



NC: 2026:KHC-D:132-DB
CRL.A No. 100365 of 2019
C/W CRL.A No. 100149 of 2020
CRL.A No. 100069 of 2021

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 7TH DAY OF JANUARY 2026**

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

**CRIMINAL APPEAL NO. 100365 OF 2019
C/W CRIMINAL APPEAL Nos.100149 OF 2020 &
100069 OF 2021**

IN CRL.A NO. 100365/2019
BETWEEN:

SRI.RAMESH S/O. SURESHAPPA HAVANUR,
AGE: 23 YEARS, OCC. LABOUR,
R/O. KURUBAGERI, SOPPINAPETE,
TQ. RANEBENNUR, DIST. HAVERI-581115.

...APPELLANT

(BY SRI. N.S. BADIGER, ADVOCATE)

AND:

STATE OF KARNATAKA THROUGH
RANEBENNUR TOWN POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD

...RESPONDENT

(BY SRI.JAIRAM SIDDI, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT DATED 16/04/2019 AND ORDER OF SENTENCE DATED 20/04/2019 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HAVERI (SITTING AT RANEBENNUR) IN S.C.NO.06/2015 IN CRIME NO.157/2014 OF RANEBENNUR TOWN POLICE STATION CONVICTING THE APPELLANT AND 3 OTHERS AND SENTENCED HIM TO UNDERGO IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDER





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GO RIGOROUS IMPRISONMENT FOR THREE YEARS FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 R/W. 34 IPC AND FURTHER CONVICT AND SENTENCED UNDERGO IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDER GO RIGOROUS IMPRISONMENT FOR THREE YEARS FOR THE OFFENCE PUNISHABLE UNDER SECTION 120B R/W. 34 OF IPC AND FURTHER CONVICTED AND SENTENCED UNDERGO RIGOROUS IMPRISONMENT FOR A PERIOD OF 7 YEARS AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDERGO IMPRISONMENT FOR ONE YEAR FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 397 R/W. 34 OF IPC ALL SUSTENTATIVE SENTENCE RUN CONCURRENTLY AND ACQUIT ACCUSED NO.2 FOR OFFENCE 120B, 302, 397 OF IPC AND ETC.

IN CRL.A NO.100149/2020
BETWEEN:

SHEKHAPPA S/O. RAMAPPA SUNAGAR,
AGE: 26 YEARS, OCC. LABOUR,
R/O. MARATGALLI, HARIHAR,
DIST. DAVANAGERE-577601.

...APPELLANT

(BY SRI.N.S. BADIGER, ADVOCATE)

AND:

STATE OF KARNATAKA THROUGH
RANEBENNUR TOWN POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...RESPONDENT

(BY SRI.JAIRAM SIDDI, HCGP)

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IN CRL.A NO.100069/2021
BETWEEN:

GOVIND S/O. HEMANNA PUJER,
AGE: 27 YEARS,
OCC. PRISONER SERVING SENTENCE AT
DHARWAD CENTRAL PRISON,
R/O. MAKANUR, TQ. RANEBENNUR,
DIST. HAVERI-581123.

...APPELLANT

(BY SRI.N.S. BADIGER, ADVOCATE)

AND:

STATE OF KARNATAKA THROUGH
RANEBENNUR TOWN POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...RESPONDENT

(BY SRI.JAIRAM SIDDI, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT DATED 16/04/2019 AND ORDER OF SENTENCE DATED 20/04/2019 PASSED BY II ADDL. DISTRICT AND SESSION JUDGE, AT HAVERI (SITTING AT RANEBENNUR) IN S.C.NO.06/2015 IN CRIME NO.157/2014 OF RANEBENNUR TOWN POLICE STATION CONVICTING THE APPELLANT AND 3 OTHERS SENTENCED HIM TO UNDERGO IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDER GO RIGOROUS IMPRISONMENT FOR THREE YEARS FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 R/W. 34 OF IPC AND FURTHER CONVICT AND SENTENCED UNDERGO IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDERGO RIGOROUS IMPRISONMENT FOR THREE YEARS FOR THE OFFENCE PUNISHABLE UNDER SECTION 120B R/W. 34 OF IPC AND FURTHER CONVICT AND SENTENCED UNDERGO IMPRISONMENT FOR A PERIOD OF 7 YEARS AND TO PAY A FINE OF RS.10,000/- IN DEFAULT TO UNDERGO RIGOROUS IMPRISONMENT FOR ONE YEAR FOR THE OFFENCE PUNISHABLE UNDER SECTION 397 R/W. 34 OF IPC ALL SUSTENTATIVE SENTENCE RUN CONCURRENTLY ACQUITS IN SO FAR AS CONCERN TO ACCUSED NO.1 FOR OFFENCE 120B, 302, 397 OF IPC AND ETC.



THESE CRIMINAL APPEALS COMING ON FOR FINAL HEARING,
THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

1. These appeals are preferred against the judgment and order dated 16.04.2019 and 20.04.2019 passed by the Court of II Additional District and Sessions Judge at Haveri (Sitting at Ranebennur) in S.C. No.6/2015.

2. Vide impugned judgment dated 16.04.2019, the learned Sessions Judge has convicted accused Nos.1 to 4 for the offence punishable under Section 302, 120B and 397 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC', for short). Further, vide order dated 20.04.2019, passed the following sentence:

"13. accused Nos. 1 to 4 each convicted and sentenced to undergo imprisonment for life for the offence punishable U/Sec.302 R/W Sec. 34 of IPC. Accused Nos. 1 to 4 each further convicted and sentenced to pay fine of Rs.10,000/- each for the said offence punishable U/Sec.302 R/W Sec. 34 of IPC. In default of payment of fine, accused Nos. 1 to 4 shall



further undergo rigorous imprisonment for a further period of 3 years each.

14. *Accused Nos. 1 to 4 each further convicted and sentenced to undergo imprisonment for life for the offence punishable U/Sec. 120-B R/W Sec. 34 of IPC. Accused Nos. 1 to 4 further convicted and sentenced to pay fine of Rs.10,000/- each for the said offence punishable U/Sec. 120B R/W Sec. 34 of IPC. In default of payment of fine, accused Nos. 1 to 4 shall further undergo rigorous imprisonment for a further period of 3 years each.*

15. *Accused Nos. 1 to 4 each further convicted and sentenced to undergo rigorous imprisonment for a period of 7 years for the offence punishable U/Sec.397 R/W Sec.34 of IPC. Accused Nos. 1 to 4 further convicted and sentenced to pay fine of Rs.10,000/- each for the said offence punishable U/Sec.397 R/W Sec.34 of IPC. In default of payment of fine, accused Nos. 1 to 4 shall further undergo rigorous imprisonment for a further period of 1 year each."*

3. Criminal Appeal No.100069/2021 is preferred by accused No.1, Criminal Appeal No.100365/2019 is preferred by accused No.2 and Criminal Appeal No.100149/2020 is preferred by accused No.3.

4. Insofar as accused No.4, Criminal Appeal No.100218/2019 preferred by him was dismissed as abated vide order dated 03.09.2025, since the said accused was reported to be dead on 16.03.2021.



5. We have heard learned counsel Sri. Namadev Seetaram Badiger for the appellants, learned High Court Government Pleader Sri. Jairam Siddi for the respondent-State and perused the evidence and material on record.

6. It is the case of prosecution that deceased Neelamma, wife of Kotrappa Omkari, was residing along with her son Basavaraj Omkari (PW.23) at 1st cross, Vageesh Nagar, Ranebennur, Haveri District. Her another son Shivayogi Omkari (PW.5) was residing in Bangalore. Deceased wanted to let out a house belonging to her situated adjacent to the house where she was residing, hence put up a let out board. Accused Nos.1 to 4 with a common intention of committing robbery and murder and having conspired among themselves, approached the deceased on 17.6.2014 at about 12:30 pm when she was alone, in the guise of taking the house on rent. When the deceased was about to show the house to them, they held her mouth and nose tightly, strangled her using a cloth and committed her murder. Thereafter, robbed the gold ornaments worn by her and cash of Rs.30,000/-.



7. Law was set into motion by one Kotresh Bangali (PW.1) brother of the deceased, who came to know about the incident from Basavaraj Omkari (PW.23). Based on his complaint marked as Ex.P.1, FIR was registered against unknown persons. Investigation was taken over by PW.22. He visited the spot and conducted the spot mahazar and inquest mahazar in the presence of panchas. Postmortem was conducted by PW.20. In the course of investigation, accused Nos.1 to 4 were arrested on 22.08.2014. The voluntary statement of accused No.1 was recorded as per Ex.P-50. His voluntary statement led to the discovery of the gold ornaments such as one gold chain, a finger ring and another finger ring with elephant's hair, marked as M.Os.9 to 11 from the house where he was residing, apart from cash, motor bike, a screw driver and an iron rod from accused Nos.1 to 4 under different panchanamas in the presence of panchas. On completion of investigation, PW.22 laid the charge sheet.

8. Charges were framed against A1 to A4 for the offence punishable under Section 302, 120B, 397, 451 and



380 read with Section 34 of IPC. The accused pleaded not guilty to the said charges.

9. In order to bring home the guilt of the accused, the prosecution, in all, examined PW.1 to PW.23, got marked Ex.P-1 to P-52(a) and (b) and M.Os.1 to 21.

10. The defence of the accused was one of total denial. They denied all the incriminating materials put to them while they were examined under Section 313 of the Code of Criminal Procedure. However, they did not choose to lead any evidence on their behalf.

11. The learned Sessions Judge on appreciating the oral and documentary evidence on record proceeded to convict the accused for the charged offences and passed the sentence accordingly, as noted supra.

12. It is vehemently contended by the learned counsel for the appellants that the learned Sessions Judge has convicted the accused without there being any legal evidence on record and without properly appreciating the



cross-examination conducted by the defence. He contended that the prosecution has utterly failed to establish that Neelamma died a homicidal death. He further contended that there are no eyewitnesses to the incident in question and the entire case of the prosecution is based on circumstantial evidence and the said circumstances relied on by the prosecution are not sufficient to establish the guilt of the accused beyond all reasonable doubt. He contended that the alleged recoveries from the accused are not at all proved and the prosecution has also failed to establish the ingredients of Section 397 of IPC. He further contended that the FIR was registered against unknown persons and there is no sufficient evidence to connect these accused with the crime and therefore, the learned Sessions Judge was not justified in recording the conviction against them. He therefore, contended that the impugned judgment has resulted in miscarriage of justice and accordingly sought to set aside the judgment and acquit the accused.

13. Per contra, the learned High Court Government Pleader has contended that the prosecution has adduced



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acceptable and legal evidence to hold the accused guilty of the charges leveled against them. He contended that the homicidal death of Neelamma has been proved by examining the doctor who conducted the postmortem examination and the postmortem report marked as Ex.P-46. He contended that the injuries found on the dead body also clearly establishes that the accused have used force and inflicted those injuries while committing murder. He contended that all the accused have conspired to commit robbery and murder of Neelamma. Further, the recovery of gold ornaments belonging to the deceased, which were identified by all the relatives, clearly establish the guilt of the accused beyond all reasonable doubt. He would also contend that the accused have robbed a cash of Rs.30,000/- from the house of the deceased and some cash was recovered from them and they have confessed that they have committed the murder and robbed cash and gold which were recovered from them. Hence, there is substantial compliance of Section 27 of the Evidence Act. He contended that the learned Sessions Judge having given acceptable reasons,



appreciating the evidence adduced by the prosecution, has rightly convicted the accused for the charged offences and there is no illegality or perversity in the said judgment. He has, accordingly sought for dismissal of the appeals.

14. It is the specific case of the prosecution that accused Nos.1 to 4 with a common intention of committing robbery and murder, conspired among themselves and went to the house of the deceased on a motorcycle in the guise to request the deceased to give the house on rent, as she had put up 'let out' board outside her house and in that guise, they went inside the house and held her nose and mouth tightly and suffocated her by tying a cloth around her neck and committed murder and then robbed the bangles, gold chain and two finger rings and cash of Rs.30,000/-.

15. From the material on record, it is evident that the deceased was residing in the house along with her son Basavaraj (PW.23). The incident took place on 17.06.2014. As could be seen, PW.23 was not present in the house at the time of incident. In his evidence, PW.23 has stated that on



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16.06.2014, he had been to Anaji village to give some medicine to his Aunt Vishalakshi (PW.9). He has stated that, during that time, his mother was alone in the house. On 17.06.2014 at about 6:30 pm, he returned to Ranebennur from Anaji village, at that time, he noticed the door of the house was open and there was no response from his mother and therefore, went inside the house and saw all the things scattered. Thereafter, when he went inside the kitchen of the house which the deceased wanted to give for rent, he noticed his mother lying dead. Immediately, he informed his uncle i.e., Kotresh Bangli (PW.1) who was residing at Harapanahalli. On receiving the information from PW.23-Basavaraj, Kotresh Bangli (PW.1) immediately rushed to Ranebennur, to the house of the deceased at about 9:00 pm. Thereafter, he lodged a complaint as per Ex.P-1.

16. PW.1 in his evidence has reiterated the complaint averments, receiving the information from PW.23 over phone and then visiting the house, noticing the dead body of his sister and also the house hold articles being scattered. He has stated about lodging the complaint as per Ex.P-1,



mentioning the missing of gold chain, rings and bangles. PW-23 has stated that when he enquired with the neighbours, he came to know that a neighbour by name Kusuma, had spoken to the deceased at about 10:00 am. Hence, PW.1 lodged the complaint stating that in between 10:00 am and 6:30 pm some unknown persons have committed the robbery and murder of his sister.

17. There are no eyewitnesses to the incident. The prosecution relies on circumstantial evidence to prove the charges. In order to establish that the deceased died a homicidal death, the prosecution has examined the Doctor, who conducted the postmortem examination, as PW-20. He issued postmortem report which is marked as Ex.P-46.

18. PW.20 has deposed in his evidence that on 18.06.2014 in between 10:00 am to 11:00 am, he has conducted autopsy over the dead body of Neelamma. He has noticed injuries over the nose, neck and left hand. He has stated that all the injuries are antemortem in nature. He has given his opinion regarding cause of death that the death



is due to asphyxia as a result of strangulation with a large cloth and also suffocation caused by forcible closure of mouth and nose by hands and cloth.

19. A perusal of the postmortem report-Ex.P-46 clearly discloses that the deceased sustained abrasions over forearm etc. Neck and face were cyanosed, conjunctival congestion in the eyes, a dark colour mark over front of neck measuring 15cm in length and 7cm in width and subcutaneous hemorrhage below the mark. PW.20 has stated that it may be caused by the cloth measuring 53x34 inches. Further, the postmortem report reveals that thyroid bone and nasal bone were fractured.

20. PW.20 has opined that the death has taken place about 18-24 hours prior to postmortem examination which corresponds to the time of incident. There is nothing elicited from his cross-examination, to deny the fact that the deceased died a homicidal death. Hence, the prosecution has established that the death was homicidal in nature.



21. Admittedly, there are no eyewitnesses to the incident. The case rests on circumstantial evidence. As per prosecution, PW.17-PSI while on patrolling duty on 21/22.08.2014 at about 1:10am along with other police personnel, noticed two persons speeding on a motorcycle from Harihar towards Ranebennur. In spite of they asking them to stop, they did not stop. Hence, the said motorcycle was intercepted. Two persons on the motorcycle were apprehended. They confessed to have involved in theft cases in and around Ranebennur. PW.17 informed the matter through wireless to the CPI (PW.22). The said two persons namely accused Nos.1 and 3 were produced before PW-22, who after their arrest, recorded the voluntary statement of accused No.1, who confessed committing the crime in question. A screw driver and an iron rod marked as M.Os.12 and 13 kept in the motor cycle and the motorcycle marked as M.O.19 were seized under a mahazar.

22. After the arrest of accused Nos.1 and 3, on the information furnished by them, accused Nos.2 and 4 were also arrested. The said accused confessed to have



committed the robbery and murder. Based on the information furnished by accused No.1, PW.22 along with other police officials and panchas, initially, went to 'Manapuram Finance' and seized gold ornaments allegedly pledged by the accused pertaining to some other case. Further, at the instance of accused No.1, one gold chain-M.O.9, two finger rings-M.Os.10 and 11 and bangles were recovered from his house under a mahazar Ex.P-25 in the presence of panchas CWs.8 and 9.

23. The prosecution would rely on the confessional statement of the accused to prove that the accused have conspired to commit robbery and murder and proceeding together to the house of the deceased on a motorcycle. Based on their confessional statement, the Investigation Officer has conducted panchanamas at the places, where the conspiracy was held and the motorcycle was parked as per Ex.P.23 and Ex.P.24. At this stage, it is relevant to mention that the said confessional statement alone does not provide conclusive proof, without corroborating evidence to hold that the prosecution has established the fact that all the



accused have conspired together to commit robbery and murder and they went to the house of the deceased together on a motorcycle. Apart from the said confessional statement, there is no evidence adduced by the prosecution to show that the accused were either present at the place, where the mahazar was drawn, to conspire to commit robbery and murder or to show that accused Nos.1 to 4 went to the house of the deceased together on a motorcycle.

24. It is the contention of the learned counsel for appellants that the alleged seizure of motorcycle, screwdriver, iron rod or even the gold ornaments is not sufficient to hold that it was these accused who have committed the robbery and murder. He contended that the recovery is not in accordance with Section 27 of the Indian Evidence Act, 1872 and therefore, the accused cannot be held guilty of the charged offences.

25. It is pertinent to mention that in Ex.P.1-complaint itself, P.W.1 has mentioned about the missing of bangle, gold chain and gold rings belonging to the deceased. Though



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the descriptions of those articles were not stated, that itself is not fatal to the prosecution case. The prosecution has examined P.W.1, P.W.5 to P.W.9 and P.W.23, the close relatives of the deceased. Except P.W.8, all the other witnesses have identified the gold chain-MO.9 and two finger rings-MO.10 and MO.11 as belonging to the deceased. They have categorically stated that the deceased was wearing those ornaments when she was alive. Insofar as the bangle is concerned, P.W.6, daughter-in-law of the deceased has stated that the bangle which the deceased used to wear was an artificial bangle. The witnesses have stated that after the accused were arrested, the gold chain, a finger ring and another finger ring with Elephant's hair were shown to them and they have identified those ornaments as belonging to the deceased.

26. As per prosecution, the voluntary statement of accused No.1 was recorded as per Ex.P.50. The said accused initially led the police and panchas to one Manapuram Finance, from where certain gold ornaments were seized and



thereafter, he took them to his house at Makanuru, wherein, at his instance, MO.9 to MO.11 were seized under Ex.P.25.

27. The prosecution has examined C.W.8 as P.W.4, one of the panch witnesses to Ex.P.22 under which MO.12, MO.13 and MO.14 to MO.17 and MO.19 were seized and Ex.P.23, Ex.P.24, Ex.P.25 under which MO.9 to MO.11 were seized and Ex.P.26 to Ex.P.39 (photographs taken at the time of drawing of the panchanamas).

28. P.W.4 has deposed in his evidence that the accused took them to Makanuru village, from where one gold chain, gold earrings and finger rings were seized. As could be seen from the evidence adduced by the prosecution, the gold chain and the two finger rings pertain to the present case. The prosecution has also got examined one Gajanana Shejavadkar-P.W.15 to establish the recovery aspect. Though he has not wholeheartedly supported the case of prosecution and has been treated hostile, in the cross-examination conducted by the Public Prosecutor, he has admitted that out of the articles seized, one gold chain, one



finger ring with Elephant's hair and another finger ring (MO.9 to MO.11) were produced by accused No.1 and he has signed the mahazar-Ex.P.25. Thus, his evidence corroborates the evidence of P.W.4 as well as the evidence of the Investigation Officer-P.W.22, who prepared the seizure panchanama.

29. At the cost of repetition, all the witnesses, namely the relatives of the deceased including P.W.1-brother of the deceased, P.W.5 and P.W.23-sons, P.W.6-daughter-in-law, P.W.7-brother-in-law and P.W.9-sister of the deceased have identified MO's 9 to 11 as the gold ornaments belonging to the deceased. Hence, we have no hesitation to hold that the said MO's 9 to 11 belongs to the deceased and they were robbed from the house after committing the murder. The said ornaments were seized at the instance of accused No.1.

30. It is the contention of the learned counsel for appellants that the ingredients of Section 397 of IPC are not made out. The said contention is not acceptable, as this is not only a case of robbery but also a case of murder. The



postmortem report would clearly reveal the injuries inflicted on the deceased. The hyoid bone was fractured and the cause of death is due to asphyxia as a result of strangulation using a cloth. At the time of conducting the spot mahazar, P.W.22-Investigation Officer has seized a cloth and it was sent to P.W.20, the doctor who conducted postmortem examination. P.W.20 has opined that the cloth-MO.7, which was found around the neck of the deceased could also be used for strangulating the deceased and causing the death by strangulation.

31. The incident took place on 17.06.2014. The prosecution has established that the deceased died a homicidal death. The gold ornaments of the deceased were found missing and it was mentioned in Ex.P.1-complaint. Hence, this is a case of murder for gain. The accused were arrested on 22.08.2014. According to prosecution, a cash of ₹.30,000/- was also robbed from the house of the deceased. After the arrest of accused No.1 to 4, a sum of ₹.1,200/- was recovered from accused No.1, ₹.840/- from accused No.2, ₹.350/- from accused No.3 and ₹.610/- from accused No.4.



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The said seizure of cash itself is not sufficient to hold that they were robbed from the house of the deceased or that accused No.2 to 4 were also part of conspiracy or they have committed robbery and murder. The learned Sessions Judge while holding all the accused guilty of the charges leveled, has observed at para Nos.148 and 149 of the judgment as under:

"148. Facts and circumstances of this case shows that, it is humanly impossible for one of the accused i.e., accused No.1 to commit the offence of murder and robbing of gold and cash and accordingly he conspired with other accused nos.2 to 4 and accordingly, brought accused Nos.2 to 4 in the motor cycle near the house of deceased, parked the bike in a lonely place and all of them together with a common intention entered the house of deceased Neelamma to commit murder and to rob the gold ornaments found on the person of the deceased Neelamma. If at all if there is no such criminal conspiracy hatched up interse between accused nos.1 to 4 then there was no occasion for accused nos.1 to 4 to trespass in to the house of deceased Neelamma. So in furtherance of the common object all the accused Nos.1 to 4 trespassed in to the house of deceased Neelamma with an intention to commit an offence of murder and robbery and executed the intended act by committing murder. The role of accused nos.1 to 4 has been clearly mentioned in the voluntary statement of accused No.1, which is produced in this case as per Ex.P50. He also disclosed about the sharing of the amount which is the subject matter of robbery in the house of the deceased Neelamma.

149. The personal search and panchanama



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drawn as per Ex.P22 also discloses the fact that, cash was also recovered from the possession of accused Nos.1 to 4 in the police station while conducting personal search of accused Nos.1 to 4. When amount was recovered from accused Nos.1 to 4, they never raised any voice contending that, it is the amount that they earned by doing any of their independent work."

32. The reasons assigned by the learned Sessions Judge to convict accused No.2 to 4 for the charges leveled are not in accordance with law. Reasons are based on assumption and presumption. As we have already held, except the confessional statement of the accused, there is no legal evidence to show that even accused No.2 to 4 were part of conspiracy or they have gone to the house of the deceased together on a motorcycle, along with accused No.1. Admittedly, the voluntary statements of accused No.2 to 4 are not marked in evidence. It is only the voluntary statement of accused No.1, which is marked as Ex.P.50. The gold ornaments were seized on the confession statement of accused No.1 from his house situated at Makanuru. P.W.18, owner of the said house has deposed that the house was given on rent to accused No.1 and for about 15 days, the



said accused was staying in the said house. The recovery of cash from accused No.2 to 4 is not sufficient to hold that they are also involved in the crime in question. There is absolutely no material against accused No.2 to 4 either in the form of recovery or any other acceptable evidence to hold that they are guilty of the charges leveled against them. However, insofar as accused No.1, we find that there is evidence to show that he has not only committed robbery but also committed the murder of Neelamma.

33. Accused No.1 has not offered any explanation, while being questioned under Section 313 of Cr.P.C., for the possession of gold ornaments. Hence, the only conclusion which could be drawn is, he has committed the robbery and murder of Neelamma. Murder and robbery have been proved to be integral parts of the same transaction and therefore, the presumption arising under illustration (a) to Section 114 of the Evidence Act is that not only the accused committed the murder of the deceased but also committed robbery of her ornaments which form the part of same transaction. At this juncture, it is useful to refer to the relevant para of the



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judgment reported in **(1983) 2 SCC 330** in the case of
***Earabhadrappa Alias Krishnappa vs. State of
Karnataka***, which reads as under:

"13. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (a) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of PW 3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangled to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by PW 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under Illustration (a) to Section 114 must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies



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according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property."

34. In the case on hand, the incident took place on 18.06.2014. Recovery of gold ornaments from Accused No.1 was on 22.08.2014. The time lag between the date of commission of the offence and the date of recovery is not so wide as to snap the link between recovery and commission of offence. In this regard, it is relevant to refer to para No.15 of the judgment of the Hon'ble Apex Court in the case of ***Ganesh Lal Vs. State of Rajasthan*** reported in **(2002) 1 SCC 731**, which is extracted hereunder:

"15. A review of several decisions of this Court, some of which we have cited hereinabove, leads to the following statement of law. Recovery of stolen property from the possession of the accused enables a presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) the offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been



committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance. Ordinarily the purpose of Section 313 of the Code of Criminal Procedure is to afford the accused an opportunity of offering an explanation of incriminating circumstances appearing in prosecution evidence against him. It is not necessary for the accused to speak and explain. However, when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an explanation which he failed to do. (See Earabhadrappe v. State of Karnataka para 13, Gulab Chand v. State of M.P. para 4.)"

35. The findings recorded by the learned Sessions Judge insofar as convicting accused No.1 for the offence punishable under Sections 397 and 302 of IPC are therefore, justified. However, we find that the evidence adduced by the



prosecution to record conviction against Accused Nos.2 to 4 is not sufficient.

36. Hence, we proceed to pass the following:

ORDER

1. Criminal Appeal No.100365/2019 and Criminal Appeal No.100149/2020 are allowed;
2. The judgment dated 16.04.2019 and order on sentence dated 20.04.2019 passed against accused No.2 and 3 for the offence punishable under Section 120B, 397 and 302 read with 34 of IPC are set aside; (Appeal filed by accused No.4 has been dismissed as abated);
3. Accused No.2 and 3 are acquitted of the charges leveled against them; Their bail bonds stand cancelled.
4. Criminal Appeal No.100069/2021 is partly allowed;
5. The judgment dated 16.04.2019 and order on sentence dated 20.04.2019 convicting accused No.1 for the offence punishable under Section 120B of IPC is set aside;



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6. The conviction and sentence passed against accused No.1 under Section 397 and 302 of IPC is confirmed;
7. Accused No.1 shall surrender before the Trial Court to undergo the sentence passed against him for the aforementioned offences;
8. A copy of the judgment shall be forwarded to the Trial Court.

SD/-
(MOHAMMAD NAWAZ)
JUDGE

SD/-
(GEETHA K.B.)
JUDGE

Kmv upto para 22
SH,
CT:PA