

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO.825 OF 2018

C/W

CRIMINAL APPEAL NOS.292 OF 2018,

430/2018, 493/2018,

CRIMINAL REFERENCE CASE NO.2/2018

IN CRL. APPEAL NO.825 OF 2018

BETWEEN:

MUNIREDDY @ CHIKKA
S/O. NARAYANAPPA @ DODDANNA,
AGED ABOUT 31 YEARS,
R/AT BYAPANAHALLI, KOLAR TALUK,
KOLAR DISTRICT - 563 101.

...APPELLANT

(BY SRI. K.B. MONESHKUMAR, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY THE POLICE OF KOLAR TOWN POLICE STATION,
KOLAR-DISTRICT-563101
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE ORDER OF CONVICTION AND SENTENCE PASSED IN S.C.NO.97/2017 DATED 20.01.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR AND ACQUIT THE APPELLANT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 201 READ WITH SECTION 34 OF IPC.

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MOHANKUMAR B
SHELAR

Location: HIGH
COURT OF
KARNATAKA

IN CRL. APPEAL NO.292 OF 2018

BETWEEN:

SRI. MUNI REDDY S/O. KRISHNAPPA,
AGED ABOUT 35 YEARS,
BYPANAHALLI VILLAGE,
KOLAR TALUK AND DISTRICT,
PIN-563 101.

...APPELLANT

(BY SRI. M.R. NANJUNDA GOWDA, ADVOCATE)

AND:

STATE OF KARNATAKA
BY KOLAR TOWN POLICE,
KOLAR DISTRICT,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER AND ORDER REGARDING SENTENCE DATED 20.01.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR IN S.C.NO.97/2017 ALLOW THE APPEAL AND ACQUIT THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 201 OF IPC.

IN CRL. APPEAL NO.430 OF 2018

BETWEEN:

SRI. K. NARENDRA
S/O. LATE KESHAVAPPA,
AGED ABOUT 42 YEARS,
RESIDING AT 1ST MAIN,
3RD CROSS, DHARMARAYANAGAR,
KOLAR-563 101.

...APPELLANT

(BY SRI. M.R. NANJUNDA GOWDA, ADVOCATE)

AND:

STATE OF KARNATAKA BY
KOLAR TOWN POLICE,
KOLAR DISTRICT,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT AND ORDER AND ORDER REGARDING DEATH SENTENCE DATED 20.01.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR IN S.C.NO.97/2017, ALLOW THE APPEAL AND ACQUIT THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 302 READ WITH SECTION 34 OF IPC AND 201 READ WITH SECTION 34 OF IPC AND ETC.,

IN CRL. APPEAL NO.493 OF 2018

BETWEEN:

MR. B.S. SURESH KUMAR @ MANI
S/O. SHANKARACHARI,
AGED ABOUT 37 YEARS,
LORRY DRIVER,
R/O. BYAPPANAHALLI TALUK,
DISTRICT: KOLAR.

...APPELLANT

(BY SRI. VEERANNA G. TIGADI, ADVOCATE)

AND:

STATE OF KARNATAKA,
REP. BY SUB-INSPECTOR OF POLICE,
KOLAR TOWN POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-563 101.

...RESPONDENT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 20.01.2018 IN S.C.NO.97/2017 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR AND BY ACQUITTING HIM OF ALL THE CHARGES LEVELLED AGAINST HIM IN THE INTEREST OF JUSTICE.

IN CRL.R.C.NO.2 OF 2018

BETWEEN:

II ADDITIONAL DISTRICT AND SESSIONS JUDGE KOLAR,
 KOLAR.

...APPELLANT

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II ALONG WITH
 SMT. R SOWMYA, HCGP)

AND:

SRI NARENDRA K.
 S/O. LATE KESHAVAPPA,
 AGED ABOUT 41 YEARS,
 TEACHER, 1ST MAIN,
 3RD CROSS, DHARMARAYA NAGARA, KOLAR.

...RESPONDENT

(BY SRI. M.R. NANJUNDA GOWDA, ADV. FOR RESPONDENT/A1)

THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED UNDER SECTION 366 (1) OF CR.P.C. FOR CONFIRMATION OF DEATH SENTENCE AWARDED TO ACCUSED K. NARENDRA BY JUDGMENT DATED 20.01.2018 AND SENTENCE DATED 20.01.2018 PASSED IN S.C.NO.97/2017 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KOLAR FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 302, 201 READ WITH SECTION 34 OF IPC.

DATE ON WHICH THE APPEAL WAS RESERVED FOR JUDGMENT	22.07.2024
DATE ON WHICH THE JUDGMENT WAS PRONOUNCED	21.10.2024

THESE CRIMINAL APPEALS AND CRIMINAL REFERENCE CASE HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, **J.M.KHAZI J.**, PRONOUNCED THE FOLLOWING:

CAV JUDGMENT

(PER: THE HON'BLE MS. JUSTICE J.M.KHAZI)

Since these 4 appeals by the accused challenging their conviction and sentence and the criminal reference for confirmation of death sentence on accused No.1 imposed by the Sessions Court, arise out of the same judgment and order, they are clubbed together and disposed of by a common judgment.

2. For the sake of convenience, the parties are referred to by their ranks before the trial Court.

3. A charge sheet came to be filed against the accused Nos.1 to 4 alleging that accused No.1 Narendra and deceased K.B.Kumaraswamy were friends for the last 20 years. K.B.Kumaraswamy was doing finance business of lending money by taking gold and silver ornaments, vehicles, blank cheques, on-demand promissory notes and title deeds. He was in the habit of noting the details in a diary and note book and taking

the signatures of borrowers. About 5 years prior to the date of incident, accused No.1 availed loan of Rs.10,00,000/- on interest at 2% p.m. from deceased K.B.Kumaraswamy by executing on-demand promissory notes. In turn accused No.1 lent the said sum of Rs.10,00,000/- to CW-15 B.S. Venkatesh with interest at 5% p.m. Further, about two years back accused No.1 borrowed a sum of Rs.5,00,000/- from deceased K.B.Kumaraswamy on interest at 2% and lent the same to CW-44 B.S. Manjunath with interest at 5% p.m.

3.1 In this regard CW-15 B.S. Venkatesh and CW-44 were due in a sum of Rs.28,00,000/- to accused No.1. Since they failed to pay interest for the last 14 months, accused No.1 was also not able to pay interest to K.B.Kumaraswamy. He had given ultimatum to accused No.1 that if he failed to repay the entire loan of Rs.20,00,000/- with interest within two months, he was going to file cases based on the blank pronotes given by him.

3.2 As accused No.1 was not having money to repay the loan borrowed from K.B.Kumaraswamy, he planned to kill him by mixing poison in his drinks and thereafter to kill his mother Sunanda Devi and take the gold and silver ornaments, blank promotes, diary and note book containing the details and destroy the papers. He also planned to sell the gold and silver articles and repay the loan incurred with Kembodi Shivaraju and others. With this intention he roped in accused No.2 B.S.Suresh Kumar @ Mani and accused No.3 Munireddy @ Chikka with a promise that if they helped him he would purchase a new tempo for accused No.2 K.B.Suresh Kumar @ Mani and a JCB for accused No.3 Munireddy @ Chikka.

3.3 With this intention on 21.10.2014 at 6.15 p.m, accused Nos.1 to 3 went near the stores of CW-28 Bhaskar and from his coin booth accused No.1 called K.B.Kumaraswamy and also got his TATA Indica car No.KA-04/P-7480 (for short 'Indica'). At around 6-45

p.m, accused No.1 to 3 made K.B.Kumaraswamy sit in the back seat of the Indica and gave him drinks laced with poison (insecticide). K.B.Kumaraswamy died around 8-45 p.m.

3.4 Accused Nos.1 to 3 around 9.00 p.m. went in Indica with the dead body of K.B.Kumaraswamy to Kambliswamy Matha compound and locked the gate to prevent anyone from coming inside. At 10.30 p.m, they entered the house of K.B.Kumaraswamy under the pretext of meeting him. Accused No.1 requested his mother Sunanda Devi for a glass of water. When she went inside to get water, accused Nos.1 to 3 followed her. While accused Nos.1 and 2 caught hold of Sunanda Devi, accused No.3 assaulted her with a knife on her left neck and back. As a result of which she died. Accused No.1 collected 806 gms of gold ornaments, 2448 gms silver articles, Rs.10,000/- in cash, all the papers, on-demand pronotes, cheques, diaries and note book. They wrapped Sunanda Devi in two plastic bags. Accused

Nos.1 to 3 washed the blood stains with water and to prevent the dog squad from securing their smell they sprinkled chilli powder in the house. They carried the dead body of K.B.Kumaraswamy and Sunanda Devi in Indica car. Around 1.00 a.m. they removed a two string gold chain, 4 bangles and ear studs from the body of Sunanda Devi. They put Tar moulds (ಛಾರ ಹೆಂಟಿ) into the plastic bag containing the dead body of Sunanda Devi and threw it into Yelemallappa Shetty tank near Avalahalli, Bengaluru East Taluk. From there, accused Nos.1 to 3 proceeded with the dead body of K.B.Kumaraswamy to Chikkahonnashettyhalli of Mulbagal Taluk and around 4.00 a.m pushed the dead body of K.B.Kumaraswamy into Linganakunte tank.

3.5 Thereafter accused Nos.1 to 3 proceeded to Nawab petrol bunk situated on KGF road and purchased 2 liters of petrol from CW-30 Chandra and burnt the diary, note book, pronotes, cheques and other papers taken from the house of deceased K.B.Kumaraswamy.

Around 10.30 a.m. of 22.10.2014, they proceeded to Krishnagiri and left the car in the outskirts of Krishnagiri of Tamil Nadu by removing its number plates. Around 4.00 p.m. they returned to Kolar. Accused Nos.1 and 3 kept the gold and silver articles in an iron trunk in the school at Kolar where accused No.1 was working as a teacher. Accused No.2 destroyed the two cell phones and car number plates by burning them.

3.6 On 29.10.2014 at 1.00 p.m, accused No.1 removed the bag containing the ornaments and took two string gold chain belonging to Sunanda Devi and gave the bag containing remaining gold ornaments and silver articles to accused No.3 to conceal the same. Accused No.1 pledged the said gold chain belonging to Sunanda Devi with Mutooth Finance through CW-15 B.S. Venkatesh on 31.10.2014 for Rs.1,00,000/- and spent the amount. In turn accused No.3 Munireddy @ Chikka after removing a gold chain concealed the said bag in the mulberry garden belonging to accused No.4. Accused

No.3 pledged the chain with Mutooth Finance. However, accused No.4 K.Munireddy, who saw it, removed the bag and concealed it inside a abandoned well situated in the said land and after his arrest, on 03.12.2014, the said gold ornaments and silver articles were recovered at his instance and thereby accused Nos. 1 to 3 committed offences punishable under Sections 302, 201 r/w Section 34 I.P.C. Accused No.4 K.Munireddy committed offence punishable under Section 201 I.P.C.

4. Accused Nos.1 to 4 pleaded not guilty to the charges leveled against them and claimed trial.

5. In order to prove the allegations against the accused, prosecution examined 64 witnesses as PWs-1 to 64 and got marked Exs.P1 to 141 and MOs.-1 to 25.

6. During the course of their statements under Section 313 of Cr.P.C., accused denied the incriminating evidence led by the prosecution.

7. Accused did not lead any defence evidence, but relied upon Exs.D1 to 3, portion of statements of PWs-21 and 54.

8. Vide impugned judgment and order the trial Court convicted accused Nos.1 to 3 for the offences punishable under Sections 302, 201 r/w Section 34 I.P.C and accused No.4 K.Munireddy for the offence punishable under Section 201 I.P.C.

8.1 The trial Court has sentenced accused No.1 to death penalty for the offence punishable under Section 302 I.P.C and imprisonment for life for the offence punishable under Section 201 I.P.C.

8.2 The trial Court has sentenced accused Nos.2 and 3 to undergo imprisonment for life and pay fine of Rs.50,000/- each with default sentence for the offence punishable under Section 302 I.P.C.

8.3 The trial Court has also sentenced accused Nos.2 and 3 to undergo imprisonment for life and pay

fine of Rs.50,000/- each with default sentence for the offence punishable under Section 201 I.P.C.

8.4 The trial Court has sentenced accused No.4 to undergo simple imprisonment for a period of two years with fine of Rs.10,000/- with default sentence for the offence punishable under Section 201 I.P.C.

9. While the trial Court has referred for confirmation the death penalty imposed on accused No.1, aggrieved by their conviction and sentence, accused Nos.1 to 4 have filed separate appeals contending that the impugned judgment and order are illegal, improper and perverse, it is opposed to law, facts and probabilities of the case, it is based on surmises and conjectures when there is no evidence on record. The trial Court has not given any cogent, clinching and convincing reasons. There are no eye witnesses to the incident. The entire case of the prosecution is based on circumstantial evidence, but the prosecution has failed to

prove the chain of circumstances pointing towards the guilt of the accused.

9.1 There is no legal evidence to convict accused Nos.1 to 3 for the offences punishable under Sections 302 and 201 I.P.C. There is no evidence to show that accused Nos.1 to 3 shared common intention. The recovery at the instance of accused persons is not proved beyond reasonable doubt. The findings of the trial Court is contrary to the evidence on record and as such perverse. The decisions relied upon by the defence are not properly appreciated by the trial Court. Viewed from any angle, the impugned judgment and order are not sustainable and prays to allow the appeals, set aside the same and acquit the accused persons.

10. In support of their arguments, learned counsel for accused relied upon the following decisions:

- (1) Siraganahalli Rangappa Vs. State of Karnataka (***Siraganahalli Rangappa***)¹

¹ 2019 (1) AKR 403

- (2) Vijender Vs. State of Delhi (**Vijender**)²
- (3) Pramodhkumar N. @ Pramoda Vs. State of Karnataka (**Pramodhkumar N. @ Pramoda**)³
- (4) Kalinga Alias Kushal Vs. State of Karnataka by Police Inspector, Hubli (**Kalinga Alias Kushal**)⁴
- (5) Raja Naykar Vs. State of Chhattisgarh (**Raja Naykar**)⁵
- (6) Sharad Birdhichand Sarda Vs. State of Maharashtra (**Sharad Birdhichand Sarda**)⁶
- (7) Sekaran Vs. The State of Tamil Nadu (**Sekaran**)⁷

11. On the other hand, learned High Court Government Pleader supported the impugned judgment and order. He would submit that though there are no eye witnesses to the incident, the allegations against accused are proved through circumstantial evidence. All the links in the chain of circumstances connecting the accused with the crime are established. So far as

² (1997) 6 SCC 171

³ Crl.A.No.1671/2019 C/W Crl.R.C.No.3/2019

⁴ AIR ONLINE 2024 SC 101

⁵ (2024)3 SCC 481

⁶ (1984)4 SCC 116

⁷ (2023) INSC 1062

accused No.4 is concerned, the fact of he having concealed the gold and silver ornaments belonging to deceased K.B.Kumaraswamy in a defunct well situated within the land belonging to him is established and therefore his conviction and sentence for the offence punishable under Section 201 I.P.C. is proper.

11.1 However, the learned High Court Government Pleader fairly conceded that this is not a case coming under the rarest of rare category warranting death penalty to accused No.1, especially when the prosecution case is based on circumstantial evidence.

12. In support of his arguments learned High Court Government Pleader has relied upon the following decisions:

- (1) Bhupinder Singh Vs. State of Punjab
(***Bhupinder Singh***)⁸
- (2) Shanmughan Vs. State of Kerala
(***Shanmughan***)⁹

⁸ (1988) 3 SCC 513

⁹ (2012) 2 SCC 788

13. We have heard elaborate arguments of both sides and perused the record.

14. There are no witnesses to the incident and the entire case of the prosecution is based on circumstantial evidence, particularly discovery of dead body of Sunanda Devi on the information provided by accused No.1 Narendra. Though by the time accused No.1 Narendra gave information regarding the killing of K.B.Kumaraswamy and throwing his dead body in the pond, the investigating officer did not find the dead body, further investigation revealed that the dead body of K.B.Kumaraswamy was discovered by Mulbagal police and after conducting postmortem and finding no one claiming the same, it was buried as unclaimed dead body. The investigating officer got the dead body exhumed and subjected it to post-mortem examination and vicera was collected and its chemical examination revealed that his death was due to poisoning.

15. On the basis of voluntary statement of accused Nos.1 to 4, the investigating officer collected evidence, based on which the trial Court has found accused Nos.1 to 3 guilty of the offence punishable under Sections 302 and 201 of IPC, whereas accused No.4 is found guilty of the offence punishable under Section 201 of IPC. In the present proceedings while accused Nos.1 to 4 have challenged their conviction and sentence, through the reference, the State has sought confirmation of death sentence imposed on accused No.1. In the light of the grounds urged by accused Nos.1 to 4, it is necessary to examine whether there is sufficient evidence to connect the accused person with the crime in question, in which event it is also necessary to examine whether it is a rarest of rare case to confirm the death sentence imposed on accused No.1.

16. It is pertinent to note that though deceased K.B.Kumaraswamy was married and having children, on account of matrimonial discord with his wife, they were

divorced and living separately. Therefore, deceased K.B.Kumaraswamy was living alone with his mother, Smt Sunanda Devi. It is also relevant to note that their house was situated within the compound of Kambaliswamy Mutt. In the said compound, the family of PW.1 Ravindra Babu and his wife PW.5 Anitha were residing in a house belonging to deceased K.B.Kumaraswamy. It is the specific case of the prosecution that deceased K.B.Kumaraswamy was doing money lending business by taking blank pronotes and cheques and also gold ornaments, silver articles, vehicles by way of pledge and used to park the vehicles so taken inside the compound of Kambaliswamy Mutt. His only sister PW.21 Sujatha was married and staying with her husband PW.6 Gurubasavaraj K., at Bengaluru. PW.39 Shashikala is the divorced wife and PW.50 Karthik is the son of deceased K.B.Kumaraswamy and PW.39 Shashikala. These facts are not in dispute.

17. The evidence of PW.21 Sujatha, her husband PW.6 Gurubasavaraj K., PW.1 Ravindra Babu, his wife PW.5 Anitha, PW.39 Shashikala and PW.50 Karthik, the wife and son of deceased K.B.Kumaraswamy, prove that about 10 years prior to the date of incident deceased K.B.Kumaraswamy and PW.39 Shashikala got divorced and since then he was living along with his mother Sunanda Devi in the house situated within the compound of Kambaliswamy Mutt. They have also deposed that deceased K.B.Kumaraswamy was doing money lending business. In addition to these witnesses, PW.24 B.M. Surendra, a teacher working in Government school along with accused No.1 Narendra, PW.26 Sriramaiah, an agriculturist, PW.28 Srinivas a Goldsmith, PW.29 Chakrapani, PW.30 Manjunatha Reddy, PW.32 P. Shakuntala, a retired Nursing Superintendent, PW.34 B.S. Manjunatha, PW.36 Ramanachari and PW.37 Somashekarachari, have deposed about borrowing hand

loan from deceased K.B.Kumaraswamy by pledging valuables and also vehicles.

18. Their evidence also prove the fact that accused No.1 Narendra was closely acquainted with K.B.Kumaraswamy and he was regularly visiting his house and other places while he was dealing with finance. PW.21 Sujatha also deposed that accused No.1 Narendra was a friend of deceased K.B.Kumaraswamy since 22-23 years and he was visiting their house regularly. He used to eat in the house of K.B.Kumaraswamy and also take tiffin for his son. He was taking loan from K.B.Kumaraswamy at lower rate and lending the same to others on higher rate. PW.26 also deposed that sometimes when deceased K.B.Kumaraswamy used to come for recovery, accused No.1 Narendra used to accompany him. On the last occasion, when he saw deceased K.B.Kumaraswamy, he was wearing a red T-shirt and jeans pant and after

sometime he came to know that deceased K.B.Kumaraswamy had been murdered.

19. PW.27 Santhosh Kumar has deposed that he had taken a vacant site belonging to deceased K.B.Kumaraswamy on a rent at Rs.17,000/- per month and had paid advance of Rs.2.4 lakhs. Twice even accused No.1 Narendra accompanied him for collecting rent. The evidence of PW.31 B. Srinivasa is to the effect that a vacant site belonging to him and deceased K.B.Kumaraswamy were adjacent to each other and both of them together rented it to one Mahindra for Rs.16,000/- each per month. K.B.Kumaraswamy was doing financing business and accused No.1 Narendra used to be with him. He also deposed that by pledging gold ornaments, he had taken loan from K.B.Kumaraswamy. He identified item Nos.3 and 41 of MO-18 as belonging to him. Similarly, PW.32 P. Shakunthala identified item No.6, 8, 10, 11, 12, 25 and 67 as the ornaments pledged by her while taking loan

from K.B.Kumaraswamy. During his cross-examination by the prosecution, PW.34 admitted that on 17.10.2014, he repaid the loan taken from deceased K.B.Kumaraswamy and took back his Hero Honda motorcycle No.KA-08-K-7891.

20. PW.39 Shashikala, the divorced wife of K.B.Kumaraswamy also deposed that when they were together, she had seen accused No.1 Narendra coming to their house and her husband used to refer him as a close friend (ಚಡ್ಡಿ ದೊಸ್ತ). PW.5 Anitha, who is a tenant and neighbour of deceased K.B.Kumaraswamy clearly deposed that among accused persons, she knows accused No.1 Narendra. He used to come to deceased K.B.Kumaraswamy regarding financial transaction.

21. The evidence of PW.38 K.N. Shivaraj assumes significance in the light of the fact that even accused No.1 Narendra had borrowed hand loan of Rs.6 lakhs from him for purchasing a site by issuing two cheques for Rs.3 lakhs each. Since accused No.1 Narendra failed

to repay the loan, he presented the cheques and on their dishonour got issued legal notice and filed complaint against him as per Exs.P 59 to 68.

22. The evidence of these witnesses clearly establish the fact that while the deceased K.B.Kumaraswamy was into finance business, accused No.1 Narendra was not only a close friend of deceased K.B.Kumaraswamy, but also had financial transaction with him. As he was not able to repay the loan taken from deceased K.B.Kumaraswamy he was under threat by him to initiate criminal proceedings based on the blank cheques and pronotes given by him.

23. It is pertinent to note that K.B.Kumaraswamy and his mother Sunanda Devi went missing on 21.10.2014. It was Deepavali festival time. Their absence was noticed by PW.1 Ravindra Babu, who was their tenant and neighbour on 22.10.2014. At that time, his wife PW.5 Anitha had gone to her mother's house.

Evidence of PWs-1 and 5 reveal that PW.1 called her over phone and informed that both deceased K.B.Kumaraswamy and Sunanda Devi were not to be seen. In turn PW.5 Anitha called both deceased K.B.Kumaraswamy and Sunanda Devi on their cell phones, but they were switched off. Therefore, she called PW.21 Sujatha - the daughter of Sunanda Devi and informed her.

24. PW.21 Sujatha deposed that after receiving the said information she also called K.B.Kumaraswamy and Sunanda Devi and on finding that their cell phones were switched off, she along with her husband PW.6 Gurubasavaraj K. came to Kolar by 7-00 p.m. On the way, PW.21 also called the police and informed them about her mother and brother having become incommunicado. On getting the information, PW.39 Shashikala, the ex-wife of deceased K.B.Kumaraswamy also reached the spot. They along with PWs-1 and 5 found security gate locked. They got it broken and

entered the house. Both deceased K.B.Kumaraswamy and Sunanda Devi were not in the house and they found blood stains on a tile near the utility and also observed that someone had tried to clean blood stains with a mop and some foot marks were also found with blood stains. They also found chilli powder sprinkled in the entire house and also on the motor cycle parked in front of the house. In this backdrop, PW.21 Sujatha filed missing complaint as per Ex.P34.

25. Based on the missing complaint, the concerned police registered the case and conducted spot mahazar as per Ex.P1. The investigating officer seized a blood stained tile from the utility area and also a mop used to clean the house of the blood stains. The chilli powder found sprinkled in the house was also collected. PW.1 is a witness to the spot mahazar. During his cross-examination, PW.62 Sudhakara Reddy, who is the first investigating officer rightly deposed that since chilli powder was sprinkled by the miscreants to prevent the

dog squad from getting their smell, he did not press into service the dog squad. Though he called the fingerprint experts, in the light of the fact that the miscreants erased the prints, there was no possibility of getting any handprints and footprints. PW.62 also rightly deposed that since during investigation, the identity of accused persons was established, there was no need for him to rely on the fingerprints or footprints.

26. It appears looking to the gravity of the case, investigation of missing complaint was handed over to PW.63 P. Shivakumar CPI. During investigation as done in such cases, the investigating officer collected information regarding the close friends of deceased K.B.Kumaraswamy and zeroed on accused No.1 Narendra. In this regard, PW.49 M.D. Narayanappa, head constable deposed that he was entrusted with the duty of collecting information about the K.B.Kumaraswamy. During collection of intelligence, he came to know that even accused No.1 Narendra was a

close friend of K.B.Kumaraswamy and had borrowed loan to the tune of Rs.20 lakhs etc, and also on 21.10.2014 accused No.1 Narendra had called K.B.Kumaraswamy through coin booth and he furnished the said information to the Investigating Officer.

27. On the basis of said information, PW.62 summoned accused No.1 Narendra and interrogated him. During such interrogation accused No.1 Narendra gave voluntary statement to the effect that when Sunanda Devi objected K.B.Kumaraswamy having come home drunk, he slapped her. Sunanda Devi fell down and died. Therefore K.B.Kumaraswamy called accused No.1 Narendra for help. Both of them covered the body of Sunanda Devi in plastic bags and threw it in Avalahalli Tank. Thereafter, deceased K.B.Kumaraswamy being dejected in life and not able to face the society, informed accused No.1 Narendra that he would commit suicide and went away. Based on the said information given by accused No.1 Narendra, PW.63 made a report as per

Ex.P106 arraigning deceased K.B.Kumaraswamy as accused No.1 and Narendra as accused No.2 for the offences punishable under Sections 302 and 201 of IPC.

28. On the basis of his voluntary statement accused No.1 led PW.62 Sudhakara Reddy and pointed out the place where the dead body of Sunanda Devi was thrown in the water in the presence of PWs.2 to 5. The dead body was found and recovered through mahazar Ex.P3. The Tahsildar conducted inquest on the dead body as per Ex.P4 in the presence of PWs.2 to 5. PW.1 Ravindra Babu and PW.5 Anitha identified the dead body as that of Sunanda Devi. PW.6 Gurubasavaraj K., the son-in-law and PW.21 Sujatha, the daughter of deceased Sunanda Devi, also identified her dead body. Though PW.2 Shekar did not identify the dead body as that of Sunanda Devi and also failed to speak with regard to the presence of accused No.1 Narendra, when suggested that PW.3 Syed Asifulla, PW.4 Suryababu and PW.5 Anitha were present, he did not deny the said fact, but stated that among

them he knew PW.5 Anitha only. PW.3 Syed Asifulla and PW.4 Suryababu have clearly deposed that accused No.1 Narendra was present and led them to the place. PW.47 Surendra Babu is the Police photographer who was present and captured the photographs at the time of recovery of dead body of Sunanda Devi at the instance of accused No.1 Narendra. The evidence of PW.49 and 63 corroborates the testimonies of the other witnesses. Through the evidence of these witnesses, the prosecution proved that the dead body of Sunanda Devi was discovered at the instance of accused No.1 Narendra.

29. It is relevant to note that as per the first version of accused No.1 Narendra, Sunanda Devi died when her son deceased K.B.Kumaraswamy slapped her. However, the dead body of Sunanda Devi was having stab injuries, which indicated that the information furnished by accused No.1 Narendra was not true. On further interrogation accused No.1 Narendra gave

further statement, that he, along with accused Nos.2 and 3 killed K.B.Kumaraswamy by administering poisoned drink and thereafter killed Sunanda Devi by stabbing her with a knife in her house and they disposed of the dead body of Sunanda Devi in Elemallappa Shetty tank and thereafter, threw the dead body of K.B.Kumaraswamy in Linganakunte Tank of Honna Shetty village of Mulbagal Taluk. This part of confession cannot be proved against accused, therefore circumstances must be seen.

30. The evidence of the investigating officer i.e, PW.63 reveal that as per his further statement, accused No.1 Narendra led him and Panchas to Linganakunte Tank. However, the dead body of K.B.Kumaraswamy was not found. On enquiry, it was revealed that sometime back a dead body of an unknown male was found in the said tank and UDR.No.38/2014 was registered and as there were no claimants, after conducting inquest and post-mortem examination, it was

buried near the tank bed. On 26.10.2014, PW.53 M. Shankarappa, PSI, Mulbagal PS on receipt of a complaint at Ex. 27 from PW.10 Govindappa regarding a dead body floating in the tank registered UDR.No.38/2014. He visited the spot and in the presence of Panchas i.e, PW.12 Narayanaswamy, PW.13 C.N. Subramani, PW.14 Somashekhar and PW.15 Krishnappa, drew up mahazar at Ex.P28 and recovered the body. PW.12 to 15 identified the T-shirt and underwear found on the person of the dead body at MOs-3 and 15. A pair of slippers found on the bank were also seized. Ex.P29 is the inquest. It was subjected to post mortem examination as per Ex.P81. After finding that no one claimed the body, it was buried in the tank bed as per the mahazar at Ex.P30.

31. PW.41 Ramachandra is the photographer who captured the photographs of the unknown dead body found on 26.10.2014 as per Exs.P70 and 71. He also videographed the same as per MO-20. PW.48

Shivananda, PC, Mulbagal PS assisted PW.53. PW.16 Akbar Ali @ Hyderali Khan and PW.17 Jameer Ahmed are the persons in whose presence the dead body was buried. The testimonies of PWs-12 to 15 with regard to the finding of unknown dead body and identification of clothes on its body and that of PW.41 that he captured the photographs and recorded the videograph remained unchallenged by the defence.

32. Before requesting for exhuming the said body, PW.63 wanted to make sure that the body in question was that of K.B.Kumaraswamy. Therefore he took PW.21 Sujatha - the sister and daughter of deceased K.B.Kumaraswamy and Sunanda Devi respectively and PW.5 Anitha their neighbour to the Mulbagal PS and they identified the photographs and clothes of deceased K.B.Kumaraswamy. Based on the said information, PW.63 requested the Tahsildar to exhume the dead body of K.B.Kumaraswamy. PW.48 Shivananda, PC-567 had shown the place where the dead body was buried. It was

exhumed in the presence of PW.63 the investigating officer, PW.8 Vishwanatha, the cousin and PW.9 Rajasekaraiah, the brother-in-law of K.B.Kumaraswamy. They and PW.6 Gurubasavaraj K., identified the exhumed body as that of K.B.Kumaraswamy. In their presence, the mahazar at Ex.P23 and inquest at Ex.P24 are drawn. The investigating officer also recorded the statement of PW.6 Gurubasavaraj K., and PW.48 Shivananda. PW.41 also captured the photographs at Exs.P12 to 15 when the body of K.B.Kumaraswamy was exhumed. PW.8 Vishwanatha and PW.9 Rajashekaraiah have also deposed on this aspect. PW.6 Gurubasavaraj K also spoken about it. Except making formal suggestions, the evidence led by the prosecution regarding the exhumation of dead body of K.B.Kumaraswamy and its identification is not seriously disputed by the defence.

33. On the basis of voluntary statement of accused No.1 Narendra, PW.63 has drawn mahazar Ex.P16 at Nirmal Shouchalaya where the accused

persons had parked the Tata Indica car and made deceased K.B.Kumaraswamy sit inside the car and consume poisoned drink. According to the prosecution accused No.1 Narendra also led the investigating officer to Nawaz petrol bunk where they purchased petrol. PW.20 Chandra, the employee of the petrol bunk is cited as a witness to the mahazar drawn at the said place. However, he has also not supported the prosecution case. As led by accused No.1 Narendra, the investigating officer has also drawn a mahazar at the land of one Nataraj where the accused washed the car. PWs-49 and 63 have deposed on this aspect.

34. The investigating officer has also drawn a mahazar as per Ex.P19 in the land of one Ambalal Seth, where the accused burnt the on demands pronotes, cheques, notebook, diary and recovered partly burnt papers. Accused No.1 Narendra also led PW.63 to the place where they discarded the car by removing its number plates. However, the car was not found in the

said place, but a plastic can with small amount of petrol was found. The investigating officer seized the same through mahazar Ex.P20. To all these mahazars PW.4 Suryababu and PW.7 Amir Jan are witnesses. However, they did not support the prosecution case. Of course, PWs-49 and 63 have deposed on this aspect. The testimony of PW.49 M.D.Narayanappa HC-77 and PW.63 the investigating officer prove these mahazars.

35. It is pertinent to note that the Krishnagiri police seized an abandoned Tata Indica car in the proceedings drawn under Section 102 Cr.P.C and later the investigating officer received the same in this case. The fact that independent witnesses have not supported these various mahazars does not affect the case of the prosecution in the light of FSL reports with regard to the seized articles, which support the testimonies of PWs-49 and 63, which we would discuss a little later.

36. PW.36 Ramanachari is the owner of car bearing registration number KA-04-P-7480. He deposed that he borrowed hand loan from deceased K.B.Kumaraswamy by pledging the said car and Kumaraswamy was using the same. He specifically deposed that once he had seen K.B.Kumaraswamy along with PW.8 Vishwanatha on motorbike. He has identified Exs.P55 to 57 as the photographs of the said car.

37. PW.60 Vijay is working as in charge at Lanco toll. At the request of the investigation officer he furnished information to the effect that Car No.KA-04-P 7480 passed the toll at 12.52 am, on 22.10.2014. Since the video footage would be stored only for ten days, it could not be furnished. Since the 65B certificate was not produced on the objection raised by the defence the Court did not permit the prosecution to mark his report. However, during his cross examination PW.60 has denied the suggestion that, to help the investigating officer he has given false evidence. The very fact that

the said car was discovered at Krishnagiri, supports the evidence of this witness that on 21.10.2014, it has passed through the said toll.

38. It is the specific case of the prosecution that accused No.1 led the investigating officer to the shop of PW.33 Shaktivelu and pointed out that he and accused Nos.2 and 3 purchased clothes and discarded their previous clothes. The fact of accused Nos.1 to 3 having purchased new clothes is deposed by PW.33 Shaktivelu. He has specifically stated that accused Nos.1 to 3 purchased clothes from the said shop. His evidence reveal that for about two and half years he was running a ready-made cloth shop at Krishnagiri. About two years prior to his giving the evidence, accused Nos.1 to 3 came to his shop and purchased three pants, three shirts, three underwears, three banians and three Lungis. He identified Exs.P51 and 52 as the two bills and Ex.P53 as the visiting card collected from him by the investigating officer. He is cross-examined by the

defence as to whether he would be able to recollect every customer coming to his shop, etc.

39. The evidence led by the prosecution prove that accused Nos.1 to 3 had committed the murder of K.B.Kumaraswamy by making him to consume poisoned liquor. Thereafter, they went to the house of deceased and committed the murder of Sunanda Devi by stabbing her. They transported both dead bodies in the car and threw the dead bodies into different tanks. Thereafter, they proceeded to burn the pronotes, cheques and other papers collected from the house of K.B.Kumaraswamy. They also washed the car and discarded it at Krishnagiri. In all probabilities, during all this, there is probability that that the clothes which they were wearing became soiled and therefore, they purchased spare clothes, including underwears and lungis, etc. From the nature of purchase made by them itself might have made PW.33 Shaktivelu to remember them. Though, as a owner of the shop he may not be in a position to remember each

and every customer, in such a special occasion and especially after coming to know that they were suspected in a murder case, the possibility of he recollecting the faces of accused and the fact of making purchase in his shop cannot be ruled out. Despite lengthy cross-examination, the defence has failed to discredit his testimony. This is also a circumstance which corroborate the case of the prosecution.

40. At the instance of accused No.1, the Investigating Officer, i.e. PW.63 has drawn Mahazar at Ex.P.21 and the photographs as per Exs.P.36-41 were captured, at the school where he was working and showed the trunk in which he had kept the gold ornaments and silver articles stolen from the house of K.B.Kumaraswamy. PW.49 – M.D.Narayanappa, H.C.77 is also a witness to this Mahazar. Since the said valuables were no longer available in the trunk, this fact may not assume importance. PW.24 –B.M. Surendra is the colleague of accused No.1 –Narendra. Though he has

deposed with regard to the friendship between accused No.1 –Narendra and K.B.Kumaraswamy and they were into finance transaction and that he had also taken loan of Rs.7,000/- from K.B.Kumaraswamy and accused No.3 – Munireddy used to visit accused No.1 – Narendra, he has resiled from his statement that on the last date when accused No.1 attended school, he took away a big bag with him. However, his evidence establish the fact that accused No.1 Narendra and deceased K.B.Kumaraswamy were friends and doing finance business and accused No.3- Munireddy used to visit accused No.1-Narendra.

41. As already noted, accused No.1 was working as a teacher in Government school. After the incident, he absconded and consequently, failed to attend duty. At the relevant point of time, PW.45 B Jagadish was working as B.E.O. Kolar Taluk. He has deposed that after the arrest of accused No.1 the investigating officer informed the said fact to the department and sought for

certain document. In this regard he visited the school and verified the attendance and found that accused No.1 had remained absent unauthorizedly from 06.11.2014 without informing the higher officers. Ex.P86 to 90 are the said documents produced by him. It appears during investigation when the fact of accused No.1 being a close friend of K.B.Kumaraswamy came to the notice of the investigating officer, accused No.1 absconded. On 08.11.2014 he was apprehended.

42. According to the prosecution, after the incident, accused No.1 handed over MO.19, gold chain to CW.15 B.S.Venkatesh saying that it belonged to his mother and requested him to get loan by pledging it. Accordingly, CW.15 B.S.Venkatesh pledged the same with Muthoot Finance, Malur, for Rs.1,00,000/- and paid the said amount to him. During investigation, CW.15 B.S. Venkatesh has given statement to this effect and undertaken to produce the said gold chain after getting it released from the pledge. He has also given further

statement dated 25.12.2014 to the effect that he has got released the gold chain from Muthoot Finance and produced before the Investigating Officer. The Investigating Officer-PW.63 recovered the same through Mahazar Ex.P92 in the presence of PW.51 Shankarachari, and PW 57 H.R.Ramesh.

42.1 Unfortunately, before CW.15 B.S.Venkatesh could be examined, he died. PW.51 Shankarachari who had a goldsmith shop opposite to Kambliswamy Matha has identified MO.19 gold chain and stated that Sunanda Devi used to wear it and in the police station he identified it. PW.57 H.R. Ramesh is also witness to Mahazar Ex.P92. Though he has deposed that he knew CW.15 B.S.Venkatesh and accused No.1 Narendra and admits his signature in Ex.P92, he has not supported the prosecution case with regard to seizure of MO.19. During his cross-examination by the prosecution he has denied that when CW.15 B.S.Venkatesh produced MO.19, he was present and signed the mahazar. However, his

evidence is that he, CW.15 B.S.Venkatesh and accused No.1-Narendra, were knowing each other and MO.19 gold chain belong to Sunanda Devi, is not disputed by the defence.

42.2. PW.35 Asadulla is the Manager of Muthoot Finance, Malur. He has deposed that on 31.10.2014 CW.15 Venkatesh pledged MO.19 gold chain for Rs.1,00,000/-. On 10.12.2014, he paid the said amount along with interest and got it released. His evidence is not disputed by the defence. Of course there is evidence of PW.63 the Investigating Officer with regard to CW.15 Venkatesh producing MO.19 before him and its recovery through Mahazar at Ex.P92. Despite the fact that PWs.51 Shankarachari and 57 H.R. Ramesh not supporting the prosecution case, through the testimonies of PWs.35 and 63, the prosecution has proved that MO.19 gold chain belonged to Sunanda Devi, was pledged by CW.15 B.S. Venkatesh at the instance of accused No.1 Narendra and after coming to know that it is subject matter of murder,

he has got it released and produced before the investigating officer and it is seized through Mahazar Ex.P92.

43. Based on the information given by accused No.1 -Narendra, the investigating officer secured the presence of accused No.2 through PW.49. He led them to eucalyptus grove and showed the place where he had burnt the cell phones belonging to deceased and car number plate. The burnt plastic and fiber pieces were seized through Mahazar at Ex.P2. PW.1-Ravindra Babu and PW.9- Rajashekaraiah are witnesses to the same. PW.9 has stated that accused No.2 was present and he led them to the place. However, before the Court he identified accused No.3 as the said person. It is pertinent to note that accused No.3 was not at all in custody at that time as he came to be arrested on 02.09.2016. It appears due to lapse of time, he was not able to correctly identify accused No.2. Though in the examination-in-chief PW.1-Ravindra Babu has only

stated that a person in custody, led them to the place. During his cross examination by the prosecution, he admitted that it was accused No.2. Of course, there is evidence of PW.49 and PW63 with regard to the recovery of plastic and fiber pieces at the instance of accused No.2.

44. According to the prosecution when accused Nos.1 and 2 caught hold of Sunanda Devi, while accused No.3 stabbed her, she bit the right middle finger of accused No.2. In this regard, investigation officer got accused No.2 examined by PW.44 Dr.Sowmya and she gave injury certificate at Ex.P85. She has given evidence on this aspect and stated that if a person who is assaulted, tries to escape, he may cause such injury. It is pertinent to note that when PW.44 was not in a position to give opinion as to whether the injury sustained by accused No.2 Suresh Kumar was due to human bite, the investigation officer took opinion of PW.46 Dr. D.K. Ramesh. After examining accused No.2

B.S. Suresh Kumar he has given opinion that the said bite mark is due to human bite.

45. During cross examination PW.46 Dr. D.K. Ramesh has denied that he did not examine accused No.2 and to help the police, he gave false opinion. It is relevant to note that if the injuries sustained by accused No.2 B.S. Suresh Kumar was not due to human bite, he could have given explanation as to how he sustained it. There is no suggestion by the defence with regard to the same. The evidence of PWs.44 and 46 prove that accused No.2 suffered a human bite to his middle finger which corroborates with the prosecution case that it was caused while deceased Sunanda Devi tried to escape from the clutches of accused Nos.1 to 3 and this information is forthcoming from accused No.2- B.S.Suresh Kumar.

46. The allegations against accused No.4 is that some time after the incident at the instance of accused

No.1, when accused No.3 concealed the bag containing gold ornaments and silver articles in the Mulberry farm of Krishnappa – the father of accused No.4, he in turn without the knowledge of accused Nos.1 to 3 concealed the same inside an abandoned well situated in the said land. During investigation through PW.49 the presence of accused No.4 was secured. Based on his voluntary statement on 03.12.2014, the Investigating Officer, i.e. PW.63 P. Shivakumar recovered the same through Mahazar as per Ex.P44.

47. PW.22 C.N. Subbanna – Revenue Inspector and PW.23 Shankar – F.D.A. are the witnesses to the said Mahazar. PW.55 Krishna is the goldsmith who examined and noted the weighment of these gold and silver articles. They have deposed in detail the recovery made at the instance of accused No.4. Despite their lengthy cross examination the defence could not discredit their testimony. At the time of the said Mahazar PW.21 Sujatha, the sister of K.B.Kumaraswamy was also

present. She has also deposed to that effect and stated that the said ornaments include gold bangles of her mother.

48. It is pertinent to note that though the investigating officer arrested accused Nos.1, 2 and 4 and conducted detailed investigation, accused No.3 successfully evaded arrest till 02.09.2016. Having regard to the fact that the investigation revealed his involvement in offence in question and as accused Nos.1, 2 and 4 were in custody, the investigating officer filed charge sheet against accused Nos.1 to 4 showing accused No.3 as absconding.

49. PW.49 along with other staff apprehended accused No.3 on 02.09.2016 from K.R. Puram bus stand and produced him before the investigating officer. In this regard, PW.64 M.J. Lokesh, C.P.I. conducted further investigation. He has recorded the voluntary statement of accused No.3, as per which, he offered to point out

the place where he has discarded the knife used for assaulting Sunanda Devi and poison bottle. However, despite making efforts, the same could not be found. During his voluntary statement accused No.3 has disclosed that he has pledged a gold chain belonging to Sunanda Devi in Manappuram Finance through PW54 Srinivas. In fact, during the course of his evidence PW.54 Srinivas has conceded the said fact and deposed that at the request of accused no.3 Munireddy @ Chikka he pledged a gold chain with Manappuram Finance and collected Rs.22,000/- and handed it over to him.

49.1 In this regard, the investigating officer issued notice to Manappuram Finance to produce the gold chain with documents. PW.56 Gowrishankar is the Manager of Manappuram Finance, Clock Tower Branch, Kolar. He has deposed that PW.54 Srinivas had pledged the gold chain in question and availed loan. Since he failed to pay the amount within the stipulated time, it was auctioned. He has identified the attested copies of the covering

letter, pawn ticket, demand pronote, terms and conditions sheet, statement of account and customers identity proof which are together marked as Ex.P102. Thus, through the evidence of PWs.54, 56 and 64, the prosecution proved that the gold chain belonging to the deceased was pledged by PW.54 at the instance of accused No.3 – Munireddy @ Chikka. In fact, the testimony of PW.54 is not disputed by accused No.3.

50. PW.63 has also collected the FSL reports, PM reports and also documents pertaining to UDR 38/2014 and submitted to the Court.

51. It is pertinent to note that though the incident took place on 21.10.2014, the dead body of K.B.Kumaraswamy was discovered on 26.10.2004. Since no one claimed the same, after taking its photographs and preserving the clothes found on the dead body and after subjecting the body to postmortem examination, it was buried. It was exhumed on 17.11.2014. The dead

body of Sunanda Devi was traced at the instance of accused No.1 Narendra on 08.11.2014. Exs.P6 to 9, 12 to 15, 70, 71, 100 and 101 are the photographs of the dead bodies. They have been indentified by the close relatives and friends of deceased. Despite the fact that the bodies were decaying, they are able to identify the dead bodies as belonging to Kumaraswamy and Sunanda Devi.

52. PW.42 Dr.Suguna conducted the first postmortem examination on the dead body of K.B.Kumaraswamy as per Ex.P81, when the identity of dead body was not yet known. As the body was not having any injuries, in all probabilities it was thought to be a case of suicide. Therefore, the investigating officer did not request for preserving vicera. However, he requested for removing the thigh bone for DNA testing purpose. Accordingly, the Medical Officer removed the thigh bone for sending to FSL. The clothes were also packed and sent to Investigating Officer.

53. After the exhumation of the dead body of K.B.Kumaraswamy, the second postmortem examination was conducted by PW.43 Dr. Umesh Babu as per Ex.P84. With the information received from accused No.1 that K.B.Kumaraswamy was administered alcohol laced with poison, on the instruction of the Investigating Officer, PW 43 preserved the stomach and its contents, portion of small intestine and its contents, portion of liver and both kidneys for chemical analysis. He also collected soil sample near dead body i.e., from below, above, sides of the dead body and also soil sample 30 feet away from the grave.

53.1. Ex.P103 is the chemical analysis report of the stomach contents of K.B.Kumaraswamy. As per this, presence of Methyl Parathion (organophosphorous insecticides) and Ethyl alcohol was found in article 1 and 2. Methylparathion was also found in article 3.

53.2 It is pertinent to note that PW 43 Dr.Umesh Babu who conducted the autopsy was relieved from the institution on 06.10.2015 and therefore, after receipt the chemical analysis report, as he was not available for giving opinion, the Investigating Officer collected the final opinion regarding cause of death through PW 58 Dr. Kiran. After examining the PM report and chemical analysis report, he gave opinion that the death of Kumaraswamy was due to consumption of Methyl Parathion (organophosphorous insecticides) and Ethyl alcohol. It is consistent with the information furnished by accused No.1 regarding administration of insecticide mixed drink.

53.3 Ex.P139 is the chemical report regarding a pair of slippers, one underwear and T-Shirt belonging to K.B.Kumaraswamy regarding the presence of any poisonous material. As per this report, on the T-Shirt the presence of Methyl Parathion (organophosphorous insecticides) was found. This also corroborates the case

of the prosecution that the T-shirt in question belonged to K.B.Kumaraswamy. It appears when he was administered insecticide which was mixed in alcohol, in all probability he vomited and therefore, the said chemical was found on his T-shirt. It is pertinent to note that as per the voluntary statement of accused no.1, while proceeding to dispose of the dead body of K.B.Kumaraswamy, the accused persons removed his pant and threw it somewhere in the darkness of night and as such, it could not be recovered. The presence of the same chemical on the T-shirt belonging to deceased which is the cause of his death also corroborate with the prosecution case that the T-shirt in question belongs to the deceased and his T-shirt is one of the material objects based on which his dead body was identified by PW.21 Sujatha and other relatives and friends of K.B.Kumaraswamy.

54. The dead body of Sunanda Devi was subjected to examination by PW-43 Dr.Umesh Babu. Ex.P82 is the

postmortem examination report. The PM report reveals the following injuries on her dead body.

- i) *Incised wound 8cm x 4cm x muscle deep present over left side of the neck, obliquely situated from suprasternal notch to a point 6cm below left ear lobe. The margins are sharp the jugular vein and sterno mastoid muscle is cut.*
- ii) *Stab wound 3cm x 1cm present over back situated 3cm inner to the inner margin of shoulder blade bone and 5cm above the level of tip of shoulder blade bone on left side. On dissection the wound has pierced through muscles of the back, third and fourth ribs on left side, fourth inter costal space and parietal pleura and entered the pleural cavity.*

55. Similarly, the opinion regarding cause of death of Sunanda Devi was also furnished by PW.58 Dr. Kiran as per the endorsement in Ex.P82, according to which her death was due to multiple injuries sustained to the neck and chest.

56. Despite lengthy cross examination of the medical officers, the defence has failed to discredit their evidence with regard to the cause of death of K.B,.Kumaraswamy and Sunanda Devi. The cause of death of Sunanda Devi clearly indicate that at the first instance, accused No.1 Narendra tried to mislead the investigating officer with a story that she died when her son K.B.Kumaraswamy slapped her and at his request, he helped K.B.Kumaraswamy to dispose of the dead body of Sunanda Devi and thereafter, K.B.Kumaraswamy departed him saying that he would commit suicide and that in all probabilities he has committed suicide. In fact, initially the investigating officer arraigned K.B.Kumaraswamy as accused No.1

and Narendra as accused No.2 for the offences punishable under Sections 302 and 201 of IPC. Only after the dead body of Sunanda Devi was traced and finding stab injuries, the investigating officer realised that accused No.1 might have tried to mislead him and therefore proceeded with investigation. This is also an important circumstance pointed towards the guilt of the accused persons.

57. After the dead body of K.B.Kumaraswamy was exhumed and subjected to PM examination at Ex.P84, the medical officer collected i) stomach and its contents; portion of small intestine and its contents ii) portion of liver and kidney iii) soil sample around the body and soil sample 30 ft. away from the body. This fact is forthcoming in the PM report of K.B.Kumaraswamy at Ex.P.84.

58. In the FSL report at Ex.P103, it is stated that the presence of Methyl Parathion (organophosphorous

insecticides) and Ethyl alcohol was found in item Nos.1 and 2. Similarly, the presence of Methyl Parathion (organophosphorous insecticides) and Ethyl was found in article 3. The tests are negative in articles 4 and 5. Normally, the chemical analyser would list the articles as per the order in which it is collected and noted in the covering letter. Accordingly, in Ex.P.103, the third article ought to have been sample soil around the body, but, it is noted as sampling soil established at a distance of 30 ft. away from the body. In other words as per this document in the soil sample 30ft. away from the body presence of Methyl Parathion (organophosphorous insecticides) was detected, but it was not found in the soil around the body, which appears to be a mistake while listing the items received from the investigating officer and in the report, their place is interchanged.

59. It is also relevant to note that Ex.P137 is the chemical report regarding the nature of the soil is as follows:

MATERIALS EXAMINED

Sl. No.	Description of Article/s	IO Marking
1.	Soil said to have been collected around the dead body	3
2.	Soil said to have been collected at a place 30 feet away from grave	4
3.	One pair of black with while colored PRIDE Company slippers	I
4.	One V.I.P FRENCHIE company Kacha	II
5.	One red colored POLICOTTON Company T-Shirt	III

60. In this report, the soil collected around the dead body is noted first and thereafter, the soil collected at a place 30ft. away from the grave is noted as the second item and the chemical analyser has marked them as 3 and 4. However, in Ex.P103, their marking is reversed which also indicates that it may be a mistake.

61. On this basis, the learned counsel appearing for accused No.2 submitted that the dead body in question might not be that of K.B.Kumaraswamy and it may be a dead body of some other person. It is pertinent to note that the accused more particularly, accused No.2 has not cross examined the investigating officer, i.e. PW.63

about this discrepancy. He would have been a proper person to explain the same, especially, whether in the recent past the dead body of any other male with history of poisoning was found buried in the tank bed near the dead body of K.B.Kumaraswamy. The accused have also not chosen to request the Trial Court to summon to chemical analyser and cross examine him on this aspect. Without drawing the attention of the witness on this aspect the defence cannot take advantage of the same at the argument stage. The very fact that the contents of the stomach and liver and kidney of deceased contained Methyl Parathion (organophosphorous insecticides) and Ethyl alcohol supports the case of the prosecution that it was accused Nos.1 to 3 who committed the murder of K.B.Kumaraswamy and the fact of administering insecticide mixed with alcoholic drink was in their exclusive knowledge. In the light of overwhelming evidence led by the prosecution connecting the accused persons with the crime, the

discrepancy noted above in the chemical report at Ex.P103 would not create doubt in the prosecution case.

62. It is also relevant to note that during the course of her evidence, PW.21 Sujatha the daughter and sister respectively of Sunanda Devi and K.B.Kumaraswamy has deposed that when she saw the dead body of K.B.Kumaraswamy, she found his head tonsured and his hair was found in the plastic bags covering the dead body of Sunanda Devi. On this observation, she has deposed that the accused had tonsured the head of K.B. Kumaraswamy and put his hair in the bags covering the dead body of Sunanda Devi. It is not the case of the prosecution that the accused persons had tonsured the head of K.B.Kumaraswamy.

63. It is relevant to note that while conducting the postmortem examination of Sunanda Devi, the medical officer observed that the scalp hair could be pulled out easily. In PM examination of K.B. Kumaraswamy at

Ex.P84, the medical officer has noted that the scalp hair was missing. It appears K.B. Kumaraswamy might have removed the hair immediately prior to the incident due to some religious reason or otherwise, and as PW.21 Sujatha had not met him recently, she was not knowing the same. After finding that his scalp hair was missing and the hair of Sunanda Devi was coming out easily, she might have thought that accused tonsured the head of K.B. Kumaraswamy and kept them in the plastic bags covering the dead body of Sunanda Devi.

64. At this stage, it is relevant to note that the dead body of Sunanda Devi was covered in two plastic bags and tied securely. There was no possibility of air entering the said bags. Putrefaction (decomposition) in the absence of air in a humid environment caused due to anaerobic bacteria would cause proteolysis and adipolysis leading to easy pluckability of hair and nails. It appears, for this reason the scalp hair of deceased Sunanda Devi was coming out easily. This might have

confused PW.21 Sujatha. Of course, the accused have not challenged the fact that at the time of his death, the scalp hair of K.B.Kumaraswamy is missing. The evidence of PW.21 is not challenged by the defence on this aspect.

65. It is also relevant to note that though accused No.2 removed the number plate of Tata Indica in which the dead body of K.B. Kumaraswamy and Sunanda Devi were transported, and burnt them along with the cell phones of K.B.Kumaraswamy and Sunanda Devi, the burnt pieces of the same were recovered by the investigating officer and subjected to chemical examination as per Ex.P134. The articles examined by the chemical analyzer as per Ex.P.134 are as follows;-

MATERIALS EXAMINED

Sl. No.	Description of Article/s	IO Marking
1	Semi burnt paper, plastic pieces and ash	1
2	Semi burnt paper and plastic pieces.	2
3	Sample mud	3
4	Plastic, fiber, keypad, printed circuit board, white color plastic pieces and ash	5
5	Sample mud	6

66. According to this report the black colour stick cutting on the white colour plastic pieces found in article No.5 could belong to registration number plate. Similarly, the semi burnt black colour keypad and printed circuit board found in article No.5 could be of mobile phone.

67. It is pertinent to note that the investigating officer could not find Tata Indica Car parked at the place pointed out by accused No.2. However, his further investigation reveals that it was seized by the Krishnagiri police as unclaimed vehicle. Exs.P72 is the FIR and Ex.P73 is the complaint registered in this regard. Ex.P74 is the PF, Ex.P75 is the Mahazar drawn by the Krishnagiri police. Its English translation is also produced and enclosed with them. It clearly indicates that Car with engine No.475IDI01 FZZP33026 and chasis No.600/3/FZZ133082 was seized by the Krishnagiri police. It is submitted to the jurisdictional Magistrate

through PF 135/2014 as per Ex.P128. Ex.P131 is the vehicle details received from the website of R.T.O. It is standing in the name of one S.A.Babu. As per this document, the registration number of the vehicle with engine No.475IDI01 FZZP33026 and chasis No.600/3/FZZ133082 is Tata Indica KA-04 P7480.

67.1 As already noted, PW.36 Ramanachari has deposed that Tata Indica bearing registration No.KA-04 P-7480 belongs to him. He had purchased it through a broker and pledged the same to K.B.Kumaraswamy after borrowing hand loan of Rs.50,000/-. The evidence of this witness regarding Tata Indica bearing No.KA-04 P7480 belonging to him and that he had pledged it with K.B. Kumaraswamy is not disputed by the defence. Thus, despite the accused persons destroying its registration number plate, the prosecution has proved that the vehicle which was abandoned within the jurisdiction of Krishnagiri was pledged with deceased K.B.Kumaraswamy and it was used by the accused

persons to transport the dead bodies of K.B. Kumaraswamy and Sunanda Devi. The prosecution has also proved that the burnt plastic and fiber pieces recovered at the instance of accused No.2 were in fact that of the registration number plate of the said car and cell phones which accused had taken from the deceased.

68. Ex.P135 is the chemical report pertaining to burnt paper pieces of diary, newspaper pieces, plastic pieces along with ash, label found on blue coloured rexine of a diary and a petrol can containing small amount of orange colour liquid. On examination, the chemical analyser has found that the paper pieces contained petrol resedue and the liquid in the petrol can responded positive for petrol. Similarly, Ex.P136 is the chemical report regarding the soil and ash collected from the spot from where the above paper pieces were recovered. It also respond positive for the presence of petrol. This corroborate the voluntary statement given by accused No.2 regarding burning of notebook, diary,

blank pronotes cheques and other papers collected from the house of K.B.Kumaraswamy after killing his mother.

69. Ex.P132 is the chemical report regarding the blood stained tile and blood stained mop recovered from the house of K.B.Kumaraswamy. The chemical report states that presence of blood stains were detected in item Nos.1 and 2. Since it was disintegrated, its origin could not be determined. Ex.P.138 is the chemical report with regard to the pair of slippers, underwear and T-shirt of K.B.Kumaraswamy. It also state that presence of blood stains were detected on these items which were of human origin but its grouping could not be determined as the tests were inclusive.

70. The evidence led by the prosecution proves that the dead bodies of K.B.Kumaraswamy and his mother Sunanda Devi were transported in the same vehicle. Though K.B.Kumaraswamy had not sustained any bleeding injuries, the evidence led by the prosecution

proves that Sunanda Devi sustained bleeding injuries and while transporting the dead bodies, in all probabilities, the blood oozing from the dead body of Sunanda Devi might have stained the underwear, T-shirt and slippers of K.B.Kumaraswamy. The dead body of K.B.Kumaraswamy was found on 26.10.2014 within five days of the incident. After conducting PM examination, it was buried. It appears for this reason the blood stains on his clothes were preserved and responded to the chemical examination. The pair of slippers belonging to K.B.Kumaraswamy were found on the bank of the tank and for this reason also the blood stains were preserved. Therefore, the arguments of the defence counsel that it was not the dead body of K.B.Kumaraswamy cannot be accepted.

71. It is also relevant to note that, the dead body of Sunanda Devi was recovered on 08.11.2024 at the instance of accused No.1 after 18 days of her death. During this period, her dead body was floating in the

water amid the vegetation grown here. It appears for this reason the Investigation officer could not find any blood stains and as such, he did not refer the clothes of Sunanda Devi for chemical analyses. Of course, defence has not questioned the investigating officer about the same.

72. Ex.P140 is the chemical report regarding the chilli powder collected from the house of deceased which was found sprinkled everywhere. It responded positive to the presence of chilli powder ingredients and both samples are similar in morphological character.

73. Ex.P141 is the DNA report of femur bone collected at the first PM examination of the dead body of K.B.Kumaraswamy. Unfortunately, the DNA profile examination could not be conducted as the amplicons collected from the bone were not sufficient. Anyhow, prosecution has established the identity of both dead bodies as that of K.B.Kumaraswamy and Sunanda Devi.

Though the medical officers and the investigating officers have stated that the dead bodies were decaying, their condition was such that, for the near relatives and friends it was possible to identify them, there is positive identification of the dead bodies by PWs.5, 6 and 21. The identification of the clothes and slippers of K.B.Kumaraswamy also support and corroborate the case of the prosecution in identifying the dead bodies in question. In fact, the photographs captured at the time of discovery of dead bodies also corroborate the testimony of witness in identifying the dead bodies. Therefore, the fact that DNA report could not be carried out for want of sufficient amplicons would not affect the case of the prosecution.

74. The evidence of PWs.62 to 64 who are the investigating officers and also the testimony of PW.53 who conducted investigation with regard to discovery of dead body of K.B.Kumaraswamy and conducting of spot mahazar, inquest and subjecting it to postmortem

examination corroborate with the prosecution case. Despite their lengthy cross examination the defence has failed to discredit their evidence, especially with regard to identification of the dead bodies as that of K.B.Kumaraswamy and Sunanda Devi. Having regard to the situation in which these dead bodies were discovered, the attempts made by accused Nos.1 to 3 to destroy the evidence, the investigating officer collected the best evidence that could be gathered. The complicity of accused Nos.1 to 3 in the killing of K.B.Kumaraswamy and Sunanda Devi is corroborated by the discovery of the gold ornaments and silver articles taken away from their house, more particularly, the gold chains, bangles belonging to deceased Sunanda Devi which are identified by her daughter and neighbor and other relatives.

75. The discovery of car which was being used by K.B.Kumaraswamy as per the information furnished by accused No.1 and also the fact that the presence of petrol found in the burnt papers and plastic pieces

discovered at the instance of accused Nos.2 and 3 and also that the plastic pieces discovered are those of the cell phones and burnt number plates of the vehicle, also corroborate the case of the prosecution. Moreover, the recovery of entire gold ornaments and silver articles stolen from the house of deceased at the instance of accused No.4 which he had taken away from the place concealed by accused No.3 also prove the complicity of accused persons. In this regard, the decision of the Hon'ble Supreme Court in ***Mahaboob Ali and Another Vs. State of Rajasthan***¹⁰ is relevant and applicable to the case on hand. Though the dead body of K.B. Kumaraswamy and Sunanda Devi were discovered at the instance of accused No.1 which is a material evidence, the discovery of other incriminating evidence at the instance of accused Nos.2 to 4 connect the complicity of accused No.2 and 3 in the actual commission of murder of K.B.Kumaraswamy and Sunanda Devi.

¹⁰ (2016) 14 SCC 640

76. Accused No.3 who was an acquaintance of accused No.1 also absconded till 02.09.2016. In fact, the investigating officer had to file charge sheet showing him absconding. After he was arrested on 02.09.2016, PW.64 conducted further investigation and produced additional documents to the Court. The conduct of accused No.3 in absconding is one of the circumstances establishing his complicity in crime.

77. Now coming to the decisions relied upon by the accused. ***Sharad Birdhichand Sarda*** was a case of death by cyanide poisoning. The issue involved was whether it is a case of suicide or murder. In the present case, at the first instance, accused No.1 tried to project it as though K.B.Kumaraswamy caused death of his mother Sunanda Devi by slapping her and after disposing of her dead body with the help of accused No.1, he committed suicide. However, after finding that the dead body of Sunanda Devi was having stab injuries, the investigating officer found the story put forth by

accused No.1 Narendra as false leading to further investigation. Having regard to the nature of the poison that caused the death of K.B.Kumaraswamy, it is highly improbable that after consuming the said poison, he would keep his slippers in an orderly manner on the bank of the tank and jump into it. Moreover, when his body was traced, his pant was missing. A person who wants to commit suicide would not remove his pant and jump into the water. The investigation carried out in the case and the evidence of PW.63 reveal that though accused No.3 led the investigating officer and other witnesses to point out the place where he had disposed of the bottle in which the insecticide was brought and the knife used by him to assault Sunanda Devi, since it was thrown into the tank, he could not find it. However, the fact that the death of K.B.Kumaraswamy was due to administering poisonous substance like Methyl Parathion (organophosphorous insecticides) and Ethyl alcohol there is support to the prosecution case to connect

accused No.3 with the crime in question as it was within his exclusive knowledge and admissible under Section 27 of the Evidence Act. Taking into totality of the evidence, despite the fact that the investigating officer could not trace the poison bottle and knife, we are of the considered opinion that prosecution has proved that the death of K.B.Kumaraswamy was due to administering the insecticide mixed with alcohol.

78. In fact in ***Bhupinder Singh***, the Hon'ble Supreme Court held that in the light of other evidence led by the prosecution, failure to prove that the accused had poisoned in his passion is not fatal. Similarly in ***Shanmugham*** which is a case of murder by administering cyanide, based on circumstantial evidence the Hon'ble Supreme Court upheld the conviction of accused.

79. In ***Vijender***, on facts the Honb'le Supreme Court held that, in a case based on circumstantial

evidence abscondence is a weak link. In ***Sekaran***, on facts the Hon'ble Supreme Court held that mere abscondence was not a ground to hold that accused has committed the offence. However, in the present case, in addition to the evidence of abscondence of accused Nos.1 to 3 there is overwhelming evidence to connect them to the crime in question and therefore, this decision is not applicable to the case on hand.

80. In ***Siraganahalli Rangappa***, on facts it was held that the prosecution has failed to prove the allegations against the accused beyond reasonable doubt. However, in the present case, prosecution has proved each and every circumstance connecting the accused persons to the crime in question and therefore, this decision is not applicable to the case on hand.

81. ***Kalinga Alias Kushal*** was a case based on extra judicial confession of the accused. It has no relevancy to the present case.

82. In ***Raja Naykar***, the Hon'ble Supreme Court held that where the recovery is from a place accessible to all or from improbable place, it belies the prosecution case. In the present case, the recovery of dead body of Sunanda Devi was from a tank. It was completely covered in plastic sheets and tangled in the hives grown in the tank. In fact, it was not visible to anyone. No one could assume that a dead body is inside the said plastic bags. It was exclusively within the knowledge of accused No.1 Narendra. As per his voluntary statement it was discovered and therefore, it cannot be said that the recovery was from a place accessible to all or from an improbable place. So far as discovery of the dead body of K.B.Kumaraswamy is concerned, it was found floating in the tank. After finding that there are no claimants, it was buried. On the voluntary statement of accused No.1 when attempts were made to find the dead body, it was not found. The further enquiry reveals that earlier from the said place a dead body of a male was found and it

has been buried. After the daughter and neighbour of deceased identified the dead body of K.B.Kumaraswamy through photographs, and its clothes, the investigating officer has got the body exhumed and it was also identified by them. These factors clearly establish the discovery of the dead bodies at the instance of accused No.1. Therefore, this decision is not applicable to the case on hand.

83. The ratio in ***Pramodhkumar N. @ Pramoda*** is not applicable to the facts and circumstances of the present case.

84. In ***Geerish Honnai and Ram Saran Matho*** on facts it was held that the prosecution has failed to prove all the circumstances. However, in the present case the allegations against accused are proved beyond reasonable doubt. Therefore, this decision is not applicable to the case on hand.

85. The accused No.1 has relied upon the decision of the Hon'ble Supreme Court in ***Ram Saran Matho*** wherein direction was given to the investigating officer to record the voluntary statement of accused in the presence of two independent witnesses, whereupon leading to the discovery of incriminating evidence. This procedure is not contemplated under the provision of Section 27 of the Evidence Act. The very fact that an incriminating evidence is discovered based on the voluntary statement of the accused gives credence to its discovery and for this reasons only Section 27 is carved out as an exception to Sections 24 and 25 which makes a statement given to the police inadmissible. The directions given by the Hon'ble Supreme Court in this decision regarding the procedure to be adopted could be followed in those cases subsequent to the judgment. Only on the ground that the said direction which is subsequent to the judgment is not followed in the earlier cases, cannot be a ground to discard the evidence of

discovery which is admissible under Section 27 of the Evidence Act. Only whether the said discovery is established in accordance with Section 27 and other provisions contemplated under Evidence Act is required to be examined. Therefore, the accused cannot press into service the ratio in the above decision and it is not applicable to the case on hand.

86. Thus, through the elaborate evidence led by the prosecution, it is proved that accused Nos.1 to 3 committed the murder of K.B.Kumaraswamy and Sunanda Devi and after collecting the gold ornaments, silver articles, blank cheques, promotes and other documents disposed of the dead bodies. During investigation, they were discovered on the basis of voluntary statement of accused Nos.1 to 4. Taking into consideration the oral and documentary evidence placed on record, the trial court has rightly convicted accused Nos.1 to 3 for the offence punishable under Section 302

and 201 of IPC and accused No.4 for the offence punishable under Section 201 of IPC.

87. So far as death punishment imposed on accused No.1 is concerned, though he betrayed his friend K.B.Kumaraswamy and was a mastermind to eliminate the friend and his mother and with the help of accused Nos.2 and 3 killed them, the same cannot be categorized as a rarest of rare case warranting death penalty. Therefore, we are of the considered opinion that accused No.1 is liable to be punished with imprisonment for life, as accused No.2 and 3 are sentenced. To this extent, the appeal filed by accused No.1 deserves to be allowed in part.

88. So far as the offence punishable under Section 201 of IPC is concerned, the Trial Court has sentenced accused Nos.1 to 3 to undergo imprisonment for life and also pay fine of Rs.50,000/- each with default sentence. So far as accused No.4 is concerned he is sentenced to

undergo imprisonment for two years and to pay fine of Rs.10,000/- with default sentence.

89. Section 201 of IPC prescribes punishment for causing disappearance of evidence of offence or giving false information to screen the offender. It reads as follows.

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.--Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.--shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.--and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.-- and if the offence is punishable

with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

90. As per this section, when the main offence for which the accused are punished which is punishable with death, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine. If the main offence is punishable with imprisonment for life or imprisonment which may extend to ten years then for the offence under Section 201 the punishment that may be imposed is imprisonment of either description for a term which may extend to three years and shall also be liable to fine. If the main offence is punishable with less than ten years, then the accused is liable to be punished for a term which may extend to $\frac{1}{4}$ part of the longest term of imprisonment provided for the offence or with fine or with both.

91. Taking into consideration the punishment which is prescribed for Section 201 of IPC, we are of the considered opinion that sentencing accused Nos.1 to 3 to undergo imprisonment for life and also to pay fine of Rs.50,000/- with default sentence imposed by the Trial Court for the offence punishable under Section 201 of IPC is on the higher side. Having regard to the facts and circumstances of the case, we are of the considered opinion that, it would be appropriate to sentence them to undergo imprisonment for two years and pay fine of Rs.10,000/- each and it would meet the ends of justice.

92. In the result all the appeals fail and accordingly, the following:

ORDER

- (i) Crl.A.Nos.430/2018, 493/2018, 825/2018, 292/2018, filed respectively by accused Nos.1 to 4 are dismissed.
- (ii) The Crl.R.C.No.2/2018 filed by State is rejected.

- (iii) The sentence of life imprisonment and fine imposed by the Sessions Court on accused nos.2 and 3 for the offence u/S 302 r/w 34 IPC is confirmed.
- (iv) The death sentence imposed on accused no.1 by the Sessions Court for the offence under Section 302 of IPC is set aside and instead he is sentenced to rigorous life imprisonment and fine of Rs.50,000/- and in default to pay the fine amount, he shall undergo simple imprisonment for a period of six months.
- (v) For the offence U/ 201 r/w 34 IPC, sentence imposed by the Sessions Court is modified and each of accused nos.1, 2 and 3 is sentenced to imprisonment for a period of two years and fine of Rs.10,000/-. In default of payment of fine, each of accused nos.1, 2 and 3 shall undergo imprisonment for one month.
- (vi) The sentence imposed by the Sessions Court on accused no.4 for the offence u/S 201 IPC is confirmed.
- (vii) The substantive sentence of imprisonment imposed on accused nos.1, 2 and 3 u/S 201

IPC shall run concurrently with the life imprisonment imposed on them.

- (viii) The custody period of accused nos.1 to 3 may be counted for the purpose of remission u/S 432 of Cr.P.C., if they are entitled to remission.
- (ix) Accused no.4 is entitled for set off for the period of his custody before he was released on bail.
- (x) Registry shall send back the records along with the copy of this judgment.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(J.M.KHAZI)
JUDGE**

RR/Vmb/MBS/Ac
List No.: 1 Sl No.: 13