

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 01ST DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.280 OF 2019

c/w

CRIMINAL APPEAL NO.269 OF 2019

In Crl. Appeal No.280/2019

BETWEEN:

SRI. THIRUMALLESHA
S/O LATE ARASIAH,
AGED ABOUT 32 YEARS,
R/A KADNURUPALYA VILLAGE,
MADHURE HOBLI,
DODDABALLAPUR TALUK-561203
BANGALORE RURAL DISTRICT.

...APPELLANT

(BY SRI VEERANNA G. TIGADI, ADV.)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY ITS HEAD OFFICER,
DODDABELAVANGALA POLICE STATION,
DODDABALLAPUR TALUK-561203
BANGALORE RURAL DISTRICT.

...RESPONDENT

(BY SRI VIJAY KUMAR MAJAGE, SPP-II.)

THIS CRL.A. IS FILED U/S 374(2) CR.P.C. PRAYING TO
SET ASIDE THE JUDGMENT OF CONVICTION 16.10.2018 AND
ORDER OF SENTENCE DATED 29.10.2019 PASSED BY THE IV
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DODDABALLAPURA, IN S.C. NO.10007/2017 - CONVICTING

THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S 302
AND 201 OF IPC.

In Crl. Appeal No.269/2019

BETWEEN:

STATE OF KARNATAKA BY
DODDABELAVANGALA POLICE STATION,
DODDABALLAPURA TALUK,
REP. BY STATE PUBLIC PROSECTUOR,
HIGH COURT BUILDING,
BENGALURU-1.

...APPELLANT

(BY SRI VIJAY KUMAR MAJAGE, SPP-II.)

AND:

THIMMAIAH
S/O LATE HANUMAIAH,
AGED ABOUT 67 YEARS,
MADHURE HOBLI,
DODDABALLAPURA TALUK,
BENGALURU RURAL DISTRICT-561203.

...RESPONDENT

(BY SRI ABHISHEK M. K., ADV.)

THIS CRL.A. IS FILED U/S 378(1) CR.P.C. PRAYING TO
GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND
ORDER OF ACQUITTAL DATED 16.10.2018 PASSED BY THE
COURT OF THE IV ADDITIONAL DISTRICT AND SESSIONS
JUDGE, DODDABALLAPURA IN S.C.NO.10007/2017
ACQUITTING THE RESPONDENT/ACCUSED NO.2 OF THE
OFFENCE P/U/S 201 OF IPC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 16.07.2026 AND COMING ON FOR
"PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

Appellant/Accused No.1 has preferred Criminal Appeal No.280 of 2019 against the Judgment of conviction and order on sentence dated 16.10.2018 passed in SC No.10007 of 2017 by the IV Additional District & Sessions Judge at the Doddaballapura (for short the "the trial Court"). Being aggrieved by the impugned Judgment of acquittal in respect of accused No.2, State has preferred Criminal Appeal No.269 of 2019.

2. For the sake of convenience, the parties herein are referred to as per their rank before the trial Court.

3. Brief facts of the case are that the Doddabelavangala Police filed a charge-sheet against the accused for offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code. On 9.12.2016 at 8.15 am, Lakshminarayana R of Kadanurpalya appeared at the police station and filed a complaint. The summary of the complaint is that his father Ramamurthy, has two younger brothers, Muniraju,

and Nagarajappa, who lived with their family in Kadanurpalya. Nagarajappa married Muddulakshmamma of Doddaballapura and had been living there since their marriage. They had no children. For some reason, Nagarajappa had a fight with his wife six months earlier and had to return to his family's house, where he worked as a labourer. About twenty days prior to the incident, Nagarajappa had a fight with his father Ramamurthy and, instead of returning home, began to stay at the house of Thirumallesha in the same village. On 9.12.2016, at around 7.00 am, when the complainant was near their house, someone came and told him that his uncle Nagarajappa had been murdered and his body thrown into a culvert near Nanjappa's land, on the road leading from Kadanurpalya to Mallohalli Colony. The complainant and his father by name Ramamurthy, immediately went there and found that their uncle had been murdered elsewhere and the body dumped at that spot. There was a mark on his left leg, and he had been struck on the head with some weapon and killed.

4. The complainant has further stated that he came to know that on 8.12.2016, his uncle Nagarajappa had gone to work and returned to the village at around 5.00 p.m. Thereafter, Nagarajappa, Thirumallesha and Thimmaiah consumed alcohol together. At some point during the night complainant's uncle got into a fight with Thirumallesha for some reason and was thrown out of Thirumallesha's house. Thirumallesha and Thimmaiah then allegedly struck his uncle on the head with a weapon, killing him, and thereafter, dumped the body in the culvert near Nanjappa's land in order to destroy evidence.

5. After filing the charge-sheet, the case was registered as CC No.506 of 2017 on the file of the Civil Judge and JMFC, and was thereafter committed to the Court of Sessions, where it was registered as SC No.10007 of 2017. Upon hearing, the trial Court framed charges against the accused, which were read over and explained to them. Having understood the same, the accused pleaded not guilty and claimed to be tried. Both the accused were released on bail.

6. To prove its case, the prosecution examined 17 witnesses as PWs1 to 17, marked 50 documents as Exhibits P1 to P50, and 11 material objects as MOs 1 to 11. On closure of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. The accused denied the evidence of the prosecution witnesses in its entirety but chose not to lead any defence evidence.

7. Having heard arguments on both sides, the trial Court acquitted accused No.2 of the offences punishable under Sections 302 and 201 of the Indian Penal Code. Accused No.1 was convicted of the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment along with a fine of Rs.20,000/- and was further convicted under Section 201 IPC and sentenced to simple imprisonment for one year along with a fine of Rs.1,000/-.

8. Aggrieved by the judgment of conviction and sentence, accused No.1 has preferred Criminal Appeal No.280 of 2019. The State has preferred an appeal

challenging the judgment of acquittal passed in favour of accused No.2.

9. Learned counsel appearing for the appellant/accused No.1 submitted that the impugned judgment is contrary to law and evidence, as well as to the circumstances of the case, and is also against the material documents placed on record. It was submitted that the allegation made against accused No.1 in the charge-sheet is that he killed the deceased by dropping a large, heavy stone on him — a stone that accused No.1 could not, in fact, even lift. Despite this, the Sessions Judge imported a theory that, while having dinner, the deceased scolded the wife of the appellant, saying that the food was not good, as a result of which the appellant developed enmity towards him. It was further held that when the deceased was asleep in the house, accused No.1 brought a large stone and dropped it on his head, causing a bleeding injury; that accused No.1 then called accused No.2; and that the two of them together placed the dead body on the TVS Champ moped (MO7), pushed it along the jelly road

for a distance of about one kilometre, and dropped the body near the culvert on the main road at Mallohalli Colony, opposite the land belonging to one Nanjappa, who, it was pointed out, has not been cited as a witness in the charge-sheet.

10. It was submitted that there is no eyewitness to these allegations, and that after the dead body was discovered on the main road at Mallohalli Colony, PWs1 and 4 fabricated allegations against the appellant, following which the FIR was sent to the jurisdictional Magistrate. Meanwhile, it was submitted, false allegations were created against the appellant and were subsequently deposed to before the trial Court. The trial Court, by placing reliance on the interested and fabricated evidence of PWs 1 to 4, arrived at an erroneous conclusion and passed the judgment of conviction, which is accordingly bad in law.

11. It was further submitted that the trial Court erred in law in accepting the evidence of PWs1 to 4, who are respectively the brother, wife, and brother's son of the

deceased, being close relatives with an interest in the outcome. Their statements before the police and their depositions before the trial Court contain numerous contradictions, improvements, omissions, and inconsistencies.

12. PW1, in his examination-in-chief, deposed that for the past six months the deceased had been residing in their house and never used to work; that when his father questioned him about this, the deceased quarrelled with PW4 and left the complainant's house to stay at the house of accused No.1-Thirumallesha. However, in cross-examination, he deposed that he had seen the deceased sleeping at the appellant's house, but could not say on which occasion. He also admitted in cross-examination that the deceased was on cordial terms with his wife. While staying at the house of PW4, the deceased used to work and was also employed as a coolie labourer in the village; and in his remaining time, he used to tend goats and sheep belonging to PWs1 and 4.

13. PW1 further deposed that he himself used to leave home at 8.30 am and return at 7.30 pm from Nelamangala, where he worked as a Computer operator in the office of the Tahsildar, and that during the evening hours he used to consume liquor. He stated that he used to give the deceased money for his pocket expenses, but expressed his inability to say on which dates, or at whose house, the deceased used to go for coolie work. He admitted that there is no liquor bar in the village or at Madagondanahalli, and also admitted that Mallohalli Colony is adjacent to the Nelamangala-Doddaballapur main road, where there is vehicular traffic round the clock.

14. He deposed that Shankar, Ramaiah, and Thimmaiah informed him of the deceased's death and told him that the body was lying at the edge of the road. He admitted that he had not personally observed the nature of the injuries caused to the deceased. He further admitted that he had not witnessed the deceased and both accused going to Mallohalli to consume alcohol on 8.12.2016, nor the quarrel that allegedly took place

between them while returning home at 8.00 p.m. He deposed that this information had been conveyed to his father by an unknown person, and admitted that he had not deposed about any quarrel occurring near his and his father's house — thereby confirming that his evidence on this point is hearsay and that he is not an eyewitness.

15. He further admitted that after the dead body was found on the main road, he fabricated a false story and lodged a false complaint against the appellant, and deposed accordingly before the trial Court. He also deposed that he could not recall what was recorded in the mahazar, which was drawn up on 10.12.2016 between 9.00 am and 10.00 pm, and that no sample copy of the seizure mahazar had been furnished to him.

16. In sum, it was submitted that PW1 is not an eye-witness, was not even aware of the deceased's stay at the appellant's house, and had falsely implicated the appellant purely on assumptions and presumptions, both in his complaint and in his deposition before the trial Court.

17. PW-2, Thimmaiah, who first saw the dead body on the roadside at Mallohalli Colony, deposed before the Court that, according to Thimmaiah, the deceased, after leaving the house of PW4, had been residing at Kadanur Hand-post and working in the nearby lands. The deceased used to visit the house of PW4 once a week and on other days, used to stay at other people's houses. In his statement recorded under Section 161 Cr.PC, PW2 stated that after the deceased quarrelled with his brother, the deceased went to Alur Duddanahalli and worked at the poultry farm belonging to the appellant's brother, and that when the deceased came to the village, the deceased used to stay at the appellant's house.

18. In examination-in-chief, PW2 deposed that about one year prior to 16.01.2018, when PW2 went near his land towards Mallohalli Colony, he saw the dead body of the deceased-Nagarajappa, and found that blood was oozing from the deceased's head and that there were injuries to the deceased's leg and hand. PW2 informed the deceased's brother-Ramamurthy, of this discovery. PW2

further deposed that he returned to the place where the dead body was lying and observed a blood trail extending from that spot to the appellant's house, a distance of about 1.5 km. He has also deposed that cow urine (*Gomutra*) had been sprayed in front of the appellant's house, and that there was ash from a burnt bedsheet and mat. On observing this, PW2 concluded that the appellant had killed the deceased.

19. However, on a perusal of statement of PW2 statement under Section 161 Cr.PC, no such statement appears therein. This portion of PW2's deposition is accordingly an improvement, made for the first time before the trial Court. PW2 also deposed that he had not seen the deceased in the company of accused 1 and 2 on the day preceding the date of the deceased's death.

20. Learned counsel for the appellant also pointed out material omissions and contradictions in the evidence of PW2 and further pointed out omissions and contradictions in the evidence of PWs3 to 6. It was submitted that PW7 did not support the case of the

prosecution, and that PWs8 and 9 likewise did not support the prosecution's case.

21. Learned counsel further submitted that PW14, the Doctor who conducted the post-mortem examination, admitted that there were four to five injuries on the body of the deceased, and also admitted that MO8, a large stone, could not be lifted by a single person. Learned counsel additionally submitted that accused No.2 has already been acquitted.

22. On these grounds, learned counsel submitted that, viewed from any angle, there is no cogent, convincing, or corroborative evidence to convict the appellant for the offence alleged, and that the trial Court, without properly appreciating the evidence on record, convicted the appellant, which is unsustainable in law. On all these grounds, it was prayed that the appeal be allowed.

23. On the other hand, Sri Vijay Kumar Majage, learned SPP-II appearing for the respondent-State,

submitted that the State has preferred the appeal against the judgment of acquittal passed in respect of accused No.2. It was submitted that the trial Court had failed altogether to appreciate the evidence placed on record by the prosecution pertaining to the offence under Section 201 of the Indian Penal Code. It was further submitted that while the trial Court convicted accused No.1, it disbelieved the evidence regarding the complicity of accused No.2 in the offence. He further submitted that the trial Court failed to properly appreciate the evidence on record and, consequently, the acquittal of accused No.2 is not sustainable in law.

24. With regard to the appeal preferred by the appellant/accused No.1 in Criminal Appeal No.280 of 2019 is concerned, the learned SPP-II submitted that the trial Court has properly appreciated the evidence and record in accordance with law and facts and absolutely there are no material to interfere with the impugned Judgment of conviction passed against accused No.1. On all these grounds, it is sought to dismiss the appeal preferred by

accused No.1, and to allow the appeal preferred by the State.

25. Having heard the arguments on both sides, the following points would arise for our consideration:

1. Whether the appellant/accused no.1 in Criminal appeal No.280 of 2019 has made out ground to interfere with judgment of conviction and order on sentence passed by the trial court?
2. Whether the appellant/State has made out ground to interfere with the Judgment of acquittal against accused No.2?
3. What order?

26. Our answer to the above points are:

Point No.1: in the affirmative;

Point No.2: In negative;

Point No.3: As per final order

Regarding Point No.1:

27. We, being an appellate court, are conscious that our power to re-appreciate the entire evidence on record is

as wide as that of the trial Court, since an appeal is but a continuation of the trial, though that power is exercised differently depending on whether the appeal before us is against conviction or against acquittal. Where the appeal is against conviction, we are required to re-appreciate the evidence without any deference to the trial Court's findings, and if two views are reasonably possible on the evidence, we must adopt the one favourable to the accused, since the presumption of innocence continues to enure in his favour throughout. Where, however, the appeal is against acquittal, the same unfettered power to re-appreciate exists in law, but we must exercise it with caution and interfere only where the trial Court's view is perverse, ignores material evidence on record, or is a view that no reasonable Court could have taken, and not merely because another view is also possible, since an order of acquittal reinforces the presumption of innocence in favour of the accused (*Chandrappa v. State of Karnataka* - (2007)4 SCC 415; *Sanwat Singh v. State of Rajasthan* - AIR 1961 SC 715). Being seized of a case that rests

wholly on circumstantial evidence, we are further guided by the well-settled five-fold test laid down in *Sharad Birdhichand Sarda v. State of Maharashtra* - (1984)4 SCC 116, viz. that the circumstances from which guilt is sought to be inferred must be fully established, must be of a conclusive nature, must be consistent only with the guilt of the accused, must exclude every other reasonable hypothesis, and must together form a complete and unbroken chain leaving no ground for any conclusion, save that of guilt; if even a single link in that chain is missing or unproved, the chain snaps, and the benefit must go to the accused, for suspicion, however grave, cannot take the place of proof *Hanumant v. State of M.P.* - AIR 1952 SC 343; *Kali Ram v. State of H.P.* - (1973)2 SCC 808). We must accordingly test each link relied upon by the prosecution, like motive, last seen together, recovery under Section 27 of the Evidence Act, and any false explanation offered under Section 313 Cr.P.C., bearing in mind that each is, standing alone, a weak circumstance requiring corroboration before it can be treated as

strengthening the chain. We are also mindful that where the very same body of evidence has been relied upon by the prosecution against more than one accused, differential treatment between them is not, by itself, impermissible; but where the trial Court has disbelieved the same set of witnesses as against one accused while accepting their testimony as against another, without assigning cogent and distinguishing reasons for doing so, such inconsistent appreciation of identical evidence renders the finding perverse and calls for correction at our hands.

28. Thus, keeping these principles in mind, we have examined the materials placed before the Court by the prosecution. To prove the guilt of the accused, the prosecution examined, in all, 17 witnesses as PW1 to PW17, marked 50 documents as Exhibits P1 to P50, and marked 11 material objects as MO1 to 11. The trial Court acquitted accused No.2 of the offences punishable under Sections 302 and 201 of the Indian Penal Code. However, the trial Court convicted accused No.1 for commission of

the offences punishable under Sections 302 and 201 of the Indian Penal Code.

29. The entire case of the prosecution rests on circumstantial evidence, there being no eyewitness to the incident. Ex.P1 is the complaint filed by Lakshminarayana R (CW1), who was examined as PW1. He is not a witness to the incident itself. He has deposed in his evidence that Muniraju and Nagarajappa are his father's brothers [i.e., his uncles]. Nagarajappa married Muddulakshmmamma of Doddaballapur and was residing with his wife at Doddaballapur, and they had no children. On account of having no children, Nagarajappa used to quarrel with his wife. For the six months prior to the date of the incident, Nagarajappa was not working. Twenty days prior to the date of the incident, his father questioned him twice as to why he was not working. Thereafter, Nagarajappa left the house and went to live at the house of Thirumallesha.

30. On 8.12.2016, PW1 came to know that the accused and his uncle had gone to Mallohalli Colony to consume alcohol. Thereafter, at 8.00 pm, all three of them

quarrelled with each other. Someone informed his father of this. He thereby came to know of this fact. On 9.12.2016, at 7.00 am, Thimmaiah came and informed him that someone had killed his uncle Nagarajappa and had thrown the dead body near the drain in front of the land belonging to Nanjappa. He and his father immediately proceeded to the spot and found the dead body of his uncle Nagarajappa. His uncle had sustained injuries to his leg and ear. He lodged a complaint with the Police, as per Ex.P1. He identified the photographs as well as the dead body. The dead body was shifted to the mortuary of the Government Hospital, Doddaballapur. The Police came to the spot and conducted the mahazar as per Ex.P8, and seized the deceased's bloodstained banian [vest] and pant. They also collected plain mud and bloodstained mud from the spot.

31. CW2-Thimmaiah, was examined as PW2. He is the brother-in-law of the deceased-Nagarajappa. He has also deposed that the deceased was residing in the house of accused No.1. About a year earlier, one day at 6.00

am, when he was going to his land, he found the dead body of Nagarajappa lying face down near the drain at Mallohalli village, and observed that the deceased had sustained injuries on his hand and legs. He was frightened and returned to his village, where he informed Sri Ramamurthy, the elder brother of the deceased, of what he had seen. He identified the photographs of the dead body as per Ex.P22 [P7 as marked]. He found blood marks on the road near the dead body, which trailed to the house of accused No.1. The floor was smeared with cow urine, and the mat and bedsheet had been burnt. He came to know that accused No.1 had killed Nagarajappa. On the day of the murder, Nagarajappa had slept at the house of accused No.1. However, he also deposed that he had seen Nagarajappa near his land prior to the incident, while he was still alive, along with accused 1 and 2, proceeding towards 11th Mile of Mallohalli Colony. This witness was declared hostile, and with the permission of the Court, he was cross-examined by the prosecution. In his cross-examination, Ex.P9 was marked.

32. CW3-Muddulakshmi, wife of the deceased Nagarajappa, was examined as PW3. She is also a hearsay witness. She has deposed in her evidence as to the death of her husband.

33. CW7-Ramamurthy, was examined as PW4. He has deposed regarding the deceased. Nagarajappa is his younger brother. About six months prior to his death, Nagarajappa came to live at his house, as there had been a quarrel between Nagarajappa and his wife. Nagarajappa was addicted to alcohol and used to stay at the house of accused No.1. Nagarajappa used to quarrel with him [PW4] after consuming alcohol; hence, he told Nagarajappa not to come to his house while intoxicated. On 8.12.2016, Nagarajappa and the accused quarrelled with each other after consuming alcohol. The wife of accused No.2 communicated this to him. At 6.00 am, while he was going to his land, he met Ramaiah and Shankar, who informed him of the murder of his younger brother, Nagarajappa, and that the dead body had been found near the tamarind tree on the land belonging to Nanjappa. He

then went there and saw the dead body of Nagarajappa. Villagers telephoned the police, who came to the spot and conducted the inquest mahazar.

34. CW9-Rajanna, was examined as PW5. He has deposed as to the recovery mahazar conducted by the police, as per Ex.P10. This witness was declared hostile and was cross-examined by the Public Prosecutor.

35. CW6-Hanumantha Gowda, was examined as PW6. He has deposed to the evidence as to the mahazar conducted by the police and also the inquest panchanama, as per Ex.P14. This witness was also partly treated as hostile and was cross-examined by the Public Prosecutor.

36. CW12-Mamata, wife of accused No.1 Thirumallesha; CW13, Ramaiah and CW15, Lokesh, were examined as PWs7 to 9. All these witnesses did not support the case of the prosecution and were treated as hostile witnesses, and were cross-examined by the Public Prosecutor with the permission of the Court. They categorically denied the statements said to have been

recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, which are marked as Ex.P15 to P17.

37. CW18-Sowmya, PDO of Kadanur Village, examined as PW10, has deposed regarding issuance of the House Khata Extract as per Ex.P18.

38. PW12-Junior Engineer, PWD, deposed regarding preparation of the sketch at the request of the Police.

39. PW13-Raja, brother of the accused, supported the prosecution case.

40. PW14, the Doctor, conducted the post-mortem examination and issued the opinion report as per Ex.P30.

41. PW17-Police Officer, deposed regarding the arrest of the accused.

42. PW18- Dr. Radha S., Senior Scientific Officer, RFSL, deposed regarding serological and chemical examination of the articles sent to the FSL and issuance of the report as per Ex.P34.

43. PW19-Sub-Inspector of Police, deposed regarding registration of the case upon receipt of the complaint.

44. PW22-Police Officer, deposed regarding the investigation conducted by him.

45. The case of the prosecution rests on circumstantial evidence. The Hon'ble Supreme Court, in the case of NUSRAT PARWEEN v. STATE OF JHARKHAND rendered in Criminal Appeal No.458 of 2012 decided on 10.12.2024, while dealing with the principle of criminal jurisprudence that a conviction on a charge of murder may be based purely on circumstantial evidence, at paragraph 7 of the judgment, has observed thus:

"7. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are established and that all the established facts point fully irrefutably to the accused person's guilt. The chain of incriminating

circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence. The law with regard to conviction based on circumstantial evidence has been crystalised by this Court in the case of Sharad Birdhichand v. State of Maharashtra (1984)4 SCC 116, wherein it was held:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade V. State of Maharashtra [(1973) 2 SCC 793]

where the observations were made: [SCC para 19, p. 807]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

46. Having noted the principles governing the case based purely on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution in order to

bring home the charges against the accused. The prosecution portrayed the following circumstance in its endeavour to establish the charge of murder against the accused.

47. As regards "motive", Ex.P1-complaint reveals that, on 08.12.2016, after the deceased returned from work at about 5.00 p.m., accused 1 and 2 and the deceased went together to consume alcohol. Thereafter, the accused returned to his house and slept. Subsequently, an altercation took place between accused No.1-Thirumallesh, accused No.2-Thimmaiah and the deceased for some reason. It is alleged that accused 1 and 2 assaulted the deceased on his head and caused his death. Thereafter, in order to destroy the evidence, they allegedly threw the dead body near the drainage abutting the land of Nanjappa. The complainant-Lakshminarayana, who has been examined as PW1, has also deposed to the same effect. However, the contents of the complaint do not disclose any motive for the alleged commission of the offence. Even PW1 has not deposed as to any motive on

the part of the accused to commit the murder of the deceased.

48. PW4-Ramamurthy, the elder brother of the deceased-Nagarajappa, has deposed that, on 08.12.2016, during the night, the accused and Nagarajappa consumed alcohol and quarrelled with each other and that the same was informed by his wife to accused No.2. At about 6.00 pm, while he was proceeding towards his land, he met Ramaiah and Shankar, who informed him about the death of his younger brother near the land of Nanjappa. Thereafter, they went to the spot and found the dead body of Nagarajappa. This witness has also not deposed anything regarding the motive for the accused to commit the murder of the deceased. In the charge-sheet, it is alleged that, on 8.12.2016 at about 12.00 noon, the deceased abused his wife and accused No.1 stating that the food prepared by her was not good. Accused No.1 questioned the deceased in that regard, resulting in a quarrel between them. It is alleged that, on account thereof, the accused decided to eliminate Nagarajappa

and, accordingly, while the deceased was sleeping in his house, accused No.1 dropped a stone on his head and committed his murder.

49. On careful appreciation of the entire evidence on record, none of the prosecution witnesses have deposed regarding the alleged motive of the accused. Thus, the prosecution has failed to establish the motive attributed to the accused for committing the murder. Admittedly, as per the prosecution case, the deceased Nagarajappa was residing with his wife Muddulakshmi at Doddaballapur after their marriage. About six months prior to the incident, the deceased had quarrelled with his wife and thereafter, came to reside in the house of his brother Ramamurthy. Nagarajappa was doing some work in the house of the complainant. About 20 days prior to the incident, Nagarajappa, along with his brother, started residing in the house of accused No.1. When accused No.1 had permitted the deceased to reside in his house for more than 20 days prior to the incident, the allegation that accused No.1 committed the murder of the deceased for a

trivial reason that the food had not been prepared properly creates a serious doubt in the prosecution case.***

50. It is well settled that, in a case based on circumstantial evidence, motive assumes significance, particularly where there is no direct evidence connecting the accused with the commission of the offence. In the present case, however, the prosecution has failed to establish the alleged motive beyond reasonable doubt. Though the charge-sheet alleges that the deceased had abused his wife and accused No.1 over the quality of food, resulting in a quarrel and thereafter the accused decided to eliminate him, none of the prosecution witnesses have spoken to this alleged circumstance or furnished any cogent evidence regarding the motive for the murder. Even PW1, the complainant, has not deposed as to any motive on the part of the accused. On the contrary, the evidence discloses that accused No.1 had permitted the deceased to reside in his house for about 20 days prior to the incident. In the absence of convincing evidence establishing the alleged motive, the said circumstance

remains unproved. Though absence of motive by itself may not be fatal to the prosecution case where other circumstances conclusively establish the guilt of the accused, in the present case, where the prosecution case rests substantially upon circumstantial evidence, the failure to prove the alleged motive assumes considerable significance and further weakens the prosecution case.

51. In the case on hand, the prosecution has alleged that, on 09.12.2016 at about 7.00 a.m., while PW1-complainant Lakshminarayana was near his house, somebody came and informed him about the dead body of Nagarajappa lying near the land of Nanjappa. Accordingly, PW1 and his father went to the spot and came to know that, on 08.12.2016, Nagarajappa had attended his work and returned home at about 5.00 p.m. along with the accused after consuming alcohol. It is further alleged that, during the night, an altercation took place between Nagarajappa and accused No.1 and, consequently, both the accused together committed the murder of Nagarajappa and, in order to destroy the evidence, threw

the dead body near the drainage abutting the land of Nanjappa. A perusal of the evidence of PW1 makes it clear that he is not an eyewitness to the incident. In his examination-in-chief itself, he has clearly admitted that he lodged the complaint only on the basis of suspicion, as a scuffle had taken place between the accused and the deceased during the night of 08.12.2016. Therefore, his evidence does not advance the case of the prosecution in establishing the complicity of the accused in the commission of the offence.

52. As regards the last-seen theory and failure to establish the chain of circumstances is concerned, the prosecution has principally relied upon the circumstance that the deceased was last seen in the company of accused Nos.1 and 2 on the evening of 08.12.2016. However, on a careful appreciation of the evidence, this foundational circumstance itself has not been established. As per the charge-sheet, CW13-H. Ramaiah, CW14-R. Shankara and CW15-R. Lokesha R., examined as PWs.8, 16 and 9 respectively, were cited as the last-seen

witnesses. None of these witnesses have supported the prosecution. Even after they were treated as hostile, the prosecution has failed to elicit any material admission from them regarding the deceased having been last seen alive in the company of the accused. The statements allegedly recorded under Section 161 of the Cr.P.C., marked as Exs.P16, P17 and P33, being previous statements, cannot constitute substantive evidence of the facts sought to be proved.

53. The evidence of PW1 also does not establish this circumstance. Though the complaint proceeds on the basis that the deceased had returned home along with the accused after consuming alcohol and that an altercation thereafter took place, PW1 has admitted that he had not personally witnessed either the deceased and the accused going together to consume alcohol or the alleged quarrel between them. His knowledge regarding these circumstances was derived from information furnished by others. Likewise, PW4 has spoken only to information allegedly received from the wife of accused No.2 and has

not claimed personal knowledge of the deceased having been last seen in the company of the accused. Thus, the evidence relied upon by the prosecution to establish the last-seen circumstance lacks directness, reliability and probative value.

54. It is well settled that the last-seen theory is a circumstance which must be proved by cogent and reliable evidence. The circumstance assumes significance only where the interval between the deceased being last seen in the company of the accused and the time of death is so narrow that the possibility of any person other than the accused being the author of the crime is substantially excluded. In *Sk. Yusuf v. State of West Bengal*, (2011) 11 SCC 754, the Hon'ble Supreme Court has reiterated that the last-seen circumstance, particularly when relied upon in a case resting on circumstantial evidence, must be proved with certainty and cannot, by itself, sustain a conviction unless the surrounding circumstances form a complete chain. In the present case, there is no reliable evidence establishing that the deceased was last seen

alive in the exclusive company of accused Nos.1 and 2. The very foundational fact necessary for invoking the last-seen theory is, therefore, absent. Consequently, no adverse inference can be drawn against the accused merely on the basis of their alleged proximity to the deceased prior to the occurrence. The prosecution cannot convert suspicion arising from such proximity into a legally established circumstance.

55. The same principle applies with greater force to Section 106 of the Indian Evidence Act, 1872. The provision does not cast upon the accused the initial burden of proving his innocence. The primary burden always remains upon the prosecution to establish the facts constituting the offence. Section 106 comes into operation only after the prosecution has established foundational facts from which a reasonable inference can be drawn that the particular fact was especially within the knowledge of the accused. In the absence of proof that the deceased was last seen alive in the company of the accused, the

prosecution cannot invoke Section 106 to fill the lacuna in its own case.

56. The Hon'ble Supreme Court, in *Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404, has explained the limited scope of Section 106 and held that the provision is not intended to relieve the prosecution of its duty to prove the case beyond reasonable doubt. Similarly, in *Nagendra Sah v. State of Bihar*, (2021) 10 SCC 725, the Supreme Court reiterated that Section 106 is an exception to the general rule contained in Section 101 and cannot be employed to shift the entire burden of proof upon the accused. Thus, in the absence of the foundational circumstance of last-seen together having been established, Section 106 has no application to the facts of the present case.

57. The evidence regarding the spot mahazar and the subsequent alleged recovery also does not establish the missing link. Ex.P8 records that the spot mahazar was conducted between 9.00 and 10.00 a.m. on 09.12.2016 at the place where the dead body was found, whereas the

inquest mahazar-Ex.P14 was conducted thereafter between 11.00 a.m. and 2.00 p.m. PW6, one of the attesting witnesses to the mahazar, has not supported the prosecution regarding Ex.P8 and the other attesting witness, CW4-Ravi, has not been examined. Significantly, these proceedings had taken place prior to the arrest of the accused. The subsequent reliance placed by the Investigating Officer upon the alleged voluntary statements of the accused Exs.P42 and P44, therefore, cannot, by itself, establish their involvement in the commission of the offence unless the other connecting circumstances are independently and satisfactorily proved.

58. The alleged motive has not been satisfactorily established; the last-seen circumstance has not been proved through any witness having direct knowledge; the material witnesses relied upon for the said circumstance have not supported the prosecution; PW1 and PW4 speak only to information received from others; and the subsequent circumstances relied upon by the prosecution do not independently bridge the gap in the chain of

evidence. Thus, the circumstances relied upon by the prosecution remain isolated and do not converge into a complete chain pointing unerringly towards the guilt of accused No.1.

59. It is a cardinal principle of criminal jurisprudence that *ei incumbit probatio qui dicit, non qui negat*—'the burden of proof lies upon the person who asserts and not upon the person who denies'. The prosecution cannot derive strength from the weakness of the defence. Therefore, the prosecution has failed to establish a complete and unbroken chain of circumstances leading only to the hypothesis of the guilt of accused No.1. The evidence on record leaves a reasonable possibility consistent with his innocence. It is a settled principle that suspicion, however grave, cannot take the place of proof, and where two views are reasonably possible, the view favourable to the accused must necessarily be adopted. The maxim *in dubio pro reo*—'when in doubt, the accused is entitled to the benefit of doubt'—squarely applies. Consequently, the prosecution has failed to prove the guilt

of accused No.1 beyond reasonable doubt, and he is entitled to an order of acquittal. Accordingly, we answer Point No.1 in the affirmative.

Regarding Point No.2:

60. Since, we hold that the trial Court fell in error in convicting accused No.1 while acquitting accused No.2 on the self-same evidence, and answered point No.1 in favour of the appellant-accused, the question of interference with the judgment of acquittal against accused No.2, does not arise. Accordingly, we answer point No.2 in the negative.

Regarding Point No.3:

61. For the reasons aforesaid and discussions, we proceed to pass the following:

ORDER

- (i) Criminal Appeal No. 280 of 2019, filed by Accused No.1, is allowed.
- (ii) The judgment of conviction and order of sentence passed against Accused No. 1 for the offences punishable under Sections 302 and 201 of the Indian Penal Code, in SC No.10007 of 2017, is hereby set aside.

- (iii) Accused No.1 is acquitted of the said offences.
- (iv) Accused No. 1 shall be released forthwith, if he is not required in any other case.
- (v) The Registry is directed to communicate this judgment to the concerned Jail Authority forthwith.
- (vi) Criminal Appeal No. 269 of 2019, filed by the State challenging the acquittal of Accused No.2, is dismissed. The judgment of acquittal passed in favour of Accused No.2 stands confirmed.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE