

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No.46/2021

C/W

CRIMINAL APPEAL No.811/2018

IN CRL.A. No.46/2021

BETWEEN:

1 . K. MANU,
S/O KAMARAJ,
AGED ABOUT 28 YEARS,
RESIDING AT A. K. COLONY,
2ND CROSS, BEHIND GAJANANA RICE MILL,
SAGARA TOWN,
SHIVAMOGGA DISTRICT, PIN-577401.

...APPELLANT

(BY SRI HARSHA G.C., ADVOCATE FOR
SRI NISHIT KUMAR SHETTY, ADVOCATE)

AND:

1 . STATE OF KARNATAKA,
BY LAKKAVALLI POLICE STATION,
REPRESENTED BY STATE
PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE-560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C. BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND CONVICTION AND SENTENCE DATED 16.03.2017 PASSED BY THE II ADDITIONAL SESSIONS JUDGE, CHIKKAMAGALURU IN S.C.No.112/2015, CONVICTING THE APPELLANT/ACCUSED No.2 FOR THE OFFENCE P/U/S 120B, 302, 201 R/W 34 OF IPC.

IN CRL.A. No.811/2018

BETWEEN:

1 . VIJAYA @ VIJAYKUMARA,
S/O. R. VENKATESH,
AGED ABOUT 30 YEARS,
R/AT BHAVANI RICE MILL ROAD,
LAKKAVALLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT-577 128.

...APPELLANT

(BY SRI HARSHA G.C., ADVOCATE FOR
SRI NISHIT KUMAR SHETTY, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY LAKKAVALLI POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BAGNALORE 560001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED UNDER SECTION 374(2) OF CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 16.03.2017, PASSED BY THE II ADDITIONAL SESSIONS JUDGE, AT CHIKKAMAGALURU IN S.C.No.112/2015, CONVICTING THE APPELLANT/ACCUSED No.1 FOR THE OFFENCE P/U/S 120B, 302 AND 201 R/W 34 OF IPC.

<i>DATE ON WHICH THE APPEALS WERE RESERVED FOR JUDGMENT</i>	23.01.2025
<i>DATE ON WHICH THE JUDGMENT WAS PRONOUNCED</i>	28.02.2025

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Both these appeals arise out of the judgment of conviction and order on sentence dated 16.03.2017 in S.C.No.112/2015 passed by the II Additional Sessions Judge, Chikkamagaluru.

2. Crl.A.No.811/2018 is by accused No.1 and Crl.A.No.46/2021 is by accused No.2.

3. The trial Court convicted the accused Nos.1 & 2 for the offence punishable under Section 120-B r/w Section 34 of Indian Penal Code ('IPC' for short) and sentenced them to undergo life imprisonment with fine of Rs.10,000/- each

and in default of fine, to undergo simple imprisonment for six months. They are also sentenced to undergo imprisonment for life for the offence punishable under Section 302 r/w Section 34 of IPC with fine of Rs.10,000/- each, in default, to undergo simple imprisonment for six months. Accused are further sentenced to undergo simple imprisonment for three years and to pay fine of Rs.5,000/- each for the offence punishable under Section 201 read with Section 34 IPC and in default, to undergo rigorous imprisonment for three months. The sentences are made to run concurrently.

4. The case of the prosecution is that accused No.1 took the motorbike from his relative N. Kumar to go to Lakkavalli. Then, he went to Sagar and pledged that bike to Ananda for Rs.5,000/-. On 28.06.2015, while Ananda was riding the pledged motorbike, the Motor Vehicle Inspector checked vehicle documents in Sagara Town. Ananda stopped and left the vehicle with the Motor Vehicle Inspector and ran away. The motor Vehicle Inspector seized the motor bike. Ananda having come to know that

a stolen vehicle was pledged with him, insisted that accused No.1 should repay the money, and threatened accused No.1 with dire consequences. Therefore, accused No.1 conspired with accused No.2 to finish Ananda. On 15.07.2015 at about 8.30 A.M., accused No.1 went to Ananda's house and asked Ananda to come with him to collect the vehicle documents. Ananda and accused No.1 went to B.H. Circle, Sagara Taluk, where accused No.2 was waiting, on a Motor cycle bearing registration No.KA 15/V-7923 that belonged to one Malathesh. Accused No.1, 2 and Ananda came to Lakkavalli at about 11.00 p.m., and were chatting on bridge near Government Tamil School at Hirekere of Lakkavalli. Ananda raised his voice, alleging that accused No.1 had wrongly assured him of handing over the vehicle documents. Accused No.1 hit Ananda with boulders on his head causing bleeding injuries with the intention of killing him. Later accused No.2 hit Ananda with the same stone on his forehead. Ananda died on the spot due to these injuries.

5. Accused Nos.1 & 2, with an intention to screen the evidence of offence, brought two sarees and a gunny bag from the house of accused No.1. They wrapped the dead body of Ananda with gunny bag and dragged the dead body with saree through the wetland in front of Government Tamil School and threw the body into Hirekere lake.

6. One Kumara, while going to his garden land, noticed the dead body floating in the lake, sensed foul smell and informed the police. The police registered a criminal case against the accused for offences punishable under Sections 302, 201 and 120-B r/w 34 of IPC. The trial Court on the circumstantial evidence held that accused had committed the offence. The trial Court considered the last seen theory by P.W.4-wife of the deceased as one of the circumstances. The other circumstances considered are possession of motor cycle of Malathesh, seizure of the same, discovery of murder place and place where dead body was found, and the sequence of shifting the dead body. This chain of circumstances are held to be

established to connect the accused with crime. Accordingly, the trial court convicted the accused for the offences punishable under Sections 302, 201 and 120-B r/w 34 of IPC.

7. Heard Shri G.C.Harsha for Shri Nishit Kumar Shetty, learned counsel for the appellants-accused and Shri Vijaykumar Majage, learned SPP-II for the respondent-State.

8. Shri Harsha, learned counsel for the appellants-accused submits that as per the testimony of P.W.4-deceased's wife, accused No.1 took the deceased on the bike owned by Malathesh on 15.07.2015 at about 8.30 A.M. The dead body was noticed on 21.07.2015 and FIR was registered. The case has been built against the accused on the statement of P.W.4 applying last seen theory. The efforts made by P.W.4 from 15.07.2015 to 21.07.2015 are not explained.

9. It is submitted by learned counsel that considering the huge time gap of six days from the last seen date to

the report of death, the principle of last seen theory is not applicable due to the time difference.

10. Though P.W.4 has tried to explain that she attempted to file complaint with the police on missing of her husband after three days, police refused to register the complaint. The said fact is not proved.

11. The accused leading the police to the place of the dead body was not based on the voluntary statement. Before the accused were arrested, the place of the dead body was within the public knowledge. The place of the dead body was not within the knowledge of the accused alone, leading to discovery at the instance of the accused to attract Section 27 of the Indian Evidence Act.

12. The seizure of stone at the instance of the accused, alleged for its use in committing the offence is not proved. The seized stone is not found with any traces of the deceased's blood corroborating the offence committed by the accused.

13. Learned counsel further submits that the dead body is not properly identified to be of deceased Ananda. The manner in which the dead body is identified, the process and outcome of identification is doubtful.

14. As stated by P.W.4, the deceased was taken by accused No.1 in Malathesh's bike. To prove the above aspect, Malathesh is not examined by the prosecution. Hence, the statement of P.W.4 cannot be believed.

15. Shri Vijaykumar Majage, learned SPP-II submits that P.W.4-deceased's wife has seen the deceased with accused No.1 while he was taken on the motorbike of Malathesh on 15.07.2015 at about 8.30 A.M. After this, no person had seen the deceased till he was found to be dead. It was for the accused to explain the circumstance. However, no explanation was offered.

16. It is further submitted that, based on the information of P.W.4, police apprehended the accused. On the information provided by the accused, the place of the incident was identified. The accused guided the police to

the place of the dead body. The stone used for committing the offence was recovered at the instance of the accused. The over all consideration of the circumstances surrounding the death of the deceased would prove beyond reasonable doubt that the death was caused by the accused Nos.1 & 2.

17. We have considered the submissions of learned counsel for the parties and perused the records.

18. Before proceeding further, it is necessary to analyze the evidence.

19. P.W.1-N. Kumar, was examined as the first informant upon the discovery of the dead body. The complaint is marked as per Ex.P1. As per Ex.P1, on 21.07.2015 at approximately 6:30 A.M., while proceeding to his farm near Chowdamma Temple, he noticed a foul odor. Upon closer observation, he noticed two legs floating and subsequently found a dead body wrapped in a gunny bag and a white and brown saree. The witness has partially turned hostile. In his initial statement, P.W.1 alleged that

the accused caused the death of the deceased owing to dispute over a motorcycle. However, during cross-examination by the defence, he stated that he had seen the accused for the first time in court and had no knowledge or information regarding the case. He further admitted that his deposition was made at the instance of the police. Additionally, while he denied knowledge of the contents of the mahazar, he conceded that he had signed the same at the insistence of the police.

20. P.W.2 is a mahazar witness. However, the testimony of this witness holds limited relevance to the matter at hand.

20.1. P.W.3 is a witness to the inquest mahazar. His testimony is limited to describing the procedure followed in the removal of the dead body.

20.2. P.W.4 is material evidence examined by prosecution to establish one of the circumstance, namely, last seen theory. P.W.4 the wife of the deceased, testified that she had last seen the deceased in the company of accused

No.1 on 15.07.2015. According to her evidence, the deceased was taken by accused No.1 on Malathesh's motorcycle at approximately 8:30 A.M. on that day. The case of prosecution is based on the 'last seen' theory, and the testimony of this witness is a crucial piece of evidence in support of the prosecution's case.

20.3. P.W.4 testified that her husband did not return home for two to three days prompting her to enquire with relatives, but she was unable to gather any information. Concerned about his absence, she went to Sagar Police Station with her brother in law Murthy to file a complaint. However, a police did nor register the complaint and advised them to wait for two days. It was only after this period that the police informed her via WhatsApp that body has been found. P.W.4 identified the body as her husband based on the clothing he was wearing when he left home and a distinct mark on his head. She also mentioned that accused No.1 has taken her husband on motor cycle of Malathesh at 8.30 A.M. on 15.07.2015.

During cross-examination, she admitted that her husband was on alcohol.

20.4. P.W.5, the brother of the deceased, has corroborated the 'last seen' theory as explained by P.W.4. This witness further testified to searching for the deceased along with P.W.4 and making inquiries with relatives. He also spoke of visiting the Sagara Police Station to file a complaint, although the police refused to accept the complaint at that time. P.W.5 stated that a photograph of the deceased's body was later shown to both P.W.4 and himself at the police station, and they identified it as that of the deceased.

20.5. Additionally, P.W.5 provided evidence regarding the pledge of the deceased's motorcycle and its subsequent seizure by the R.T.O. During cross-examination, P.W.5 admitted that the deceased was an alcoholic but denied the suggestion that the deceased's death resulted from riding the motor cycle in drunken state. The testimony of this witness largely aligns with that of P.W.4.

20.6. P.W.6 is witness to Ex.P8-seizure mahazar.

20.7. P.W.7 testified that accused No.1 requested for loan of Rs.10,000/- by offering a two-wheeler as security. The witness only provided information regarding the loan being secured against the bike, which was subsequently seized from him. P.W.7 is a witness to Ex.P11, the seizure mahazar. This witness was extensively cross-examined, and his testimony is not worthy to support the case of prosecution.

20.8. P.W.8 was examined to establish the pledge of the bike by accused No.1. The testimony of P.W.8 corroborates the loan of Rs.10,000/- extended to accused No.1, with the bike being provided as security.

21. The prosecution examined P.W.9 to establish that accused No.1 is alcoholic. However, nothing has turned out to support the prosecution. P.W.10 and P.W.11 are examined to establish the arrest of accused Nos.1 and 2.

21.1. P.W.12 was examined to establish the facts as per Ex.P11, the spot mahazar and the seizure of M.O.7.

According to P.W.12, the accused explained that he and the deceased had a party near the bridge, during which a heated argument ensued between them. The accused inflicted grievous injuries with stone to the deceased's head, resulting in his death. P.W.12 further testified that accused No.1 went to his house, brought a gunny bag and a saree and used them to cover the deceased's body. The body was then dragged with the saree in front of the Government Tamil School, crossed a fence and was ultimately thrown into the water.

21.2. P.W.12 further testified regarding the seizure of the motorcycle from Sanju, which had been pledged by the accused for Rs.10,000/-. The defence extensively cross-examined P.W.12, during which it was admitted that M.O.7 (the stone) was found in the water next to the bridge and that the stone had been removed by the accused. It was also confirmed that there were no bloodstains on M.O.7. A contradiction is evident regarding the seizure of M.O.7. In his examination-in-chief, P.W.12 stated that M.O.7 was seized near the

bridge; however, in cross-examination, it was admitted that the stone had been removed from the water by the accused.

21.3. P.W.13 was examined to establish recovery of dead body from the lake. P.W.14 was examined to prove ownership of the bike. P.W.14 turned hostile. Though cross-examined by the prosecution, no worthy information is elicited. P.W.15 was examined to prove the submission of FIR to the Magistrate.

21.4. P.W.16 was examined to a limited extent regarding the fact that the accused had taken food parcel from his hotel. However, this witness turned hostile and during cross-examination by the prosecution, no significant information was elicited.

21.5. P.W.17 speaks about registration of FIR and his visit to the place of dead body.

21.6. P.W.18, the doctor who conducted the autopsy, was examined by the prosecution to establish that the deceased died due to the injury inflicted with the stone,

M.O.7. The doctor identified a 6x5 cm injury on the deceased's head, towards the right posterior portion. In cross-examination, P.W.18 stated that the death occurred approximately three days prior. When responding to suggestions made by the defence, P.W.18 admitted that the exact cause of death could not be conclusively determined. However, Ex.P23, the post-mortem report, states that the cause of death is due to head injury.

21.7. P.W.19, the Motor Vehicle Inspector, was examined to establish the seizure of the motorcycle. According to the testimony of P.W.19, the motorcycle was handed over to the Sagara Rural Police Station. Additionally, it was stated that the vehicle was released in favor of Kumar after the collection of tax and penalty. A contradiction regarding the handing over of the motorcycle is noticeable.

21.8. P.W.20, the Investigation Officer, was examined to explain the course of the investigation. This witness disclosed that the voluntary statement of the accused was recorded. It was further stated that accused No.2-Manu

was arrested based on the involvement in the crime as disclosed by accused No.1.

21.9. P.W.20 testified regarding the recovery of the stone from the water. This witness was subjected to extensive cross-examination by the defence. During the cross-examination, P.W.20 was confronted with the recording of the mahazar, which stated that the stone was found near the bridge. However, P.W.20 explained that M.O.7 was, in fact, recovered by the accused from the lake.

21.10. Ex.P1 is the intimation of the dead body by P.W.1. Ex.P2 is the mahazar prepared at the place where the dead body was found. Ex.P7 is the inquest mahazar. Ex.P11 is the mahazar drawn upon identifying the place of the incident, detailing the sequence of events explaining how the dead body was carried to the lake. Ex.P21 is the FIR, based on Ex.P1. Ex.P23 is the post-mortem report.

(i) LAST SEEN THEORY

22. The case of prosecution is based on the last seen theory. According to the testimony of P.W.4, the wife of

deceased, the deceased was taken by accused No.1 on Malathesh's bike on 15.07.2015 at 8.30 A.M. After that date, the dead body of Ananda, was found on 21.07.2015. The considerable gap between 15.07.2015 and 21.07.2015 cannot be overlooked. When applying the last seen theory, the Court must exercise caution, taking into account the surrounding circumstances and the conduct of the person who last saw the deceased.

22.1. According to the testimony of P.W.4, after the deceased was taken by accused No.1, she waited for her husband's return for two to three days. Thereafter, she, along with her brother-in-law, went to Sagara Police Station to lodge a complaint. The police advised her to wait for two days. On 21.07.2015, she received a phone call along with a photo of the dead body via WhatsApp from Lakkavalli Police. She visited the police station. She was taken to the place where the body was found. She identified the dead body as that of her husband.

22.2. The explanation provided by P.W.4 regarding her efforts to trace her husband cannot be believed. It is

human nature that when a person does not return home, the first step would be to inquire with the person they were last seen with. According to the testimony of P.W.4, she made no inquiry whatsoever with accused No.1. It is not a case where accused No.1 was unknown to P.W.4. Therefore, it is difficult to accept that P.W.4 waited for three days without attempting to make any inquiries or take prompt action.

22.3. Furthermore, it has not been established that P.W.4, along with her brother-in-law, went to Sagara Police Station to file person missing complaint. In the absence of evidence proving this fact, the Court is left with no alternative but to draw an inference. In light of this, it can be inferred that P.W.4 made no genuine effort to trace her missing husband. With these circumstances, the last seen theory cannot be applied based solely on the testimony of P.W.4, as her testimony is not corroborated by any other evidence.

23. It is relevant to consider the principles as laid down by the Hon'ble Supreme Court on the last seen theory.

In ***Dinesh Kumar Vs. State of Haryana, 2023***

SCC OnLine SC 564, it is held as under:

"25. The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased. This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of guilt.

26. The circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed. Particularly, in the present case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak."

24. In ***R.Sreenivasa Vs. State of Karnataka, 2023***

SCC OnLine SC 1132, it is held as under:

"15. The burden on the accused would, therefore, kick in, only when the last seen theory is established. In the instant case, at the cost of repetition, that itself is in doubt."

25. In **Kanhaiya Lal Vs. State of Rajasthan, (2014) 4 SCC 715**, it is held as under:

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

26. In **Nizam and another vs. State of Rajasthan, (2016) 1 SCC 550**, it is held as under:

"16. In the light of the above, it is to be seen whether in the facts and circumstances of this case, the courts below were right in invoking the "last seen theory". From the evidence discussed above, deceased Manoj allegedly left in the truck DL 1 GA 5943 on 23-1-2001. The body of deceased Manoj was recovered on 26-1-2001. The prosecution has contended that the accused persons were last seen with the deceased but the accused have not offered any plausible, cogent explanation as to what has happened to Manoj. Be it noted, that only if the prosecution has succeeded in proving the facts by definite evidence that the deceased was last seen alive in the company of the accused, a reasonable inference could be drawn against the accused and then only onus can be shifted on the accused under Section 106 of the Evidence Act.

17. During their questioning under Section 313 CrPC, the appellant-accused denied Manoj having travelled in their Truck No. DL 1 GA 5943. As noticed earlier, the body of Manoj was recovered only on 26-1-2001 after three days. The gap between the time when Manoj is alleged to have left in Truck No. DL 1 GA 5943 and the recovery of the body is not so small, to

draw an inference against the appellants. At this juncture, yet another aspect emerging from the evidence needs to be noted. From the statement made by Shahzad Khan (PW 4) the internal organ (penis) of the deceased was tied with rope and blood was oozing out from his nostrils. Maniya Village, the place where the body of Manoj was recovered is alleged to be a notable place for prostitution where people from different areas come for enjoyment.

18. In view of the time gap between Manoj being left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that the appellants and the deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory.

(underlining by us)

27. The application of the aforementioned principles leads to the conclusion that the prosecution has not established the last seen theory and therefore, the burden of proof does not shift to the accused under Section 106 of the Indian Evidence Act, 1872. Apart from the testimony of P.W.4, which states that the deceased was seen with accused No.1, there is no substantial evidence linking the accused to the crime. According to P.W.4, the deceased

was seen with accused No.1 on 15.07.2015 at 8:30 A.M., and the body was discovered on 21.07.2015 at 6:45 A.M. The considerable time gap between these two events makes it unreasonable to draw an inference solely against the accused.

27.1. In this context, it is also necessary to address the further aspects of the case of prosecution. The post-mortem report (Ex.P23) states that the cause of death was a head injury, yet P.W.18, the doctor who performed the autopsy, was unable to conclusively determine the precise cause of death. This issue will be discussed later in greater detail. The prosecution has failed to establish the last seen theory as one of the circumstances.

(ii) **IDENTIFICATION OF THE PLACE OF WHERE DEAD BODY BY THE ACCUSED:**

28. The prosecution's case hinges on the voluntary statements made by the accused, which explains the location of the murder and the place where the body of deceased was disposed of. It is the case of prosecution

that accused No.1 allegedly took the deceased on a motorcycle at 8:30 A.M. on 15.07.2015, with the promise of securing the original documents of the two-wheeler. The accused and the deceased spent time at various locations and arrived at Lakkavalli at 4:30 P.M. The three of them sat near the bridge by the Lakkavalli Government Tamil School until 8:00 P.M. At approximately 9:00 P.M., they brought food from hotel of P.W.16. Around 11:30 P.M., the deceased allegedly abused the accused, which led to accused No.1 inflicting head injuries on the deceased with a stone found nearby. The deceased began bleeding and accused No.2 also struck the deceased with the same stone, ultimately causing his death.

28.1. The accused No.1 allegedly went to his house at 2.00 A.M., brought a saree and a gunny bag and wrapped the dead body in the gunny bag. The body was then dragged with saree in front of the school, passed through a fence and thrown into the lake.

28.2. Exs.P2 and P11, the mahazars were drawn based on the voluntary statements of the accused. According to

Ex.P11, the deceased's body was allegedly dragged through a fence, but this is not reflected in Ex.P9, the spot sketch. P.W.20, the Investigating Officer, also corroborates this aspect. The presence of the fence is a significant factor in establishing the connection between the location of the death and the place where the body was disposed of.

28.3. However, there are discrepancies that need to be addressed. Firstly, existence of fence is not shown in the spot sketch (Ex.P9). Secondly, there is no evidence to suggest the presence of any marks or traces near the fence, nor there is any indication that the accused could have dragged the body through it. The fence could have been an important piece of evidence to connect the crime scene to the location of the body. In a situation where defence denies involvement of the accused in the crime, heavy burden is placed on the prosecution. If any doubt arises on the occurrence of the incident as projected by the prosecution, its benefit should enure to the accused.

In the fact situation as to whether the accused can shift dead body in between the fence wire is doubtful.

28.4. In a situation where the prosecution has not sufficiently established these details, it is difficult to conclusively link the place of death with the place where the body was found, and by extension, the accused to the crime. Therefore, it is held that the prosecution has failed to establish the connection between the accused, the place of death, and the discovery of the body.

28.5. According to P.W.12, the stone was found near the bridge, but in his cross-examination, he stated that the stone was recovered by accused from water. Ex.P11 records that M.O.7 was recovered from water. The evidence of PW.12 is not consistent and contradicts Ex.P11. Since the case is based on circumstantial evidence, such discrepancies cannot be ignored.

28.6. The case of prosecution also asserts that prior to the body of deceased was disposed of in the water, he was attacked with a stone near the bridge by accused Nos.1

and 2, resulting in fatal injuries. Afterwards, the body was allegedly thrown into the water. Spot mahazar was conducted in the presence of panchas, but Ex.P11, which records the mahazar, is notably silent on critical details about the location of the death. Additionally, neither Ex.P11 nor the testimony of P.W.20, the Investigating Officer, provides any clarity regarding the events at the scene of the crime. This omission creates further uncertainty about the occurrence of the incident at the alleged place as claimed by the prosecution.

28.7. The prosecution further relies on the circumstance of the accused identifying the location of the dead body to establish the guilt. The trial court has placed significant emphasis on this point, drawing an inference of the accused's involvement in the offence. According to Ex.P1, P.W.1 discovered the body at 6:45 A.M. on 21.07.2015, and the police were informed at 8:30 A.M. The FIR was filed at 8:30 A.M. and sent to the Magistrate by 9:00 A.M. The statement of P.W.4 was recorded on the same day, she revealed that the deceased had been taken by

accused No.1. Accused Nos. 1 and 2 were arrested on 24.07.2015, and their voluntary statements were recorded on the same day (Exs.P29 and P30). The mahazar (Ex.P11) was drawn on that day. The body was recovered on 21.07.2015 and subjected to post-mortem on the same day.

28.8. However, as indicated in Ex.P2, the presence of public crowd at the scene of the dead body is noteworthy. The location of the body was already known to the public before the accused identified it. Consequently, it cannot be concluded that the discovery of the body was solely due to the information provided by the accused. In this situation, the identification of the body's location by the accused holds little significance in the case and cannot be relied upon to prove the guilt of the accused in causing the death of Ananda.

28.9. It would be relevant to refer to the Judgment of Hon'ble Supreme Court in ***Ravishankar Tandon Vs. The State of Chhattisgarh, 2024 SCC OnLine SC 526.*** *It is held as:*

"13. As such, for bringing the case under Section 27 of the Evidence Act, it will be necessary for the prosecution to establish that, based on the information given by the accused while in police custody, it had led to the discovery of the fact, which was distinctly within the knowledge of the maker of the said statement. It is only so much of the information as relates distinctly to the fact thereby discovered 570 [2024] 4 S.C.R. Digital Supreme Court Reports would be admissible. It has been held that the rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and it can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.

14. We will have to therefore examine as to whether the prosecution has proved beyond reasonable doubt that the recovery of the dead body was on the basis of the information given by the accused persons in the statement recorded under Section 27 of the Evidence Act. The prosecution will have to establish that, before the information given by the accused persons on the basis of which the dead body was recovered, nobody had the knowledge about the existence of the dead body at the place from where it was recovered."

(underlining by us)

28.10. Applying the aforementioned principles to the facts of this case, the dead body was discovered on 21.07.2015 and the post-mortem was conducted shortly thereafter. P.W.4, the wife of deceased, stated that the deceased was taken by accused No.1, after which he was not seen alive. Accused Nos. 1 and 2 were arrested on

24.07.2015, and their voluntary statements were recorded. Following this, Ex.P11 Mahazar was drawn on 24.07.2015.

28.11. In light of these facts and based on the judgment previously referenced, it is difficult to conclude that the discovery of the dead body was solely due to the information provided by the accused. By the time the accused's statements were recorded, the body had already been discovered and subjected to post-mortem. Additionally, Ex.P2 indicates that a public gathering was present at the scene, with information about the body already circulating within the public domain.

28.12. In these circumstances, the Court cannot draw an inference against the accused based on identification of dead body to connect to the crime. The prosecution cannot make use of this circumstance.

iii) **MEDICAL EVIDENCE:**

29. Ex.P23, the post-mortem report, indicates that the cause of death was head injury. While P.W.18, the doctor,

has certified that the death resulted from the head injuries. The head injuries would also be caused by a sharp weapon other than the stone and the injuries on the neck was not explained. The evidence of doctor cannot be considered to prove the cause of death on its own unless it corroborates with other evidence. P.W.18 also expressed his inability to determine whether Ananda was thrown into the water while he was alive or after his death. He further mentioned that a sharp weapon could have caused similar injuries. With this inconclusive opinion, it becomes difficult to accept the prosecution case.

30. This lack of conclusive evidence creates reasonable doubt regarding the connection between the accused and the crime. The theory of prosecution is that the injuries were inflicted by the stone (M.O.7), but there were no traces of human blood found on the stone. This absence of evidence undermines the chain of events and weakens the link between the accused and the crime.

30.1. The Hon'ble Supreme Court in ***Machindra Vs. Sajjan Galfa Rankhamb & Ors., (2017) 13 SCC 491,*** while analyzing the scope of the expert opinion has held as under:

"16. But looking at the post-mortem report, cause of injuries was not stated nor was any opinion formed to create independent testimony. We would like to emphasize on the vital role played by opinion of the expert which is simply a conclusion drawn from a set of facts coming to his knowledge and observation. Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution. Therefore, we are of the considered opinion that the prosecution has failed to prove that death was caused due to the injuries inflicted by the recovered weapons."

(underlining by us)

30.2. The expert opinion provided by P.W.18 is inadequate when assessed in the context of the evidence presented, as outlined in Ex.P23. Applying the principles discussed above, this opinion cannot be relied upon extensively to establish the guilt of the accused. The

opinion of expert lacks convincing reasons and does not offer sufficient clarity or substantiation to support the prosecution case.

IV) MOTIVE:

31. Motive plays a crucial role in the present case. Motive can be considered as one of the circumstances to prove the prosecution case. The entire sequence of events that led to the alleged crime began when accused No.1 pledged the motorbike bearing number KA-14/NT-027333/2014-15, with the deceased, Ananda, which belonged to P.W.14-Sri N. Kumar. While Ananda was in possession of the motorbike, it was seized by the RTO due to the absence of valid documents. When Ananda confronted accused No.1 about the pledge of a stolen vehicle, accused No.1 allegedly took Ananda on another motorbike, owned by Malathesh (bearing number KA-15/V-7923) and killed him.

31.1. P.W.14, however, turned hostile during his testimony and denied that he had handed over the motorbike to accused No.1. Despite this, his earlier

voluntary statement (Ex.P20) provides important information. In this statement, P.W.14 had stated that he had purchased the motorbike through financing from Hero FinCorp and that accused No.1 had taken the bike. Later, P.W.14 learnt that the bike had been pledged to Ananda. Furthermore, P.W.14 revealed that while Ananda was using the bike, it was seized by the RTO and on 31.08.2015, he paid a penalty of Rs.4,700/- to have the bike released. Due to his financial difficulties, P.W.14 eventually surrendered the bike to Hero FinCorp Finance.

31.2. Although P.W.14 turned hostile and denied his prior statements during the trial, his voluntary statement (Ex.P20) is supported by corroborative evidence in the form of documents, including the fine payment receipt (Ex.P25), the temporary certificate of registration in P.W.14's name (Ex.P26), the purchase invoice (Ex.P27), and the insurance policy (Ex.P28). These documents substantiate the claim that the motorbike belonged to P.W.14.

31.3. While these documents establish the motive concerning the motorbike, they do not directly link the vehicle or its ownership to the death of the deceased, Ananda. Consequently, while a motive may be established, other missing factors must be connected to prove the accused's involvement in the death of Ananda.

31.4. P.W.7 testified that on 16.07.2015, accused No.1 pledged the motorcycle and obtained loan of Rs.10,000/-. The police later seized this motorcycle, as noted in Ex.P11, which also records the seizure of the motorcycle with registration number KA-15/V-7923. According to P.W.4, this vehicle belonged to Malathesh, and it was the same motorcycle on which that accused No.1 is said to have taken the deceased.

31.5. The prosecution asserts that after committing the crime, the motorcycle was pledged with P.W.8, the following day. However, the prosecution has failed to examine or establish that Malathesh was the owner of the motorcycle bearing number KA-15/V-7923. Malathesh was not called to testify and there is no evidence to prove

that his motorcycle was handed over to accused No.1. Without this crucial testimony, it is difficult to establish a connection between the motorcycle and the crime based solely on the evidence of P.W.8. Another aspect that glares at the case of prosecution is, the alleged crime started with motorcycle bearing No. KA-14/NT-027333/2014-15. This motorcycle was alleged to be pledged without valid documents. This is one of the circumstances to be considered. The prosecution has not proved this circumstance. Consequently, it is held that the prosecution has failed to prove that the motorcycle bearing number KA-15/V-7923 was involved in the commission of the crime.

31.6. According to the prosecution, Accused No.1 took the deceased, Ananda, under the pretense of providing vehicle documents, and following a heated argument, Accused Nos.1 and 2 allegedly killed Ananda using a stone. The deceased was reportedly taken by Accused No.1 at 8:30 A.M., while the alleged incident occurred at 11:30 P.M. The prosecution has failed to establish that the deceased

was taken by the accused with the intention to kill him. At most, the circumstances may raise suspicion, which by itself is not sufficient to prove the guilt of the accused.

32. The trial Court convicted the accused based on the last seen theory, the alleged threat made by the deceased to accused No.1 and other circumstances such as the vehicle of Malathesh, which was claimed to be sold to Sanju and the identification of the places of the dead body and the murder site by the accused. Another factor considered was the disposal of the body in the lake to conceal evidence. The trial Court concluded that these circumstances formed a complete chain of evidence to establish the accused's guilt.

33. However, upon re-assessing the evidence, this Court finds that the last seen theory cannot be applied, considering the significant gap of six days between the last seen and the discovery of the dead body. The motorbike involved in the dispute was owned by P.W.14. The trial court erroneously linked it to Malathesh and the said Malathesh was not examined to establish the involvement

of bike in the crime. The chain of events between the place of death and place where the dead body was found is not complete. Any missing of links should favour the accused. These aspects are not considered by the trial Court. Therefore, the findings of the trial court cannot be upheld and hence, the conviction is not sustainable.

34. From the overall consideration and assessment of the evidence on record and the reasons assigned by the trial court, the only conclusion that can be reached is that the order of conviction and sentence of the trial court is unsustainable and is liable to be set aside.

35. Accordingly, the following:

ORDER

- (i) Crl.A.No.811/2018 filed by accused No.1 and Crl.A.No.46/2021 filed by accused No.2 are allowed;*
- (ii) The judgment of conviction and order on sentence dated 16.03.2017 passed by the II Additional Sessions Judge, Chikkamagaluru in S.C.No.112/2015 is set aside;*

- (iii) Accused Nos.1 & 2 are hereby acquitted of the charges leveled against them for the offences punishable under Sections 120-B, 302 and 201 read with Section 34 of IPC.*
- (iv) The bail and surety bond executed by the accused Nos.1 & 2 are hereby cancelled.*
- (v) If the accused have deposited the fine amount before the trial Court, the same shall be refunded to them on proper identification.*
- (vi) The Registry is directed to communicate this order to the concerned Jail Authorities.*
- (vii) Registry is directed to send back the trial court records with a copy of this judgment.*

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

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