

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9th DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE C.M.JOSHI

CRIMINAL APPEAL NO. 254/2022 (C)

C/W

CRIMINAL APPEAL NO. 1399/2021 (C),

CRIMINAL APPEAL NO. 1880/2021 (C)

IN CRL.A NO 254 OF 2022

BETWEEN:

1. LATESHA @ LATISHA,
S/O JAGADISHA,
AGED ABOUT 23 YEARS,
R/AT BYADARAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN-573 211.
2. JAGADISH,
S/O HANUMEGOWDA,
AGED ABOUT 48 YEARS,
R/AT BYADARAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN-573 211.

...APPELLANTS

(BY SRI M SHASHIDHARA, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY CHANNARAYAPATNA RURAL P.S.,
REP. BY SPP,
HIGH COURT OF KARNATAKA,
AT, BENGALURU-560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED U/S.374(2) CR.P.C TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 23.08.2021 PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN, SITTING AT CHANNARAYAPATNA, HASSAN IN S.C.NO.217/2015, THE ACCUSED NO.1 IS CONVICTED FOR THE OFFENCE P/U/S 302 R/W 34 OF IPC AND THE ACCUSED NO.4 IS CONVICTED FOR THE OFFENCE P/U/S 114, 120(B) AND 302 OF IPC.

IN CRL.A NO 1399 OF 2021**BETWEEN:**

MR. DEEPAK @ DEEPU,
S/O CHANDRASHEKARA,
AGED ABOUT 28 YEARS,
R/AT SATHENAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATNA TALUK - 573 116

...APPELLANT

(BY SRI M ARUN SHYAM, SENIOR COUNSEL FOR
SRI E SUYOG HERELE, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH CHANNARAYAPATNA RURAL PS,
REP. BY SPP,
HIGH COURT OF KARNATAKA,
AMBEDKAR VEEDHI,

BENGALURU - 560 001

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED U/S.374(1) CR.P.C TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 23.08.2021 PASSED BY THE LEARNED IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN DISTRICT AT CHANNARAYAPATNA IN S.C NO. 217/2015 CONVICTING THE APPELLANT/ACCUSED NO.2 FOR THE OFFENCE P/U/S 302 R/W SEC. 34 OF IPC.

IN CRL.A NO 1880 OF 2021

BETWEEN:

1. LATESHA @ LATISHA,
S/O JAGADISHA,
AGED ABOUT 23 YEARS,
R/AT BYADARAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATTNA TALUK,
HASSAN.
2. DEEPAK @ DEEPU,
S/O CHANDRASHEKARA,
AGED ABOUT 23 YEARS,
R/AT SATHENAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN.
3. NAGARAJA,
S/O KEMPEGOWDA,
AGED ABOUT 40 YEARS,
R/AT BYDARAHALLI VILLAGE,
BAGUR HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN.
4. JAGADISHA,

S/O HANUMEGOWDA,
AGED ABOUT 48 YEARS,
R/AT BYADARAHALLI VILLAGE,
BAGUR HOBLI,
CAHNNARAYAPATTNA TALUK,
HASSAN.

(VIDE ORDER DATED 05.03.2022 APPEAL OF THE APPELLANT
NOS. 1, 2 AND 4 IS DISMISSED AS NOT PRESSED)

...APPELLANTS

(BY SRI S SHANKARAPPA, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY CHANNARAYAPATNA RURAL P.S.,
REP. BY S.P.P,
HIGH COURT COMPLEX,
BANGALORE-560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED U/S.374(2) CR.P.C TO SET ASIDE
THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE
DATED 23/08/2021 PASSED BY THE IV ADDITIONAL DISTRICT
AND SESSIONS JUDGE, HASSAN, SITTING AT
CHANNARAYAPATNA, HASSAN IN SC NO. 217/2015 CONVICTING
THE APPELLANT/ACCUSED NO.1 TO 4 FOR THE OFFENCE P/U/S
302, 212, 420, 467, 120B, 468 OF IPC.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND
RESERVED ON 14.06.2024, COMING ON FOR PRONOUNCEMENT
OF JUDGMENT THIS DAY, THE COURT DELIVERED THE
FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR JUSTICE C M JOSHI

CAV JUDGMENT

(PER : HON'BLE MR JUSTICE C M JOSHI)

Aggrieved by the judgment of conviction and order of sentence dated 23.08.2021 passed by the learned IV Additional District and Sessions Judge, Hassan, sitting at Channarayana, in SC No. 217/2015 and SC No. 179/2016; accused Nos. 1 and 4 are in appeal in Crl.A.No. 254/2022; accused No.2 is in appeal in Crl.A.No.1399/2021; and accused No.3 is in appeal in Crl.A.No.1880/2021 before this Court.

2. The factual matrix of the case is as below:

Accused No.3-Nagaraj, is the husband of Pratibha, the elder daughter of PW1-Nanjamma. He had enmity with the younger daughter of PW1 Pavitra and her husband Mohankumar (both deceased), who were looking after the property of PW1 after the death of her son. Afraid of being deprived of the property, he filed a suit for partition through his wife. With such motive, he connived with accused No.1,

2 and 4 to commit the murder of the deceased Mohan Kumar and Pavithra. The prosecution alleges that on several occasions, there were scuffles and quarrels between accused No.3 and deceased Mohan Kumar regarding parking of a lorry on the way to the house of PW1. It was alleged that accused No.1 and 4 had agreed to secure a vehicle and finish the said Mohan Kumar; and accused No.3 agreed to arrange for funds. Accordingly, accused Nos.4 and 1, who were father and son, secured the vehicle of accused No.2, i.e., Tata Sumo bearing No.KA.36.A.7770 and attempted to kill Mohan Kumar, which was not successful. When accused No.2 demanded money, accused Nos.1 and 4 gave a cheque which accused No.3 had secured from PW18-Yuvaraj, to accused No.2 by mentioning the amount to be Rs.95,000/-. On 17-6-2015, at about 10.30 a.m., when deceased Mohan Kumar and Pavithra left for Channarayapatna on Yamaha Scooty bearing No.KA.13.EE.3281, accused Nos.1 and 2 followed them in the said Tata Sumo near Oopinahalli gate, drove in high speed and collided on the back of the scooty and caused

the death of Mohan Kumar and Pavithra. It was further alleged that such incident was witnessed by PW2-Annegowda and PW4-Vijayakumar, who were also going towards Channarayapatna, on the motorcycle belonging to PW2. They informed PW1-Nanjamma, who came to the spot and thereafter, she lodged FIR before Channarayapatna Rural Police Station at about 5.30 p.m., setting criminal law in motion.

3. The complaint filed by PW1, which is at Ex.P1 allege that when deceased Mohan Kumar and Pavithra were going to Civil Judge's Court at Channarayapatna on their scooty, they were hit by Tata Sumo driven by accused No.1 and accompanied by accused No.2 and caused their death. The complaint also mentions the motive and that a case was already registered in Crime No.112/2014 on 21-03-2014, where an attempt to kill was made by accused No.4 by using Tata Ace vehicle.

4. During investigation, PW25-PSI has conducted the inquest mahazars as per Ex.P12 and Ex.P13 and the spot mahazar was conducted on 18-06-2015 in the

presence of PW5 and one Nagaraj as per Ex.P2. He also seized the vehicles and handed over the further investigation to PW28.

5. PW28 recorded the statements and further statements of the witnesses and arrested accused Nos.3 and 4 on 23-06-2015. Accused No.2 was arrested on 06-07-2015. Accused No.1 surrendered before the Court. Accused Nos. 1 to 4 were taken to Police custody for investigation. The accused had also led the IO to the place where they had conspired, the place where the accused No. 3 had thrown the sim and conducted the mahazars as per Ex.P6 and Ex.P7. Accused No.1 disclosed that he had taken shelter in the house of accused No.5-Kamamma and the vehicle used by him to go to her house was also seized on 09-07-2015. He also included the offence under Section 307 IPC in Crime No.112/2014 (which was mentioned in the complaint filed by PW1 Nanjamma) and continued investigation in the same. The cheque possessed by accused No.2, which was issued by PW18-Yuvaraj to accused No.3 was also seized by him. The writings on the

cheque were subjected to expert examination. After completing the investigation, he laid the chargesheet against the accused.

6. The trial Court framed charges against accused Nos.3 and 4 under Section 114, 120B r/w 302 of IPC; against accused Nos.1 and 2 for the offence under Section 302 r/w Section 34 of IPC; against accused No.5 for the offence under Section 212 of IPC; against accused No.3 for the offence under Section 420, 467, 468 of IPC, for which, the accused claimed to be tried.

7. To bring home the guilt of the accused the prosecution examined 28 witnesses as PW.1 to PW.28 and Exhibits P1 to P51 and MO.1 to 10 were marked in evidence. The defence got marked Exhibits D1 to D4 during the cross examination of the prosecution witnesses.

8. After recording the statement of the accused under Section 313 of Cr.P.C., the trial Court heard the arguments by both the sides, convicted and sentenced accused Nos. 1 to 4 for life imprisonment and a fine of Rs.25,000/- each for offence under Section 120B, 302, 114

read with Section 34 of IPC; convicted accused No.1 for RI for 04 years and fine of Rs.20,000/- for the offence under Section 468 of IPC with adequate default sentences. Accused No.5 was acquitted.

9. On filing of these appeals, the trial Court records have been secured and on suspending the sentence, the accused were released on bail.

10. The arguments by learned counsel appearing for the appellants/accused and the learned SPP-II appearing for respondent-State in all these appeals were heard.

Arguments:

11. Learned counsel appearing for accused Nos.1 and 4 Sri Shashidhar submitted that there is delay in lodging the complaint by PW.1. Though the Police Officer-PW.25 was present at the spot in the morning at about 10.30 am, FIR came to be registered at about 05.30 in the evening and this delay is not sufficiently explained. He submits that PW.25 had first concluded that it was an accident but PW.1 in the evening filed a complaint that it

was a murder and the source of such information was not adequately established by the prosecution.

(b) He submitted that the inquest was conducted on the next day as per Ex.P12 and Ex.P13. The disclosures made in the inquest do not indicate that it was a murder. He further submitted that PW.2 and PW.4 are the eyewitnesses as per the prosecution but in fact they are chance witnesses. Their presence on the spot is doubtful. He also pointed out that PW.2 does not say that he had identified accused Nos.1 and 2 who were inmates of the Tata Sumo. It is only PW.4 who says about identifying accused Nos.1 and 2 and he is a close relative of PW.1, his evidence cannot be relied.

(c) The testimony of PW.4 is doubtful in view of the contradiction in respect of he possessing a bike. Therefore, the presence of PW.4 at the time of the inquest and at the time of the incident at the spot creates doubt and it cannot be of sterling quality.

(d) The recording of the statement of the accused under Section 313 of Cr.P.C., by the trial Court is not proper as the answers of each of the accused are not recorded separately and that the questions were not segregated as applicable to each of the accused.

12. Learned counsel Sri Shankarappa, appearing for accused No.3 submitted that Ex.P1-complaint filed by PW.1 does not name accused No.2 despite PW4 had informed PW1 about he identifying accused Nos.1 and 2 as inmates of the Tata Sumo.

(b) He also points out Ex.P12 and Ex.13-Inquest mahazars say that the person who had last seen the deceased was PW.1, but the testimony of PWs.2 and 4 indicate that they had seen the deceased leaving their house to go to Channarayapatna to attend the Court case. Therefore, the evidence of PWs.2 and 4 is not reliable as they are the planted witnesses.

(c) He further points out that the blood stains, damaged pieces of the vehicles were not seized under the

spot mahazar at Ex.P2. Therefore, the theory of accused Nos.1 and 2 committing the murder of the deceased and making it look like an accident cannot be accepted. Moreover, there is inordinate delay in registering the FIR and preparing the spot mahazar.

(d) The testimony of PW.14-Medical Officer, who conducted the postmortem shows that there was nothing which would indicate that it was a homicidal death. He came to conclusion that the death was due to road traffic accident.

(e) He also points out that Ex.P11, the cheque for Rs.95,000/- recovered from accused No.2 allegedly given by accused No.1 to him cannot in any way implicate the accused Nos.1 and 3, for, no voluntary statement of accused No.2 was recorded and as such, the recovery cannot be under Section 27 of the Evidence Act. He also points out that there is no evidence to link as to how accused Nos.1 and 3 came into possession of the cheque at Ex.P11 and who gave it to accused No.2. The testimony of

PW.18-Yuvaraj is of no help to implicate the accused No.1 in the matter.

(f) He also contends that the statement recorded by the trial Court under Section 313 of Cr.P.C., is bad in law and it has prejudicially affected the interests of the accused. Such a method of recording the statement adopted by the trial Court deprived the accused of explaining the circumstances.

(g) He points out that the wife of accused No.3 had filed a suit for partition against PW.1 and her another sister as per Ex.P3. The grievance of accused No.3 and his wife was only against PW.1 but not against the deceased. Therefore, the motive also suffers from lack of gravity.

(h) It is pointed out that though an allegation is made about the conspiracy between accused Nos.1 to 4, the call details records, locations, the SIM Cards used by the accused were not at all admitted in evidence. Therefore, there is no incriminating material which could implicate the accused into the charge for the criminal conspiracy.

13. Learned Senior Counsel Sri. Aruna Shyam appearing for accused No.2 submitted that there was no charge for the offence under Section 114 as against the accused No.2. But even then, sentence has been imposed. He points out that except PW.4, none had seen accused No.2. The testimony of PW.4 is not of sterling quality and as such, is not believable.

(b) If the evidence of PW.4 is eschewed, there is no evidence which would implicate accused No.2 in the offence. In the absence of the phone call details, SIM, location data and such other evidence that could have been produced by the prosecution, his presence is not proved.

(c) He also points out that the owner of the vehicle- PW.24-Ranganath has turned hostile and therefore, the ownership of accused No.2 over the Tata Sumo vehicle is not proved by the prosecution.

(d) Regarding the cheque at Ex.P11, it is submitted that except the say of IO-PW.28, there is nothing on record as to who gave Ex.P11 to the accused No.2. Possessing

Ex.P11-Cheque for Rs.95,000/- issued by PW.18-Yuvaraj cannot be termed to be an offence and implicate him in the case. There is neither statement by accused No.3 to that effect nor is spoken by PW.18. Accused No.2 coming to the Police Station along with Ex.P11-cheque and recovering it from his person is nothing but a cock and bull story.

(e) Lastly, he points out that the charge leveled against accused No.2 and the evidence of the prosecution witnesses in that regard being put to accused No.2 in the statement under Section 313 of Cr.P.C., is not done by the trial Court and therefore, the statement of the accused under Section 313 of Cr.P.C. is defective. He points out to question Nos.47, 50 and the last question where the trial Court has not recorded any reply by accused No.2. Moreover, there was no charge framed for the offence under Section 120B of IPC and such, the findings of the trial Court are totally defective.

14. In support of their contentions, the learned counsels have placed reliance on the following judgments:

On behalf of Accused Nos. 1 and 4:

1. Smt. Meenakshi and Another v. State of Karnataka¹
2. Vaijinath v. State of Karnataka²
3. Naga @ Nagaraja and Another v. The State of Karnataka and Another³
4. Jafarudheen and Others v. State of Kerala⁴

On behalf of Accused No.2

1. State by the Deputy Superintendent of Police, Railway, Hubli v. Dashrath S/o Martilandappa Malge and Others⁵
2. Sri B S Janardhana and Another v. The State of Karnataka⁶
3. Raj Kumar v. State (NCT of Delhi)⁷
4. Nababuddin alias Mallu alias Abhimanyu v. State of Haryana⁸
5. Nanda Samanta @ Nanda Lal Samanta & Another v. The State of West Bengal⁹ .

15. *Per contra*, Sri Vijayakumar Majage, learned SPP-2 would submit that PW.1 came to the spot after she was informed by PWs.2 and 4 and after recovering from the

¹ CRL.P No. 2170/2021 DD. 21.09.2021

² I.L.R 1993 KAR 543

³ ILR 2002 KAR 5129

⁴ (2022) 8 SCC 440

⁵ 1991 CRI.L.J.2632

⁶ CRL.A No. 1296/2006 DD. 19.11.2013

⁷ 2023 SCC Online SC 609

⁸ 2023 SCC Online SC 1534

⁹ C.R.M (DB) 2/2022 DD. 25.01.2023

grief of death of her daughter and son-in-law, she lodged a complaint at about 05.30 pm. This delay cannot be fatal to the prosecution in the circumstances of the case. He contends that the testimony of PW.3 would vouch about the presence of PW.2, who in turn, has stated that PW.4 was his pillion rider. Therefore, it was not necessary for PW.3 to say about the presence of PW.4-Vijay Kumar.

(b) He submits that there is no delay by the IO in recording the statement of PWs.2 and 4 as eyewitnesses and therefore, it is believable. He points that in the cross-examination of PW.1 there is a suggestion that accused No.1 was in Bengaluru, which has been denied. Accused No.1 has not established that he was in Bengaluru and therefore, this goes against accused No.1.

(c) He points out that the testimony of the Motor Vehicle Inspector-PW.15 and his report at Ex.P16 show that there were no tire marks of the Tata Sumo and there was no puncture of the rear tire of the scooty, therefore, the defence that it was a tire burst is ruled out.

(d) He points out that testimonies of PWs.1, 3, 4, 11 and 16 show the motive for commission of the offence and therefore, there cannot be any doubt about the motive.

(e) He contends that the defect in recording the statement under Section 313 of Cr.P.C., is a curable irregularity and the Appellate Court can very well cure the same by recording the statement of the accused by putting across to them the relevant incriminating circumstances. Hence, he has prayed for dismissal of the appeals. In support of his arguments, he relied on the judgment **Nar Singh v. State of Haryana**¹⁰.

16. In the light of the above contentions, the points that arise for our consideration are:

1. Whether the prosecution has proved the presence of accused Nos. 1 and 2 in the Tata Sumo bearing Reg.No.KA.13-A-7770 and the trial Court was justified in relying on the testimony of PW4?
2. Whether the seizure of the cheque issued by PW18 Yuvraj, from accused No.2 establishes the connivance of accused Nos. 1 to 4 in committing the crime?

¹⁰ (2015) 1 SCC 496

3. Whether the possession/ownership of Tata Sumo bearing No. KA.13-A-7770 by accused No.2 as on date of the crime is proved?
4. Whether the statement of accused under Section 313 of Cr.P.C., is defective and thereby calls for interference?
5. Whether the conclusions of the Trial Court are sustainable in law?

17. The fact that the deceased Pavithra and Mohan Kumar were daughter and son-in-law of PW1 and that they had enmity with accused No.3 and his wife is not much in dispute. The testimonies of PW.1 to PW.4 and a few other witnesses show that after the death of the husband and the son of PW.1, the deceased Pavithra and Mohan Kumar were looking after the affairs of the properties of PW1. There used to be quarrels between the deceased Mohan Kumar and accused No.3 in respect of parking the car of Mohan Kumar and the goods vehicle of accused No.3 as stated by PW.1 to PW.4. Therefore, accused No. 3 and his wife Prathibha were living separately. It is also not in dispute that Prathibha had filed a suit for partition, and it was pending at Civil Court in Channarayapatna. Therefore, the testimonies of PW.1 to PW.4 and a criminal case registered

in Crime No.112/2014 and also written statement in OS No.35/2013 as per Ex.D3 would be sufficient enough to infer that there was enmity between the parties.

18. The trial Court in para 15, considers the evidence about the motive. Moreover, the only contention raised by the appellants herein is that the gravity of such motive was not sufficient for commission of the murder of the deceased. It is relevant to note that when the prosecution is relying on the direct evidence of the witnesses who saw the incident, the gravity of the motive is not a deciding factor, and it would suffice if there was enmity between the parties. PW.1 has stated that there was attempt to murder the deceased Mohan Kumar which had resulted in Crime No.112/2014 and therefore, no fault can be found with the observations of the trial Court that there was a motive.

Re.Point No.1:

19. The prosecution heavily relies on the testimonies of PW.1 to PW.4 to establish that accused Nos.1 and 2 were the inmates of Tata Sumo vehicle which was used for

commission of the offence. This would presuppose the motive, connivance of accused Nos. 1, 2 and 4 with accused No.3 and their involvement. But the basic factor is whether the presence of accused Nos. 1 and 2 in Tata Sumo vehicle at the time of the incident is proved or not.

20. PW.2- Annegowda, started from the house of PW.1 on 17-6-2015. Though there is discrepancy regarding the time at which he started from the house of PW1 on the motorcycle of PW.2, it may be accepted that he and PW4 were nearly 100 meters behind the scooty of the deceased when the incident took place. However, PW.2 has not supported the case of the prosecution to the extent that accused Nos.1 and 2 were found in the Tata Sumo. PW.4 supports the case of the prosecution by saying that he had seen accused Nos.1 and 2 in the Tata Sumo and it was driven by accused No.1. Except for the identity of accused Nos.1 and 2, which is denied by PW.2, the rest of the evidence of both these witnesses is similar. PW.4- Vijaya Kumar though says that he did not have any motorcycle, in

another breath he says that he went to the hospital on his own motorcycle.

21. The testimony of PW.2- Annegowda shows that on 17-6-2015, when he started from his village to go to Channarayapatna, he saw the deceased near the Temple and after having a chat with them, he met PW.4, who accompanied the PW.2 to go to Channarayapatna. It is elicited that he saw the incident from 100 Mtrs., and two inmates of the Tata Sumo came out and were fleeing away and despite an effort to catch them, they could not. He does not speak to the effect that those two persons were accused Nos.1 and 2. The cross-examination of PW.2 by the prosecution has not yielded any result and there is nothing on record which shows that accused Nos. 1 and 2 were the inmates of the Tata Sumo. In the cross- examination by the defence, it is elicited that PW.1 and PW.4 are his distant relatives. It is pertinent to observe that he does not say that he had informed PW.1 about the incident.

22. Coming to the testimony of PW.4-Vijay Kumar, he states on similar lines as stated by PW.2 but he says

that accused Nos.1 and 2 were the inmates of the Tata Sumo and they had got down from the vehicle after the incident and ran away. Though he says that accused Nos.1 to 4 are the cause for death of deceased Mohan Kumar and Pavitra, the source of such information was not elicited from him. In the cross-examination by the defence, it is elicited that he does not have any bike. Later, he says that he went to the hospital on his own bike. He also says that he had narrated the entire incident with the police when he accompanied the body of the deceased to the hospital, and it was recorded in writing. His cross-examination also elicits that he started to go to Channarayapatna on the motorcycle of PW.2 at about 8.00 a.m.

23. The testimony of PW.3, Girish would show that he is a relative of PW.1-Nanjamma. He had met the deceased in the house of PW.1 and when he asked for money, the deceased Mohan Kumar asked him to come to the Court at Channarayapatna and therefore, after about 15 minutes he followed the deceased. On the way, he found accused No.3 near Byadarahalli Grama Panchayat. He

states that he overheard accused No.3-Jagadish informing accused No.4 Nagaraj that the deceased had left Byadarahalli about 15 minutes earlier. Later when he (PW.3) went to the spot, he found that the Tata Sumo had hit the scooty and deceased had died. Thus, his evidence is not of any help to ascertain whether the accused Nos.1 and 2 were the inmates of Tata Sumo or not. His evidence only shows that he had overheard the accused No.3 informing accused No.4. In the circumstances that PW1 is a close relative of PW.3, his testimony is not acceptable, more so when the prosecution had the availability of the best evidence in the form of the call detail records of accused Nos. 3 and 4.

24. The question would be, whether the testimony of PW.4 would be of a sterling quality to accept that he had seen accused Nos.1 and 2 at the spot, fleeing away from Tata Sumo vehicle. The trial Court holds that the evidence of PW.4 is believable since his version is supported by other circumstances.

25. It is relevant to note that PW.4 is a close relative of PW.1. He happens to be the brother's son of PW.1. His testimony shows that even though PW.2, who was the rider of the motorcycle, over which PW.4 was a pillion rider had not identified accused Nos.1 and 2, PW.4 could identify them. It is relevant to note that at one stretch PW.4 states that he did not have any motorcycle and therefore, he was the pillion rider of PW.2. He also states that he did not accompany the body of the deceased to the hospital in the ambulance, but he went to the hospital on his own motorcycle. If he was a pillion rider, there is no material to show as to how he went to the hospital on his own motorcycle. There is inconsistency to that extent. Therefore, the testimony of PW.4 cannot be said to be of a sterling quality so that the reliance could be placed without requiring any corroborative evidence.

26. The trial Court in paras 27 and 28 of the judgment discusses the testimonies of PW.2 and PW.4 and holds that PW.4 is believable. We are afraid that this conclusion of the trial Court to place sole reliance on the

testimony of PW.4 without corroborative evidence is not sustainable in the light of the other attending circumstances. Consequently, point No.1 is answered in the negative.

Re.Point No.2:

27. According to the prosecution, PW.28 arrested the accused No. 2 on 6-7-2015 at round 6.30 pm. On arrest, he recorded the voluntary statement of accused No.2 and seized the cheque at Ex.P11 from him under the mahazar as per Ex.P10 in the presence of PW.10.

28. The testimony of PW.10-Nagaraj would show that he knew accused No.2 and when the Police had called him to the Police Station, PW.28 informed him that accused No.2 had produced the cheque at Ex.P11 which he had received from accused No.1 and thereafter, a mahazar was drawn in his presence as per Ex.P10. It is relevant to note that his testimony does not reveal that accused No.2 in pursuance to his voluntary statement, had produced the said cheque. No such voluntary statement of accused No.2 is marked in evidence. It is not the case of prosecution that

accused No.2 had led PW.10 and PW.28 for recovery or discovery of the cheque.

29. The admissibility of the said recovery under Section 27 of the Indian Evidence Act cannot be permitted since it does not relate to a fact which is discovered. In the case of **Jafaruddin Vs. State of Kerala**¹¹ the Apex Court has made it clear that the provisions of Section 27 of the Evidence Act incorporate the theory of "confirmation by subsequent facts" facilitating a link to the chain of events. In the case on hand, the testimony of the PW.10 and absence of any voluntary statement by accused No.2 do not confirm the fact that accused No.2 had received the cheque from accused No.1.

30. PW.18-Yuvaraj states that he had a financial transaction with accused No.3; as security for the loan of Rs.25,000/- he had borrowed; had issued a blank cheque by signing it. He states that the Police had shown him the said cheque at Ex.P11 in March-2015 and had obtained several of his specimen signatures which he identifies.

¹¹ 2022 (8) SCC 440

There is no dispute in respect of the signature of PW.18 on the cheque at Ex.P11. His only say is that he had issued the blank cheque to accused No.3.

31. PW.28-Investigating Officer states that he obtained the specimen handwriting of accused No.3 and compared the same with the handwriting in the cheque and found that the amount of Rs.95,000/- in words and figures were filled by accused No.3. In this regard, he also obtained the report-Ex.P25 from PW.26, who is the Handwriting Expert.

32. The above evidence, in the absence of the voluntary statement by accused Nos.1, 2, 3 or 4 cannot implicate them that the transaction was in respect of providing help to accused No.3 in committing the crime. Accused No.2 being in possession of cheque issued by PW.18 cannot implicate accused Nos.1, and 4. Evidently, the said contention of the prosecution is based on the presumption that accused Nos.1 and 4 being son and father, accused No.4 had given the cheque to accused No.1.

33. It is pertinent to note that according to the Investigating Officer-PW.28, on the arrest of accused No.3, he led the Investigating Officer to the spot where he had conspired to kill the deceased-Mohan Kumar and Pavitra and led to the place where the accused No.3 had thrown the SIM card. Obviously, there was no such recovery and therefore, the mahazars at Ex.P6 and Ex.P7 are not of any relevance. Therefore, the possession of cheque at Ex.P11 by accused No.2 does not provide any acceptable link of the circumstance that the accused No.3 had given the cheque to accused No.4 and he in turn had given the same to accused No.1, who placed it in the hands of accused No.2 towards the expenses of committing crime. Consequently, we answer point No.2 in the 'Negative'.

Reg. Point No.3:

34. According to prosecution, PW.24 Ranganatha was the owner of the Tata sumo, which was used for committing the offence. He had entered into a lease with a company and was using the vehicle for fetching the employees of the said company. When he left that job, he

employed accused No.2 as a Driver and later, sold the Tata sumo to accused No.2 for Rs.5,00,000/- and asked him to pay Rs.4,00,000/- to the finance company to which the vehicle was hypothecated and had received Rs.1,00,000/-. Therefore, though the vehicle was with accused No.2, it was still standing in the name of PW.24.

35. Evidently, PW.24 turned hostile to the prosecution. He states that his vehicle was stolen in 2015 from Raichur. He denies any acquaintance with accused No.2. In the cross-examination by the defence, he states that there was only one seat at the front, when he saw the vehicle at Police Station. Therefore, his evidence does not establish that accused No.2 was in possession of the Tata Sumo bearing No.KA-36-A-7770. It also creates a dent that accused No. 2 could not have occupied the seat on the left of the driver's seat at the time of the incident.

36. It is significant to note that the Tata Sumo was fitted with a GPS device when it was used for plying the employees of Convergys Company at Bengaluru. The IO though obtained the GPS location details; it was marked

subject to objection that the certificate as required under Section 65B of Evidence Act must be produced. No such certificate was produced by the prosecution. As such, the said document which was marked Ex.P41 is liable to be rejected.

37. In the result, the nexus between accused No.2 and the Tata Sumo bearing No.KA-36-A-7770 is not established.

Reg. Point No.4:

38. A perusal of the statement under Section 313 of Cr.P.C., as recorded by the trial Court would show that the trial Court had prepared a single set of questionnaires and answers given by each of the accused was recorded below each question. Thus, it would indicate that the answers given by each of the accused for each of the questions posed to them regarding incriminating circumstance was recorded by the trial Court. It is relevant to note that the trial Court had noted the answer of the accused in common by putting a flower bracket in the place where the answers should have been recorded separately. It is contended by

the defence that such a procedure adopted by the trial Court is violative of several directions issued by this Court as well as the Apex Court.

39. In the case of **Raj Kumar** (referred Supra), the Apex Court in para 17 has observed as below:

"17. The law consistently laid down by this Court can be summarized as under:

- (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
- (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
- (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;
- (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity inputting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the consideration will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

40. The above principles were reiterated in the case of **Nababuddin alias Mallu alias Abhimanyu** (Supra).

41. Similarly, in the case of **Nar Singh** (Supra) in para 20, it was observed as below:

"20. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance with section 313 CrPC has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 CrPC, it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that the accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 CrPC. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may be draw an inference of such prejudice. The facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused."

42. This Court in the case of **Smt. Meenakshi** (Supra) (rendered by one of us) has laid down the guidelines as below:

"8. From the above discussions, the following guidelines are given:

(i) Only the incriminatory evidence must be picked out from oral and documentary evidence.

(ii) The questions must be framed in a simple language, as far as possible in short sentences.

(iii) The attention of each accused must be drawn to the evidence adverse or against him/her.

(iv) Sometimes, a witness may give evidence as regards the collective overt act of two or more accused and in that event a single question may be framed, but each accused must be questioned individually, and their answers must be recorded separately.

(v) It is also possible that two or more witnesses may speak identically regarding the overt act of an accused. In that event, the substance of their evidence may be put in a single question.

(vi) The attention of the accused must be drawn to the marked documents and material objects if they are incriminatory.

(vii) The accused must be questioned regarding various types of mahazars or panchanamas only if they contain incriminatory evidence.

(viii) Accused need not be questioned in regard to evidence given by the formal witnesses, for

example, an engineer who has drawn the sketch of scene of occurrence, a police constable submitting the FIR to the Magistrate, a police constable carrying seized articles to FSL, a police officer who has only submitted the charge sheet without conducting investigation, etc., unless anything incriminatory is found in such evidence.

(ix) If there are two or more accused, it is not necessary to prepare as many sets of questionnaires as the number of accused are. It is enough to prepare a single questionnaire, but the question must be directed towards a particular accused individually or two or more accused collectively. When a question is framed pointing out collective overt act of two or more accused, the answer of each accused must be recorded separately one after another.

(x) By virtue of amendment brought to Cr.P.C, the trial court judges may take the assistance of the Public Prosecutors and the defence counsel for framing the questions.

(xi) In case the Public Prosecutor or the defence counsel submits a set of questions, the trial court judges must scrutinize and adopt them with or without modification.

(xii) The court should record the answer or explanation given by the accused and should not insist upon the accused to give answer in one word, 'false' or 'true'."

43. Similar observations were also made in the case of **Naga @ Nagaraja Vs. State of Karnataka** and **Vaijanath Vs. State of Karnataka** also.

44. In the case on hand, the procedure followed by the trial Court, though is not fully in consonance with the guidelines issued by this Court, it had posed all the incriminating circumstances against the accused. The questions put to the accused were proper. However, eliciting their answer separately for all the questions, one after another was not followed. Therefore, it is nothing but an irregularity and it cannot be said that it vitiates the trial.

45. Be that as it may, we have concluded that the evidence on record is insufficient to prove the charges leveled against the accused beyond the reasonable doubt. The evidence of PW2 does not inculcate accused Nos.1 and 2 and the testimony of PW.4 does not reach the standards of the sterling quality. Therefore, an irregular recording of

the statement cannot be of much significance in the case. Even if we hold that there is an irregularity committed by the trial Court, this Court can very well record the statement of the accused under Section 313 of Cr.P.C., and proceed with the case. Consequently, we hold the Point No.4 in the 'Negative'.

Reg. Point No.5:

46. The discussion supra regarding point Nos.1 to 3 would show that the testimony of PW4 is not solely reliable *sans* any corroboration. The presence of accused No.1 and 2 at the spot and that they were driving the Tata Sumo vehicle does not get any impetus from the other circumstances which are placed before the Court. Apart from that, the other discrepancies in the evidence which are of relevance are:

(a) PW.1 files complaint at about 5:30 PM on 17.6.2015. Though the delay can be explained by a plausible circumstance that she was under the grief (as has been done and accepted by the trial Court), but there is no explanation as to why even the FIR of accident was not

registered even though the police had reached the spot immediately after the accident. Not only that, PWs 2, 3 and 4 were already present at the spot within a few minutes of the alleged incident.

(b) Though the spot Mahazar at Ex.P2 was conducted on the next day, that is on 18th, the blood stains, broken glasses, etc., were not seized from the spot. The mahazar does not mention anything about the brake marks or the scratch marks which were found on the road. It only indicates that the vehicle had mounted on the heap of mud on the side of the road. Therefore, the delay in preparing the spot mahazar is also one of the circumstances which is highlighted by the defence.

(c) Though PWs.2,3 and 4 say that they had seen and conversed with the deceased prior to the incident and this fact was known to the investigating officer, the inquest mahazars at Ex.P12 and Ex.P13 say that it was PW.1 who had last seen the deceased in person prior to their death. Therefore, it appears that the averments made in the

inquest mahazar were also not as per the real facts which had happened.

(d) Though the above circumstances are not of much relevance, in the light of point Nos. 1 to 3 discussed by us above, which are of greater relevance, the trial Court brushes aside the circumstances as a minor discrepancies.

47. Be that as it may, the trial Court erred in holding that:

(i) The evidence of PW.2 is reliable since it gets corroboration from PWs.2 and 3. The presence of accused Nos.1 and 2 at the spot as spoken by PW.4 does not get support from the evidence of PWs.2 and 3. It does not look for a corroborative evidence to substantiate the say of PW.4.

(ii) Accused Nos.1 and 2 are alleged to have received money for committing the crime, on the basis of the mahazars Exs.P6 and P7 in the presence of PW.10 (which were conducted at the instance of accused Nos.3 and 4) by believing that he was told by the investigating officer that accused Nos. 3 had given

Rs.2,000 to accused No.1 Overlooking that it was a hearsay evidence, it believes the same and terms accused Nos.1, 2 and 4 as the Supari killers.

(iii) Ex.P11 cheque was given by accused No.3 to accused No.4 and thereafter, he gave the same to accused No.1 and in turn, he gave the same to accused No.2. Though Ex.P11 cheque was not found on the person of accused No.2 and PW 10 was told by the IO that accused No.2 had produced it, this version was believed. It is pertinent to note that the PW.10 had not told that accused No. 2 produced the cheque in his presence.

(iv) The vehicle owned by PW.18 was in the hands of accused No.2 though PWs. 11 and 18 had not stated so and that the GPS records were not proved as required under law.

(v) The trial Court erred in holding that PW24-Ranganatha had in fact given the said vehicle to accused No.2. PW.24 had told that the vehicle was stolen. Even if the evidence of PW.24 was discarded,

there is no evidence to show that accused No.2 was in possession of the Tata Sumo vehicle.

(vi) There was insufficient evidence to show that it was not an accident, but it was intentional homicide amounting to murder. Even the Medical Officer has stated that the injuries might have been caused in the accident. But the accident was intentional as contended by the prosecution, and this aspect was not sufficiently proved by it.

(vii) Accused Nos. 3 and 4 were charged for the offence under Sections 114 read with 34 of IPC. Accused Nos.1 and 2 were not charged for the offences under Section 114 of IPC, even then the trial Court has sentenced the accused Nos. 1 and 2 for the offences under Section 114 of IPC which cannot be sustained.

48. The trial Court holds that the offence under Section 468 of IPC is proved. Section 468 of IPC deals with the forgery for the purpose of cheating. Whoever commits forgery intending that the document so forged shall be used

for the purpose of cheating shall be punished with a certain offence as mentioned therein. In the case on hand, the cheque was issued by PW.18-Yuvraj in favour of accused No.3. He in turn, he gave the cheque to accused Nos. 1 and 4 and they are said to have given the said cheque to accused No.2 from whom the IO has recovered the same. Accused No.2 does not complain or say that he had presented the said cheque for encashment. Simply because the prosecution has established that the amount filled in the said cheque at Ex.P11 is in the handwriting of accused No.3, it concluded that an offence under Section 468 is made out. Whether Ex.P11 has been forged or not, was not at all the question that was emanating from the complaint. Ex.P11 had nothing to do with the cheating. The person who has been induced or cheated has not complained of the same. The chargesheet alleges that the accused No.3 has cheated the PW.18-Yuvaraj. But PW.18 does not complain of any cheating. Therefore, the trial Court totally lost the track of the case when it concluded that an offense under Section 468 has been proved by the prosecution.

49. In view of the above, we are of the clear view that there is insufficient evidence to establish the guilt of the accused. The trial Court went on the premise that the sole testimony of PW4 is believable without requirement of any corroborative evidence. Therefore, PW.4 being a close relative, could not have been a reliable witness to accept his version without a corroboration. In that view of the matter, we are of the view that the trial Court erred in convicting the accused.

50. In view of the discussions made supra, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and as such, all these appeals succeed. Hence, we pass the following:

ORDER

(i) The appeals are allowed.

(ii) The appellants who are accused Nos. 1 to 4 are hereby acquitted for the offences punishable under Sections 114, 120B, 302 and 468 R/W 34 OF IPC.

- (ii) The judgment of the trial Court in SC No. 217/2015 and SC No.179/2016 dated 23.08.2021 is hereby set aside.
- (iii) The bail bonds shall stand cancelled.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(C.M.JOSHI)
JUDGE

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