovered from the scene of offence is marked as Ex.P139. The said document indicates that the request for keeping the same in the possession of the police was granted by the Court on 17.11.2009.

20.8) PW.16 and PW.17 are the witnesses to Ex.P21. The said witnesses have turned hostile.

20.9) Learned SPP-II referring to the suggestion made to PW.55 on behalf of the accused persons regarding seizure of two bottles submitted that said suggestion indicates admission of seizure of one of the whisky bottles from the spot which is marked as M.O.72 while the other one was seized from the house of accused No.3 at his instance which is marked as Ex.P37. In response to the contention not sending of glass tumblers and whisky bottle from which chance finger prints were found, learned SPP-II submits that since the fingerprints were lifted by using cello tape later transmitted to plastic sheet there is no requirement of seizing and sending the said objects for

fingerprint analysis. He relies upon the Judgment of Division Bench of this Court in the case of **Chethan C Shetty Vs State of Karnataka in Crl.A.No.933/2012 dated 10.01.2018**. In the said Judgment the Co-ordinate Bench of this Court adverting to chance fingerprint taken from a portable article, at paragraph 26(a) to (c) has held as under:

"26(a) The further contention is that the fingerprints taken on the cupboard as well as the UPS have not been taken in a manner known to law. In support whereof reliance is placed on guideline 1544 of the Karnataka Police Manual (Volume-II) 1998 which reads as follows:

" 1544 (i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) If latent prints are found on portable articles they should be seized under a detailed panchnama duly packed and labelled and sent to the Finger Print Bureau with a police officer with instructions regarding the care of the package during the journey."

It is therefore contended that of the two articles, the UPS-MO5 is a portable one. Therefore, it should have been seized under a detailed panchanama and labeled and sent to the Finger Print Bureau. Admittedly, the same has not been done.

(b). The said contention is countered by the learned State Public Prosecutor, who contends that this was the earlier practice prevailing as in the year 1998. At that point of time, due to various reasons the fingerprints could not be lifted from the scene of offence by the finger print expert. Therefore, the articles which were found to contain the fingerprints were packed, labeled and sent to the Finger Print Bureau. At the Bureau, the concerned officer would examine the article and thereafter examine the fingerprints. However, much thereafter, the procedure in lifting the fingerprints has been fine-tuned. The same was necessitated in view of the number of crimes being committed and acquittals on the ground of the error in lifting the fingerprints. Therefore, a more specialised procedure is being

adopted. At present, there are far more fingerprint experts than those in 1998. Therefore, when the Investigation Officer arrives at the scene of offence and finds that there are certain fingerprints that could be taken, he does not pack, label and send the same to the Finger Print Bureau. On the contrary, the fingerprint expert is summoned to the scene of offence and it is he who lifts the fingerprint from the concerned article and not the Police Officer. Therefore, the question of packing and labeling and sending the article to the Finger Print Bureau is obsolete, which is not being followed by the police officers.

(c) On hearing learned counsels on this issue, we are of the view that no fault would lie with the Police, in following such a procedure. The ultimate object is to ensure that the fingerprint is extracted as early as possible and as genuinely as could be done. In the earlier situation, the article would be sent to the Finger Print Bureau and thereafter the fingerprints would be lifted. In such a process, necessarily there could be damage to the fingerprint or otherwise. To overcome such a lacuna, the fingerprint expert is summoned to the scene of offence and he lifts the same. The evidence would clearly indicate that the Investigation Officer summoned the fingerprint expert PW.24 to the scene of offence, who thereafter, admittedly, lifted the fingerprints from the concerned objects.²¹ We find that the procedure adopted by the Investigation Officer as well as the fingerprint expert cannot be faulted. Furthermore, we do not find, so far as this issue is concerned, that any prejudice has occasioned to the accused, nor is it his contention. Therefore in the absence of any prejudice to the accused this ground is untenable."

20.10) Referring to the above observation of the Co-Ordinate Bench of this Court learned SPP-II submits that the guideline No.1544 of the Karnataka Police Manual requiring portable articles to be seized under a detailed panchanama is no more a requirement.

20.11) This Court is unable to accept the case of the prosecution on the circumstance of lifting the chance fingerprints from the spot for the following reasons:

- (i) The very existence of whisky bottle at the scene of offence which was marked as MO.72 through PW.53 has not been established.
- (ii) PW.48 -B.C.Ravindra, the FSL officer in his report at Ex.P66, relevant portion of which is extracted hereinabove, has not found whisky bottle anywhere in the scene of offence, let alone on the dining table. Even in his deposition he has not spoken anything about the whisky bottle except three tumblers, two filled with water and one with traces of liquor.
- (iii) The fingerprint expert PW.53 has admitted in his cross examination recorded on 12.10.2018 that no mahazar was drawn while collecting/lifting the fingerprints.
- (iv) No other witnesses have spoken about lifting of fingerprints from the spot from whisky bottle and three glass tumblers.
- (v) The chance fingerprints which were lifted through cello tape and transmitted to plastic sheet have not been made 'subject' to any Property Form and there is no reference of the same anywhere in the records or material made available before the Court.
- (vi) PW.53 in his deposition has stated that he has taken the chance fingerprints marked Q, Q1, Q2 and Q3 to his office for examination.

- (vii) PW.55 -The investigation officer has not spoken about PW.53 taking the said chance fingerprints marked as Q, Q1, Q2 and Q3 to his office.
- (viii) Three glass tumblers and the whisky bottles that were allegedly seized from the scene of the offence under Ex.P21 have been sent for forensic examination. But not for finger print analysis.

20.12) Guideline No.1544 (iv) of Karnataka Police Manual- Volume II providing for portable articles to be seized under a detailed panchnama duly packed and labelled and sent to the Finger Print Bureau with a police officer with instructions regarding the care of the package during the journey is still in place. Nothing is brought to the notice of the Court regarding any amendment or substitution being made to the Guideline No.1544. In the absence of any specific guidelines having come into place substituting the guideline No.1544 (iv) of Karnataka Police Manual-Volume II, contention urged on behalf of the prosecution is untenable. Reliance placed on the Judgment of the Co-ordinate Bench of this Court (**Chethan C.Shetty**, supra) is of no avail. Inasmuch as

in the said case there was no dispute with regard to lifting of chance fingerprints from portable object namely UPS-M.O.5 and the Co-ordinate Bench in the said case had found no prejudice having been caused to the accused therein on the said ground. In the instant case as already noted the very existence of MO.72 has been seriously disputed and rightly so. Therefore this Court does not find it safe to rely upon the said circumstantial evidence.

20.13) As regards the thumb impression found on one of the three glass tumblers, since the very lifting of chance fingerprints found thereon has not been proved as PW.16 and PW.17 having turned hostile and admittedly no mahazar having been drawn in that regard, it cannot form the basis for conviction.

21. Regarding DNA Report:

21.1) The other circumstance heavily relied upon by the prosecution is recovery of hair from the scene of offence i.e., from the hand of victim-Agnisha Das and on the bed sheet found at the scene of offence, matching with the hair and blood samples of accused Nos.3 and 4.

21.2) PW.48 -B.C.Ravindra in his deposition while recounting the details and description of state of things found at the scene of offence, adverting to recovery of hair he has stated that there was a cot in the master bedroom and on examination of which he found strands of hair on bedspread and when he examined the body of victim-Agnisha Das with the forensic light and lens he found strands of hair stuck to right hand palm of her dead body which he collected and preserved for further investigation. The hair found on the bed-sheet and right hand palm of victim-Agnisha Das body are shown as item Nos.13 and 14 respectively in his report - Ex.P66. In his further examination-in-chief he has identified the hair found on the bedsheet as MO.73 and hair found on the dead body of victim-Agnisha Das as MO.74.

In the cross examination the said witness has stated that he has not taken the photographs of hair found in the hand of dead body of victim-Agnisha Das. That he had not counted the number of hair as the dead body was decomposed and its liquid was on the hair. Therefore he could not even measure the size of the

hair. He has denied the suggestion that only medical officer who conducts post mortem is authorised to collect the hair on the dead body.

- 21.3) Ex.P24 is the mahazar drawn while collecting the hair along with other articles. PW.19-Ratnam and PW.20 - Irdyaraj are the panch witnesses to Ex.P24. The said witnesses have turned hostile and have not supported the case of the prosecution.
- 21.4) The aforesaid hair MO. 73 and MO.74 has been recovered on 23.10.2009. Accused were arrested on 28.10.2009. Prosecution has claimed that it had collected the sample hair of accused Nos.1 to 4 and were sent for examination. It is also the case of prosecution that it had collected blood samples of accused Nos.1 to 4 on 24.12.2009 and were sent to DNA centre.
- 21.5) Ex.P116 is the DNA report dated 31.07.2012 which indicate that aforesaid items, 11 in numbers, were sent to DNA centre, Madiwala, Bengaluru, through one police constable Keshav S Biradar-PC-701. The contents of the said report are extracted hereunder:

SAMPLE/ARTICLE-EXAMINED

| ITEM NO. | DESCRIPTION/DNA SOURCE | DNAC CODE NO. |
|----------|---|---------------|
| 1 | One sealed cloth packet said to contain hairs found on the bed sheet, marked as Item No.1 by the I.O. | I-365 |
| 2 | One sealed cloth packet said to contain hairs found in the right hand of the deceased Kum. Agnisha Das, marked as Item No. II by the 1.O. | I-366 |
| 3 | One sealed cloth packet said to contain hairs of the deceased Mr. Rahul Das collected by the Medical Officer during Post Mortem (No. 397/09 dated 23.10.09), marked as Item No. III by the 1.O. | I-367 |
| 4 | One sealed cloth packet said to contain hairs of the deceased Smt. Pushpalatha Das collected by the Medical Officer during Post Mortem (No. 398/09 dated 23.10.09), marked as Item No. IV by the 1.O. | I-368 |
| 5 | One sealed cloth packet said to contain hairs of the deceased Kum. Agnisha Das collected by the Medical Officer during Post Mortem (No. 399/09 dated 23.10.09), marked as Item No. V by the LO. | I-369 |
| 6 | Four sealed glass bottles said to contain hairs of Sri. Lokesh collected by the Medical Officer and marked as A1 to A4, which were further marked as Item No. VI by the LO. | |
| 7 | Four sealed glass bottles said to contain hairs of Sri. Murali collected by the Medical Officer and marked as B1 to B4, which were further marked as Item No. VII by the LO. | |
| 8 | Four sealed glass bottles said to contain hairs of Sri. Bhaskara collected by the Medical Officer and marked as C1 to C4, which were further marked as Item No. VIII by the 1.O. | |
| 9 | One sealed tube said to contain sample blood collected from male individual by name Sri. Lokesh s/o Late Sri. Ramappa, marked as Item No. IX by the L.O. | I-370L |
| 10. | One sealed tube said to contain sample blood collected from male individual by name Sri. Murali s/o Sri. Lakshman, marked as Item No. X by the I.O. | I-371M |

| | | |
|-----|--|--------|
| 11. | One sealed tube said to contain sample blood collected from male individual by name Sri. Bhaskara @ Raja s/o Venkatesh, marked as Item No. XI by the LO. | I-372B |
|-----|--|--------|

Note: (1) The samples sent in item nos. 6, 7 and 8 said to have been collected from the individuals from whom the blood samples were also collected and sent in item nos. 9, 10 and 11 respectively. Therefore, the blood samples sent in item nos. 9, 10 and 11 were taken for DNA profile examination and the samples sent in item nos. 6, 7 and 8 were not opened in the DNA Centre

(2) The DNA profile remains the same for all the biological samples of the same individual.

INTRODUCTION STATEMENT:

The hairs sent in item no. 1, 2, 3, 4, 5, 6, 7 and 8, and the blood samples sent in item nos. 9, 10 and 11 of the individuals shown in the photographs affixed to the Identification Forms, with the forwarding note annexed in the case file with a requisition for conducting DNA profile to establish the identity of the person to whom the hairs belong sent in item nos. 1 and 2.

The hairs sent in item no. 1, 2, 3, 4 and 5, and the blood samples sent in item nos. 9, 10 and 11 were taken up for DNA profile examination at the DNA Centre.

METHOD:

1. Due care taken for the integrity of each sample by coding and decoding.
2. The DNA was extracted from the sources of the samples sent in item nos 1,2,3,4,5,9, 10 and 11.
3. DNA was quantified from each of the above samples and then amplified by the polymerase chain reaction (PCR) using AmpF/STR Identifiler kit containing primers for 15 STR loci and a gender marker Amelogenin. The PCR products were separated on 3130xl Genetic Analyzer (Applied Biosystems Inc.) and analyzed using GeneMapper ID Software v3.2 to generate allele profiles. The DNA profile results for each sample are shown in the enclosed table as Annexure 1
4. A comprehensive analysis of the above results and the interpretation thereof are given in Annexure II.

OBSERVATION:

1. The STR (short tandem repeats) loci examined using the AmpF/STR Identifiler PCR amplification kit were D8S1179, D21S11, D7S820, CSFIPO, D3S1358, TH01, D13S317, D16S539, D2S1338,

D195433, VWA, TPOX, D18551, D5S818 & FGA and the gender marker Amelogenin.

2. The cumulative probability of the sample blood sent in item nos. 10 and 11 collected from Sri. Murali s/o Sri. Lakshman and Sri. Bhaskara @ Raja s/o Venkatesh, respectively, were found to be included from being the contributors of the hairs found on the bed sheet sent in item no. 1.

3. The cumulative probability of the sample blood sent in item no. 11 collected from Sri. Bhaskara @ Raja s/o Venkatesh was found to be included from being the contributor of the hairs found in the right hand of the deceased Kum. Agnisha Das sent in item no. 2.

4. The cumulative probability of the sample blood sent in item no. 9 collected from Sri. Lokesh s/o Late Sri. Ramappa was found to be excluded from being the contributor of the hairs sent in item nos. 1 and 2.

REASONS:

From the comprehensive analysis of the test results as shown in Annexure I and II it is found that:

1. The DNA profiles of the sample blood sent in item nos. 10 and 11 collected from Sri. Murali s/o Sri. Lakshman and Sri. Bhaskara @ Raja s/o Venkatesh, respectively, are matching with the DNA profiles of the hairs found on the bed sheet sent in item no. 1 under 15 STR loci.

2. The DNA profile of the sample blood sent in item no. 11 collected from Sri. Bhaskara @ Raja s/o Venkatesh is matching with the DNA profile of the hairs found in the right hand of the deceased Kum. Agnisha Das sent in item no. 2 under 15 STR loci.

3. The DNA profile of the sample blood sent in item no. 9 collected from Sri. Lokesh s/o Late Sri. Ramappa is not matching with the DNA profiles of the hairs sent in item nos. 1 and 2 under 15 STR loci.

CONCLUSION:

From the DNA profile results of the articles sent in item nos. 1.2.3.4.5.9.10 and 11, it is found that

1. The hairs found on the bed sheet sent in item no. 1 are of human in origin and of a mixture of two male individuals

2. The hairs sent in item no. 2 are of human in origin and of male sex.

3. In the DNA profiles of the hairs found on the bed sheet sent in item no. 1, the alleles present in all the STR loci were identical and matching with that of the alleles in all the STR loci of the DNA profiles of the sample blood sent in item nos. 10 and 11 collected from Sri.

Murali s/o Sri. Lakshman and Sri. Bhaskara @ Raja s/o Venkatesh, respectively.

4. In the DNA profile of the hairs found in the right hand of the deceased Kum. Agnisha Das sent in item no. 2, the alleles present in all the STR loci were identical and matching with that of the alleles in all the STR loci of the DNA profile of the sample blood sent in item no. 11 collected from Sri. Bhaskara @ Raja s/o Venkatesh.

5. The DNA profiles of the hairs sent in item nos. 1 and 2 were not matching with that of the DNA profile of the sample blood sent in item no. 9 collected from Sri. Lokesh s/o Late Sri. Ramappa.

I have therefore, considered the possibility of:

*1. Sri. Murali s/o Sri. Lakshman and Sri. Bhaskara @ Raja s/o Venkatesh, sample blood sent in item nos. 10 and 11, **are being the contributors** of the hairs found on the bed sheet sent in item no. 1.*

*2. **Sri. Bhaskara @ Raja s/o Venkatesh, sample blood sent in item no. 11, is being the contributor of the hairs found in the right hand of the deceased Kum. Agnisha Das sent in item no. 2***

*3. **Sri. Lokesh s/o Late Sri. Ramappa, sample blood sent in item no. 9, is not being the contributor of the hairs sent in item nos. 1 and 2".***

- 21.6) The note in aforesaid report indicate that though sample hair of accused Nos.2 to 4 were collected as per item Nos.6, 7 and 8 only their blood samples collected as per item Nos.9, 10 and 11 were taken for DNA profile examination and samples of item Nos.6, 7 and 8 were not opened at the DNA centre. The report further indicates that item Nos.1, 2, 3, 4, 5 namely the hair found on the bedsheet, right hand palm of dead body of victim-Agnisha Das, hair of the victim-Rahul Das and victim-Pushpalatha Das respectively and the blood

samples sent in item Nos.9, 10 and 11 were taken up for DNA profile. Hair samples of accused Nos.2 to 4 collected as per item Nos.6, 7 and 8 have not been sent for DNA profile.

- 21.7) PW.52-Dr.Vinod who has issued the aforesaid report at Ex.P116 in his evidence has reiterated the contents of said report. In the cross examination the said witness has stated that any biomaterial of a person can be taken for DNA examination and there is no need to send a particular item specifically. In the further cross examination recorded on 12.10.2018 the said witness has stated that there is no mention in forwarding letter sent to him as to who had collected the hair found on the bedsheet (item No.1). That he has also not been informed, through which instrument the hair was collected from the scene of offence. Similarly, there is no mention in the said letter as to how item Nos.1 to 11 were preserved. He admits that it is very important to preserve the items collected for the purpose of DNA examination. That the method of preservation depends upon the biomaterial collected for examination. That slip found on item Nos.1 and 2 bears the signature and

seal of the investigation officer. Therefore it must have been collected by the investigation officer and he is not aware of the same. That there is no rule that item Nos.1 and 2 is required to be collected by an expert. He has denied the suggestion that hair at item Nos.1 and 2 could not be collected without the assistance of an instrument. He has admitted that there is no mention as to from which part of the body of the human being the said item Nos.1 and 2 belong. Similarly he has not mentioned in his report at Ex.P116 as to whether the hair presented for examination were plucked from the body or had fallen accidentally. He also admits that there is no mention in the report as to how many hair were presented for examination in item Nos.1 and 2.

Inconsistency with regard to collection of hair (item Nos. 13 and 14 of Ex.P66) :

21.8) From the aforesaid material evidence it is clear that though PW.48 claims that he had collected the hair at item Nos.1 and 2 of the report (item Nos.13 and 14 of Ex.P66), according to PW.52 - Dr.Vinod the slip found on the said items were signed and sealed by PW.55-

investigation officer. As such, it is not clear who collected and preserved the said hair.

21.9) PW.48 has deposed that he collected the hair from the decomposed right hand palm of the dead body of victim-Agnisha Das. That he has neither counted nor taken the measurement. That PW.48 is not aware as to the number of hair and to which part of the body the said hair belonged.

21.10) The DNA report does not contain number/size or other content found on the said hair as the same were admittedly collected from the decomposed right hand palm of the dead body of victim-Agnisha Das with fluid stuck to it.

21.11) PW.52 admits that preservation of biomaterial is essential and he is not aware as to how said items were preserved.

21.12) PW-50 Dr. B.M Nagaraj has conducted post mortem of the dead body and submitted the post mortem report as per Exs.P108 (of Rahul Das), 109 (of Pushpalatha Das) and 110 (of Agnisha Das). The said witness in the cross-examination recorded on 15.12.2017 has stated that

whenever a post mortem is conducted in medico/legal cases, if foreign bodies/objects found in the palm the same will be handed over to the investigation officer for investigation. That at the time of examination, he did not find any foreign body in the palm of three dead bodies.

21.13) PW.55 in his evidence has stated that sample hair of accused Nos.2 to 4 were collected at Ambedkar Medical College and report in this regard is at Ex.P58 dated 13.11.2009 and same was kept in a glass bottle. The said hair are part of the report at Ex.P112 to P114 which were kept in 12 bottles marked as MOs.78 to 80. He has also spoken about collection of blood samples of accused Nos.2 to 4 on 24.12.2009 and the PF and report in this regard are marked as Ex.P172 and P173. That he has sent the hair and blood sample so collected for DNA examination on 26.12.2009 as per Ex.P64.

In the cross examination PW.55 has admitted that Ex.P13 inquest mahazar was conducted after PW.48 preparing the spot panchanama. That at Col.No.7 of Ex.P13 it is mentioned the right hand palm is closed/fisted. That he has not taken the photograph

regarding PW.48 finding hair in right hand palm of body of victim-Agnisha Das as per his report. That none of photographs produced before the Court indicate there being hair in the right hand palm. They have not taken any photograph with regard to hair found on the pillow or bed. None of the photographs produced before the Court indicate any hair found on the pillow or the bed. He has denied the suggestion that report at Ex.P116 had been obtained by comparing sample hair and blood of the accused Nos.2 to 4 for the purpose of the case. He has admitted that he has not given any written notice to FSL experts while drawing Ex.P24. That he has not obtained the signatures of FSL experts on Ex.P24. That he has not submitted the items recovered under Ex.P24 to the Court on the same day. He has denied the suggestion of deliberate delay of 15 days in submitting the report to the Court in respect of the items recovered under Ex.P24.

21.14) Perusal of PF No.83/2009 dated 23.10.2009 which contains 18 items including the hair found on the bed sheet - item No.13 and hair found in the hand of Agnisha Das - item No.14 has been marked as Ex.P138.

The said document would indicate that the request was made for keeping the said items in the custody of the police till filing of the final report and the same has been permitted on 17.11.2009.

21.15) What is notable here is that the sample hair of accused Nos.2 and 4 have been collected on 03.11.2009. Though, Ex.P24 indicate that 18 items of properties including the hair being item Nos.13 and 14 were collected from the spot on 23.10.2009 subject matter of PF No.83/2009 produced as Ex.P.138, the same appear to have been produced and permission to retain them have been obtained from the Magistrate on 17.11.2009. Neither PW.48 -B.C. Ravindra nor PW.50 are clear as to the manner in which they collected hair- item Nos.13 and 14 were preserved. Evidence of PW.55 read in the light of inquest report Ex.P12 is not convincing enough regarding existence and collection of hair from the scene of offence.

21.16) That in the meanwhile investigation officer has collected hair sample of the accused Nos.2 to 4 which were subject matter of PF No.98/2009 dated 13.11.2009 produced at Ex.P165. The permission of the Magistrate

is obtained to retain the said hair sample in the custody of investigating officer till filing of the report on 01.12.2009. Similarly, the blood sample of the accused subject matter of PF No.108/2009 dated 24.12.2009 at Ex.P172 and the permission of the Magistrate is obtained to retain the said blood sample in the custody of investigating officer till filing of the report on 29.12.2009.

21.17) It is beyond comprehension that the investigation officer had kept the items subject matter of Ex.P138 namely, hair collected from the bed sheet and from the hands of Agnisha Das (item Nos. 13 and 14) which were recovered in terms of spot mahazar at Ex.P24 dated 23.10.2009 till 17.11.2009 and the sample hair and blood subject matter of Exs.P165 and 172 till 01.12.2009 and 29.12.2009 respectively contrary to the provisions of section 102 of criminal procedure code.

21.18) As already noted Ex.P116 -DNA report suggest that the aforesaid items were sent for DNA profiling and received by DNA centre on 26.12.2009.

- 21.19) The order sheet of the trial Court dated 19.12.2009 indicate that the police inspector of Ramamurthy Nagar, Bengaluru had filed a fresh requisition praying permission to draw the blood sample of accused Nos. 2 to 4 in the presence of Court for present DNA test. The order in this regard were passed on 23.12.2009 directing the jail superintendent to produce accused Nos. 2 to 4 on 24.12.2009 and to issue summons to RMO of Ambedkar Medical Hospital to appear before Court on 24.12.2009 to draw the blood samples of accused Nos. 2 to 4. Blood samples were accordingly drawn on 24.12.2009 by Dr.B.M.Nagaraj.
- 21.20) The aforesaid hair samples and blood samples have been received by DNA Centre on 26.12.2009. Though, the blood samples seem to have been drawn on 24.12.2009 there is no material placed on record as to the manner in which the hair collected from the spot as per Ex.P24 and Ex.P138 and the hair sample of the accused collected as per Ex.P165 were preserved before handing over the same to the DNA profiling.
- 21.21) Apex court in the case of **RAHUL VS. STATE OF DELHI** reported in **(2023) 1 SCC 83** dealing with DNA

evidence, its nature and probative value under Section 45 of the Evidence Act, DNA Profiling Methodology, Collection and Preservation of Evidence, etc., at paragraphs 37, 38 and 42 has held and observed as follows:

"37. In this regard very pertinent observations made by this Court in *Manoj v. State of M.P.* [*Manoj v. State of M.P.*, (2023) 2 SCC 353 : 2022 SCC OnLine SC 677] deserve to be made. This Court has in detail dealt with the issue of DNA profiling methodology and statistical analysis, as also the collection and preservation of DNA evidence. The relevant paragraphs read as under : (SCC paras 151-56)

"151. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata [DNA profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007)] was relied upon. The relevant extracts of the article are reproduced below:

'Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with intercalated proteins. Twenty-three pairs of chromosomes present in each nucleated cells and an individual inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All information about internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases : Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar-phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study

of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1% of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed genetic markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or vasectomised male. Cases in which DNA had undergone environmental stress and biochemical degradation, mini STRs can be used for over routine STR because of shorter amplicon size.

DNA profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available in the laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In DNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:....

Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

- (1) Match : If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.
- (2) Exclusion : If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.
- (3) Inconclusive : The data does not support a conclusion of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity or Maternity Indices and Likelihood Ratios are calculated further to support the match.

Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, It will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which

can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling.'

152. In an earlier judgment, R v. Doheny [R v. Doheny, (1997) 1 Cri App R 369 (CA)] the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials : (1) the scientist should adduce the evidence of the DNA comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

153. The Law Commission of India in its report [185th Report on Review of the Indian Evidence Act, 2003] , observed as follows:

'DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not "match", then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 1,00,000 : This is described as the "random occurrence ratio" (Phipson 1999, 15th Edn., para 14.32).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law.'

154. In Dharam Deo Yadav v. State of U.P. [Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509 : (2014) 2 SCC (Cri) 626] this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows : (SCC pp. 528-29, para 36)

'36. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made up of a double stranded structure

consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. ... DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. ***DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory.***

155. The US Supreme Court in District Attorney's Office for the Third Judicial District v. Osborne [District Attorney's Office for the Third Judicial District v. Osborne, 2009 SCC OnLine US SC 73 : 557 US 52 (2009)] , dealt with a post-conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that : (SCC OnLine US SC)

'Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. ... DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others.'

156. Several decisions of this court — Pantangi Balarama Venkata Ganesh v. State of A.P. [Pantangi Balarama Venkata Ganesh v. State of A.P., (2009) 14 SCC 607 : (2010) 2 SCC (Cri) 190] , Santosh Kumar Singh v. State [Santosh Kumar Singh v. State, (2010) 9 SCC 747 :

(2010) 3 SCC (Cri) 1469] , Inspector of Police v. John David [Inspector of Police v. John David, (2011) 5 SCC 509 : (2011) 2 SCC (Cri) 647] , Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , Surendra Koli v. State of U.P. [Surendra Koli v. State of U.P., (2011) 4 SCC 80 : (2011) 2 SCC (Cri) 92] , and Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] , Rajkumar v. State of M.P. [Rajkumar v. State of M.P., (2014) 5 SCC 353 : (2014) 2 SCC (Cri) 570] and Mukesh v. State (NCT of Delhi) [Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673] have dealt with the increasing importance of DNA evidence. This Court has also emphasised the need for assuring quality control, about the samples, as well as the technique for testing — in Anil v. State of Maharashtra [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] : (Anil case [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] , SCC p. 81, para 18)

‘18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.’”

(emphasis in original)

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the

fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.

42. It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise".

21.22) As regards duty of the investigating officer contemplated under Section 100 of Cr.PC , the Apex Court in the case of **RAJESH AND ANOTHER VS. STATE OF MADHYA PRADESH** in CRL.A.792-794/2022 at paragraphs 28, 29, 30 and 33 and has held as under:

"28. That apart, the manner in which the investigating officer(PW-16) went about drawing up the proceedings forms an important issue in itself and it is equally debilitating to the prosecution's case. In Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay, this Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when the

respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act. This Court noted that Section 100(4) to Section 100(8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchanama:

- (a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.
- (b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.
- (c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.
- (d) The I.O. can take the assistance of his subordinates for search of places.

If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.
- (e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.
- (f) The panchnama should be attested by the panch witnesses as well as by the concerned I.O.
- (g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

- (h) If a search is conducted without warrant of court Under Section 165 of Code the I.O. must record reasons and a search memo should be issued.

It was held that a panchanama would be inadmissible in a Court of law if it is recorded by the investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court concluded, by stating that the entire panchanama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.

29. Recently, in Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh", a 3-Judge Bench of this Court observed that the requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchanama and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchanama. It was further observed that it is only if the Investigating Officer has successfully proved the contents of the discovery panchanama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Court may also accept the same. It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchanama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

30. In Khet Singh vs. Union of India", this Court held that even if there is a procedural illegality in conducting the search and seizure, the evidence collected thereby would not become inadmissible and the Court would consider all the

circumstances to find out whether any serious prejudice has been caused to the accused. However, this Court pointed out that ***if the search and seizure were in complete defiance of the law and procedure and there was any possibility of the evidence collected having been tampered with or interpolated during the course of such search and seizure, then that evidence could not be admitted.*** Though these observations were made in the context of a search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985, they would have relevance generally."

21.23) In the case of **KETTAVELLAI @ DEVIKAR VS. STATE OF TAMIL NADU** reported in **2025 SCC Online SC 1439** at paragraphs 43 and 44 has held as under:

DNA-A NECESSITATED ADDENDUM

"43. As we have discussed earlier in this judgment, the DNA evidence collected has been rendered unusable. It suffers from various shortcomings in as much as there is large amount of unexplained delay; the chain of custody cannot be established; possibility of contamination cannot be ruled out etc. We have also referred to instances in the recent past where, similar to the case at hand the DNA evidence was rendered unusable on account of similar lapses. A perusal of the various documents released by a number of bodies such as the Standard Operating Procedure for Crime Scene Investigation issued by the Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India"; Guidelines for collection, storage and transportation of Crime Scene DNA samples issued by the Central Forensic Science Laboratory, Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India"; a Forensic Guide for Crime Investigators (Standard Operating Procedures) issued by LNIN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India show that, although, procedures have been suggested, there is no uniformity nor there is a common procedure which is required to be followed by all investigating authorities. This, obviously, has the potential to have an impact on the cases investigated. When it comes to procedure followed by the police generally, differences therein are understandable keeping in view the difference in society, regional complexities

as also other factors given the wide length and breadth of the Country, however, the same yardstick cannot be applied when it comes to sensitive evidence such as DNA for the concerns, causes of its dilution in evidentiary value and requirements for it to be collected and maintained in pristine condition is not subject to the same factors. So, even though 'Police', 'Public Order' are subjects mentioned in List-II of the Seventh Schedule of the Constitution of India that in itself cannot permit differing procedures and sensitivities to such evidence, to rule the roost. The aspects in which we find there to be errors committed regularly are in fact procedural aspects which aid the sanctity of the evidence.

44. This lack of a common procedure to be followed, is concerning. As such, we issue the following directions which shall be followed henceforth, in all cases where DNA Evidence is involved:

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.
2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. **He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48-hours from the time of collection.** Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.
3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed

without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. ***Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor.*** This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

The Directors General of Police of all the States shall prepare sample forms of the Chain of Custody Register and all other documentation directed above and ensure its dispatch to all districts with necessary instruction as may be required".

21.24) Viewed in the light of the aforesaid principles of law enunciated by the Apex Court concerning the manner and method of seizing incriminating material, their preservation, consequent report/opinion, the facts of the present case do not evince any credibility to accept and rely upon the evidence adduced by the prosecution in the nature of DNA report.

22. **Conclusion :**

22.1) The case of the prosecution is based on circumstantial evidence. In the case of ***Sharad Birdhichand Sarda Vs State of Maharashtra*** reported in ***(1984) 4 SCC 116*** the Apex Court at paragraph No.153 has laid down the following five tests to be satisfied in a case based on circumstantial evidence, which are extracted as under:

- “(i) The circumstances from which the conclusion of guilt is to be drawn ***must or should be and not merely 'may be' fully established;***
- (ii) 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;
- (iii) The circumstances should be of a ***conclusive nature*** and tendency;
- (iv) They should ***exclude every possible hypothesis*** except the one to be proved; and
- (v) 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.”

(emphasis supplied)

22.2) In the case of ***Aftab Ahmad Anasari Vs State of Uttaranchal*** reported in ***(2010) 2 SCC 583*** the Hon'ble Apex Court in paragraph No.13 has emphasized that:

"13. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved fact each one of which reinforces the conclusion of the guilt. If the combined effect of all the fact taken together is the conclusion in establishing the guilt of the accused, the conviction would be justified even though it may be that one of more of these facts, by itself/themselves is/are not decisive."

22.3) Aforesaid analysis and discussion of evidence led by the prosecution in support of the circumstances of the present case namely, (i) Illicit relationship between accused No.1 and victim-Puspalatha Das, (ii) Accused No.1 engaging accused No.2 who in turn roped accused Nos.3 and 4 in conspiring to kill victim-Rahul Das. (iii) Recovery of gold and other articles based on the voluntary statement of accused Nos.2 to 4, (iv) Last seen theory (v) Finger Prints report and (vi) DNA report, viewed in the light of the aforesaid settled principles of law, not having been proved individually, this Court is of the considered view that same do not inspire confidence and accused persons cannot be held guilty of the offences charged against them.

23. Before concluding, we deem it appropriate to place on record our following observation on the manner of investigation as well on the Judgment and order of the trial Court.

24. Investigation:

24.1) Clearly this is yet another classic case of investigation agencies being under public pressure dishing out a charge sheet which is a result of perfunctory and lopsided investigation only to quench and quell the public angst. Records reveal instant gruesome incident of triple murder of a family consisting of husband, wife and their eight years old daughter in inexplicable brutal and cruel manner had occurred close to a similar incident that had taken place in the city. Newspaper clippings made available on record, indicate regular briefing by the police to the press about the progress of investigation. Public anguish is also evident in that as noted in one of the newspaper clippings even as the investigating officers were briefing the print and visual media with the photographs of the accused persons, house of accused No.4 had been set ablaze. The police have also rewarded one Constable by name Somashekar a cash price of Rs.10,000/- for apparently he cracking the case. Records reveal so also the evidence of investigation officer, that shocked and dismayed by the intensity of the incident, the Assistant Commissioner of Police, K.R.Puram had

formed three teams to search the accused headed by Mohammed Rafi, Police Inspector of Mahadevapura police station, Ningappa Sakri, Police Inspector of Banasawadi, Badrinath, Police Inspector, Commercial Street. The role of the investigation agency in the cases of this nature is far from satisfactory. The purpose of investigation and trial is to unearth the truth and bring the actual culprit to justice. The faulty investigation as stood exposed above requires introspection.

24.2) Apex Court in the case of **KETTAVELLAI @ DEVIKAR** (*supra*) while acquitting the accused therein of the charges alleged for failure on the part of the prosecution to prove his guilt at paragraph 46 has made the following observation;

"46. Recently, this Court, in a case concerning violation of the Prevention of Money Laundering Act, 2002 (V.Senthil Balaji v. The Deputy Director, Directorate of Enforcement, 2024 INSC 739) and where the accused person had been in prolonged detention, made some observations regarding Article 21 of the Constitution of India. They are extracted below for reference :

"28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the

accused under Article 21 of the Constitution which may give rise to a claim for compensation.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial."

Kattavellai @ Devakar has secured a clean acquittal here as well. Let it be clarified that we are not commenting as to whether the day of reckoning with this question has arrived, but we may only see that in case such an approach is adopted, we would not be breaking new ground but only affirming our commitment to the constitutional guarantee of Right to Life under Article 21 of the Constitution of India. The Law Commission of India in its 277th report titled 'Wrongful Prosecution Miscarriage of Justice: Legal Remedies' dealt with this issue. However, the Report confined the understanding of 'wrongful prosecution' to include only malicious prosecution, and the prosecution initiated without good faith. It does not, therefore, directly deal with the situation with which we are confronted. In this case, as is obvious, the accused was taken into custody, and it is the judicial process that has taken such a long time to come to a conclusion. The worrying feature here is that the conviction had no legs to stand on whatsoever and yet the Appellant-convict has been in custody for years. In foreign jurisdictions such as the United States of America (M.J.Ryan, "Compensation for Wrongful Convictions in the United States" in Compensation for Wrongful Convictions – a Comparative Perspective, Jasinski and Kremens (Eds.) 2023) acquittal after a long period of incarceration has led Courts to direct States to award compensation to the persons who suffered behind bars, only to be eventually held innocent. This right to compensation has been recognised by both Federal and State statutes. There are two ways that compensation can be claimed – tort claims/civil rights suits/moral bills of obligation and, statutory claims. Given the variety of statutes across jurisdictions grounds for compensations/procedures vary significantly.

Well, it is for the legislature to consider this aspect."

25. The aforesaid observation aptly applies the present facts situation of the matter which needs to be taken into consideration with the seriousness it deserves.

26. **Judgment and Order of the trial Court:**

26.1) Much is desired to be spoken about the manner and method of trial Court dealing with the case at hand.

26.2) More often than not it is observed that in the Judgments of the trial Courts be it civil or criminal, there is a tendency of taking up all "ISSUES" or "POINTS FOR CONSIDERATION", as the case may be, together for consideration on the premise of same being interconnected and avoiding repetition. In the process verbatim extraction of pleadings and evidence is resorted to in extenso and at the end a formal opinion and ostensible finding is given which hardly has any relevance to the contentious "ISSUES" or "POINTS FOR CONSIDERTION" raised for determination.

26.3) Marshalling and appreciation of evidence is indispensable part of judicial dispensation process. Reasons, discussions and findings based on facts presented, evidence led and their application in the light of

applicable provision of substantive and procedural law are the heart and soul of any judgment and order. Bereft of which falls short of discharge of solemn duty casted on the judiciary. Marshalling of evidence is a skill of arraying and assaying the relevant facts and the evidence both oral and documentary led in by the parties asserting and denying the same. This should give a holistic picture of court's understanding of the facts and issues of controversy. It also should indicate the clarity with which the Court has proceeded to deal with the issues of controversy presented before it for adjudication.

26.4) Appreciation of evidence invariably include the process of evaluating the worth, value and quality of evidence led on each of the aspect/circumstance of the case. It also requires systematic, scientific and methodological evaluation of evidence. It should explicitly indicate why a particular piece of evidence is accepted and why the same is rejected. Though this wide discretion is vested with the Court, the same is not free from fetters of applicable provisions and principles of law governing admission and rejection of evidence and the judicial discipline laid down by Court made law. Appropriate to

refer a passage from the book "**THE NATURE OF JUDICIAL PROCESS**" by Benjamin N Cardozo J, which reads as under;

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains."

26.5) In the case on hand the prosecution has examined as many as 56 witnesses, exhibited 183 documents and marked 87 material objects. Some of the witnesses have spoken about all or more than one circumstance of the case. Trial court has mechanically extracted the deposition of the witnesses from page Nos.15 to 107 of its judgment and at page Nos.113 to 158 has given its so called findings. The purported findings neither refer to any specific circumstance nor to the deposition of a particular witness speaking with reference to any particular circumstance, exhibits or material object. The impugned judgment of the trial Court hardly meets the principles of appreciation of evidence particularly in a

criminal case which is based on circumstantial evidence. The findings and conclusion arrived at are thus contrary to the facts presented and the settled position of law. As such, the judgment and the order passed by the trial Court is unsustainable.

27. For the aforesaid reasons and analysis the point No.1 is answered in the negative and point No.2 is answered in the affirmative. Accordingly, the following;

ORDER

- (1) The Criminal Appeal Nos.593/2019, 617/2019, 904/2019 and 833/2019 are allowed.
- (2) Judgment and order dated 11.03.2019 passed in S.C.No.922/2010 on the file of LXVI Additional City Civil and Sessions Judge, Bengaluru City is hereby set aside.
- (3) Accused Nos. 1 to 4 are acquitted of the charges for the offences punishable under Sections 120-B, 109, 449, 201, 302 and 380 read with Section 34 of IPC.
- (4) As accused No.1 is already on bail, bail bond of accused No.1 stands cancelled. Accused Nos. 2 to 4 shall be set at liberty forthwith, if their detention is not required in any other case.

- (4) Consequently, Criminal Appeal No.1622/2019 filed by the State is dismissed.
- (5) Communicate copy of this order to the Trial Court and concerned prison.

The Registrar General shall circulate the copy of this Judgment and order to all the trial Courts.

**Sd/-
(K.S.MUDAGAL)
JUDGE**

**Sd/-
(M.G.S. KAMAL)
JUDGE**

SBN/RL/RU