



CNR: KAHC010224172019

NC: 2026:KHC:42579-DB
CRL.A No. 1396 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1396 OF 2019 (C)

BETWEEN:

1. FAHID @ FAREED
S/O LATE NASIR AHAMED,
AGED ABOUT 42 YEARS,
RESIDING OPP. ABUBUCKER MASJID,
ARABIC COLLEGE, TANNERY ROAD,
VENKATESHPURAM,
BENGALURU.
2. ASMA @ RIZWANA
W/O KHAJA MOHAMMED-
HAMIDULLA KURESHI,
AGED ABOUT 40 YEARS,
CHIKKANNA LAYOUT,
P & T COLONY, SHAMPUR ROAD,
BENGALURU.
3. IMRAN PASHA
S/O ASLAM PASHA,
AGED ABOUT 35 YEARS,
MODI ROAD, D.J. HALLI,
HYDER ALI CIRCLE,
BENGALURU.

...APPELLANTS

(BY SRI. RANGANATH REDDY, ADVOCATE (PH))

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signed by
LAKSHMI T
Location:
High Court
of Karnataka



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AND:

STATE BY BAGALUR POLICE STATION
BENGALURU RURAL DISTRICT,
REP. BY SRI A.P.P.,
HIGH COURT COMPLEX,
BENGALURU-560 001.

...RESPONDENT

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

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO:
(A) CALL FOR THE RECORDS IN S.C.NO.15004/2016 ON THE
FILE OF THE LEARNED V ADDL. DISTRICT & SESSIONS JUDGE,
DEVANAHALLI, AND; (B) SET ASIDE THE ORDER OF JUDGMENT
OF CONVICTION DATED 17.01.2019 IN S.C.NO.15004/2016
PASSED BY THE LEARNED V ADDL. DISTRICT & SESSIONS
JUDGE, DEVANAHALLI, SENTENCING THE APPELLANTS TO
UNDERGO IMPRISONMENT FOR LIFE AND SHALL PAY FINE OF
RS.20,000/- EACH, FOR THE OFFENCES PUNISHABLE U/S 302,
14 & 34 OF I.P.C AND THEY ARE ALSO SENTENCED TO
UNDERGO RIGOROUS IMPRISONMENT OF FIVE YEARS AND
SHALL PAY FINE OF RS.5,000/- EACH FOR THE OFFENCES
PUNISHABLE U/S 201 R/W SECTION 34 OF I.P.C AND ACQUIT
THE APPELLANTS.

THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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



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ORAL JUDGMENT

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

The appellants/accused Nos.1 to 3 have preferred this appeal against the Judgment and Order dated 17.01.2019 passed by the Court of the V Additional District and Sessions Judge, Devanahalli in Sessions Case No.15004/2016.

2. Vide impugned Judgment and order, the learned Sessions Judge has convicted accused nos.1 to 3 for the offences punishable under Sections 302 and 114 read with Section 34 of IPC and Section 201 read with Section 34 of IPC, and sentenced them to undergo imprisonment for life and to pay a fine of Rs.20,000/- each for the offences punishable under Section 302 and 114 read with Section 34 of IPC and to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- each for the offence under Section 201 read with Section 34 of IPC.



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3. Heard the learned counsel for the appellants Sri. Ranganath Reddy, and learned SPP-II for the State, Sri. Vijayakumar Majage and perused the material on record.

4. Brief facts of the case: Accused No. 2-Asma @ Rizwan is the wife of deceased Khaja Mohammed Hamidulla Khureshi. She had an illicit relationship with accused No.1/Fahid @ Fareed. Accused No.3-Imran Pasha, is the brother of accused No.2. The deceased had come to know about the illicit relationship between accused No.2 and accused No.1 and he had objected to the same and assaulted accused No.1. Subsequently, accused No.1 developed friendship with the deceased and he had lent a sum of Rs.20,000/- to him. Since the deceased was an obstacle to the illicit relationship, both accused Nos.1 and 2 along with accused No.3, hatched a plan to commit his murder. Hence, as per the instructions and abetment of accused No.2, on 12.10.2015 at about 04:30 p.m., accused No.1 and 3 took the deceased in his



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autorickshaw bearing No.KA-04/4835 from Shivajinagar Chowk, Bengaluru towards Hosuru Bande, in the guise of purchasing some scrap items, by fixing the auto fare at Rs.300/-. At about 07:30 p.m., they took the deceased near Marenahalli quarry wherein, accused No.3 picked up quarrel with him. When the deceased took out a knife and tried to assault him, accused No.3 who had a grouse against the deceased, as he was harassing his sister, and accused No.1 who had an illicit relationship with accused No.2, with a common intention, repeatedly stabbed him on his stomach, chest and other parts of the body and committed his murder.

5. It is the further case of the prosecution that accused Nos.1 and 3, with an intention to destroy the evidence, took the mobile phone of the deceased, and shifted the dead body and dumped it in a deep quarry and threw the knives in the nearby bushes. Thereafter, they took the autorickshaw of the deceased near Kannur Village Circle, where accused No.3 got down from the



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autorickshaw. Accused No.1 took the autorickshaw to Hegdenagar Circle, where accused No.2 was waiting and they went to a shop and purchased pant and shirt for a sum of Rs.600/-. Accused No.1 wore the said pant and shirt and threw the bloodstained clothes worn by him in a gutter. Thereafter, accused No.2, washed the blood stains found in the autorickshaw and on 13.10.2015 at about 10:00 a.m., accused No.1 along with accused No.4 took the autorickshaw and parked it near Boodikere cross Dargah.

6. On 13.10.2015, PW.2 the brother of the deceased lodged a missing complaint at Shivajinagar Police Station, regarding missing of his brother, based on which, a case was registered by the PSI-PW.24, in Crime No.168/2015 of Shivajanagar Police Station. In the complaint-Ex.P32, PW.2 has stated that his brother was running an autorickshaw and on 12.10.2015 at about 07:00 p.m., he had left the house in the said autorickshaw



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bearing registration No.KA-04/4835, but did not return and his mobile phone was also switched off.

7. On 14.10.2015, at about 05:30 p.m., PW5/Swaminathan noticed the dead body of a male person in the deep quarry, behind B.M.School, Kadusonnappanahalli cross. Based on the information gathered from the public, the Police Constable of Bagalur Police Station, Sri. Rajkumar M. Pathroti-PW1 visited the spot and noticed that the dead body was of a male person aged about 35-40 years. On the complaint-Ex.P1 lodged by PW1, a case was registered in Crime No.193/2015 of Bagalur Police Station, Bengaluru City against unknown persons for the offences punishable under Sections 201 and 302 of IPC. The Police Inspector-PW26, of Bagalur Police Station, took over the investigation, arrested the accused and recorded their voluntary statements. On completion of the investigation, charge sheet was filed against accused Nos.1 to 4.



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8. Before the trial Court, the accused pleaded not guilty to the charges framed against them and claimed to be tried. In order to establish the guilt of the accused, the prosecution got examined PW1 to PW26 and got marked Exs.P1 to P59 and MOs.1 to 14.

9. On appreciation of the oral and documentary evidence on record, the learned trial Court came to the conclusion that the prosecution has succeeded in proving and in completing the chain of circumstances relating to commission of offence against accused Nos.1 to 3, however, there was no proper and independent corroborative evidence to believe the commission of offence by accused No.4 that he has destroyed the evidence knowing fully well about the offence having been committed by accused Nos.1 to 3.

10. The entire case of the prosecution rests on circumstantial evidence. The prosecution is relying on the following circumstances:



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- i) The homicidal death of the deceased Khaja Mohammed Hamidulla Khureshi.
- ii) Motive, illicit relationship between accused Nos.1 and 2.
- iii) Abetment by accused No.2 and instructions given by her to accused Nos.1 and 3 to commit the murder of her husband.
- iv) The last seen theory i.e., accused Nos.1 and 3 were seen in the company of the deceased prior to the incident.
- v) Accused Nos.1 and 3 showing the place where the murder was committed and where accused No.1 threw the blood stained clothes.
- vi) Recovery of blood stained knives (MOs.7 to 9) at the instance of accused Nos.1 and 3.
- vii) Injury sustained by accused No.1.
- viii) Accused No.2 purchasing the new pant and shirt (MOs.5 and 6) after the incident and recovery of shirt and pant at the instance of accused No.1.



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- ix) Accused No.2, destroying the evidence by washing the autorickshaw after the incident.

11. The Hon'ble Apex Court, in a series of decisions has held as to when on the strength of the circumstantial evidence an accused can be convicted. The legal principles as in those judgments can be summarized as follows:

- i) The circumstances from which the conclusion of guilt has to be drawn should be fully established;
- ii) The circumstances should be of a definite tendency, unerringly pointing towards the guilt of the accused;
- iii) The circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;
- iv) The circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and



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- v) They must exclude every possible hypothesis except the one which is sought to be proved.

12. It is the specific case of the prosecution that accused No.2, wife of the deceased, had an illicit relationship with accused No.1. The deceased, who came to know about the said illicit relationship was objecting to the same and he had even assaulted accused No.1 and quarrelling with his wife, accused No.2. Further, the deceased had borrowed a sum of Rs.20,000/- from accused No.1. It is the further case of the prosecution that at the instigation of accused No.2 and as per the plan hatched by accused Nos.1 to 3, on 12.10.2015 at about 04.30 p.m., accused Nos.1 and 3 took the deceased from Shivajinagar Chowk, Bengaluru, towards Hosuru Bande on the pretext of bringing some scrap items and took him near Marenahalli quarry at about 07.30 pm, wherein they picked up a quarrel with the deceased and committed his murder by stabbing him with knives. Further, they threw



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the dead body in the deep quarry and thereafter, threw the knives in the nearby bushes and also threw the blood-stained clothes in a gutter and then accused No.1 and accused No.2 purchased new clothes and accused No.2 washed the autorickshaw, to destroy the evidence. Thereafter, accused No.1 and accused No.4 parked the autorickshaw belonging to the deceased, near Boodigere cross Dargah.

13. Insofar as the acquittal of accused No.4 is concerned, the findings recorded by the trial Court has attained finality, as there is no challenge to the said finding.

Homicidal death:

After the dead body was noticed near the mining quarry, behind the BM School, the same was subjected to post mortem examination by PW16. Ex.P24 is the post mortem report, as per which, 13 injuries were noticed on the dead body as follows:



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- i) Three parallel cut wounds present over left side of the face, placed one below the other and each measuring 4cm x 0.5cm x muscle deep.
- ii) Five stab-incised wounds present over right side front of the chest, one situated 5cm above the right nipple, another 2cm below the right nipple, another 3cm away from the midline, and 5cm below the nipple, another 3cm in front of the anterior axillary line; each wound measuring 4cm x 0.5 cm x muscle deep.
- iii) four stab wounds present in and around the left nipple, one situated 3cm from the midline, another 5cm away from the nipple, another 3cm away from the midline and 4cm below the nipple, another 5cm in front of anterior axillary line; each wound measuring 4cm x 0.5cm x muscle deep.
- iv) An obliquely placed stab wound present over front of left chest measuring 5cm x 1.5cm x chest cavity deep. Centre of wound is situated 5cm away from the



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midline and 18cm below the medial end of left clavicle.

- v) Multiple stab-incised wounds present between left side chest nipple and anterior axillary line, four in numbers measuring 4cm x 0.5cm x muscle deep.
- vi) Horizontally placed stab wound present over front of middle third of left abdomen measuring 6 cm x 2cm x abdominal cavity deep, through which coils of intestines are protruding out. Centre of wound is situated 21cm away from the midline and 30 cm above the anterior superior iliac spine.
- vii) Obliquely placed incised wound over back of upper third of left forearm measuring 6cm x 2cm x bone deep.
- viii) Obliquely placed incised wound over back of middle third of left forearm measuring 5cm x 1 cm x muscle deep.
- ix) Obliquely placed incised wound over right thenar eminence measuring 8cm x 2cm x bone deep.



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- x) Vertically placed incised wound over palmar aspect of right hand measuring 3cm x 1cm x muscle deep.
- xi) Obliquely placed incised wound over back of left hand measuring 4cm × 1.5cm x muscle deep.
- xii) Two horizontally placed incised wounds over right and left gluteal region, each measuring 6cm x 1.5cm x muscle deep and 7.5cm × 1.5cm x muscle deep respectively.
- xiii) Two horizontally placed incised wounds over left lower back region, separated from one another by 2cm and each measuring 3.5cm x 1.5 cm x muscle deep.

14. PW16 has deposed about conducting autopsy over the dead body on 15.10.2015 between 11.00 a.m. and 12.00 p.m. As per Ex.P27, he has opined that the death was due to multiple homicidal injuries sustained.



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15. From the above, the prosecution has established that the deceased-Khaja Mohammed Hamidulla Khureshi died a homicidal death. In fact, the defence has not disputed that he died a homicidal death.

Illicit relationship:

The prosecution has got examined PW2 and PW3 to prove that there was an illicit relationship between accused No.1 and the wife of the deceased i.e., accused No.2. PW2 is the brother of the deceased and PW3 is the daughter of the deceased.

16. It is the contention of the learned counsel for the appellants that the evidence of PW2 and PW3 will not lead to a conclusion that there was an illicit relationship between accused Nos.1 and 2 and the alleged murder was a result of the said illicit relationship. He contended that according to the prosecution, the deceased had borrowed a sum of Rs.20,000/- from accused No.1, however, both PW2 and PW3 have not seen the said transaction and



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therefore, the evidence of PW2 and PW3 is not conclusive to prove the illicit relationship between accused Nos.1 and 2 or accused No.1 having lent a sum of Rs.20,000/- to the deceased. Hence, he contended that the motive is not established.

17. PW2 has deposed that whenever his brother used to run the autorickshaw, accused No.2 used to be alone in the house. Opposite to their house, sister of accused No.1 was staying and accused No.1 used to visit his sister's house. At that time, he got acquainted with accused No.2 and that acquaintance turned into an illicit relationship. His brother came to know about the said relationship and therefore, he had quarrelled with his wife/accused No.2. Further, deceased had seen both accused Nos.1 and 2 together and therefore, he had quarrelled with accused No.1 and assaulted him. He has also stated that since his brother was in need of money, accused No.1 had lent a sum of Rs.20,000/- to him and then the said accused developed a friendship with his



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brother and in that guise he used to visit his brother's house.

18. PW3, the daughter of the deceased, has also deposed about accused No.1 visiting their house in the absence of her father and his visit even during night hours at 10.00 p.m. to 10.30 p.m. She has stated that the accused used to go to the bedroom of her mother and would remain there till 12.00 in the midnight. About a month prior to the date of incident, her father had quarrelled with accused No.1 when he noticed his presence in the house and he had assaulted him and also warned her mother.

19. Both PW2 and PW3 were cross-examined by the defence, however, there is nothing elicited in the cross-examination to disbelieve their evidence about the illicit relationship between accused Nos.1 and 2. Hence, we have no hesitation to hold that the prosecution has established that there was an illicit relationship between accused Nos. 1 and 2.



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Abetment by accused No.2:

20. According to the prosecution, at the instance of accused No.2, accused Nos.1 and 3 took the deceased to a quarry mine wherein, they picked up a quarrel with him and committed his murder by stabbing with knives. However, the testimony of PW2 and PW3 is silent about the accused No.2 hatching a plan with accused Nos. 1 and 3 or she abetting the said accused to commit the murder of her husband. Even though their testimony shows that there was an illicit relationship between accused Nos.1 and 2, that itself will not lead to a conclusion that on account of the said illicit relationship, accused No. 2 hatched a plan and instigated or abetted accused Nos.1 and 3 to commit the murder. The prosecution has not placed any convincing material before the Court to show that accused Nos.1 and 3 took the deceased near the quarry to commit his murder, pursuant to the abetment by accused No.2.

21. Learned SPP-II has contended that the role played by accused No.2 is evident from the testimony of



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the prosecution witnesses who have stated about the said accused purchasing the new clothes for accused No.1 and also attempting to destroy the evidence by washing the autorickshaw. He, therefore, contended that the conduct of accused No.2 will lead to a conclusion that she actively participated in the commission of the offence and hatched a plan along with accused Nos.1 and 3 and abetted them to commit the murder.

22. We are unable to accept the contention of the learned SPP-II because, the specific case of the prosecution is that after accused Nos.1 and 3 took the deceased in his autorickshaw, in the guise of purchasing some scrap items, they picked up a quarrel with him and then when the deceased tried to assault accused No.3 with a knife, both the accused stabbed him with the knives which were in their possession and committed his murder. Even accepting the evidence with regard to accused No.2 purchasing the clothes for accused No.1 and washing the autorickshaw, it will only lead to a conclusion that she



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tried to cause disappearance of the evidence, after the incident. However, there is no sufficient evidence placed on record to show that accused Nos.1 and 3 have taken the deceased near the quarry either at the instigation of accused No.2 or on her abetment. Therefore, the prosecution has not established that accused No.2 has abetted the commission of the offence by accused Nos.1 and 3.

Last seen evidence:

The prosecution has placed reliance on the evidence of PW4 and PW6 to establish that prior to the incident, the deceased was last seen in the company of accused Nos. 1 and 3. The learned counsel for the appellants vehemently contended that accused No.1 is a total stranger to both PW4 and PW6 and their testimony does not indicate as to when they saw the deceased with accused 1 and 3. He further contended that the proximity of time is also not spoken by the said witnesses and the accused being a



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stranger to the said witnesses, without any test identification parade, their testimony cannot be accepted.

23. The learned counsel relied upon a decision of the Hon'ble Apex Court in the case of **SURESH CHANDRA TIWARI AND ANOTHER v. THE STATE OF UTTARAKHAND** reported in **2024 SCC ONLINE SC 3531**. The observations made at paragraph 26 of the judgment, is extracted hereunder:

"26. The circumstance of deceased being last seen alive in the company of the deceased is a vital link in the chain of other circumstances but on its own strength it is insufficient to sustain conviction unless the time-gap between the deceased being last seen alive with the accused and recovery of dead body of the deceased is so small that possibility of any other person being the author of the crime is just about impossible. Where the time-gap is large, intervening circumstances including act by some third person cannot be ruled out. In such a case, adverse inference cannot be drawn against the accused merely because he has failed to prove as to when he parted company of the deceased."



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24. Further, the learned counsel, relying on a decision in the case of **MUHAMMED RIZWAN v. STATE OF HARYANA** reported in **(2023) AIR SC 5036**, contended that when the circumstances of last seen together is not established beyond reasonable doubt, the entire chain of circumstantial evidence may be broken.

25. PW4 has deposed that when he was having a cup of tea with the deceased and talking to him near Shivajinagar Chowk at about 4.30 pm, accused No.1 came to the place where they were talking and hired the autorickshaw of the deceased for Rs.300/-, stating that he has to bring some scrap items. Thereafter, accused No.1 went in the autorickshaw of the deceased. After four days, he saw all the four accused in the police station and identified accused No.1. In the cross-examination, he has stated that he did not know the exact date on which the deceased and accused No.1 went in the autorickshaw. He has denied the suggestion that accused No.1 had not



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engaged the autorickshaw of the deceased and went along with him. He has stated that he has informed the police about accused No.1 hiring the autorickshaw of the deceased and both of them going together in the autorickshaw.

26. PW6 has deposed that when he was at the Hennur Cross bus stop at about 05.00 p.m., accused No.3, brother of accused No.2 was also standing at the bus stop and at that time, the deceased came in his autorickshaw and there was one more person in the autorickshaw. Accused No.3 also got into the autorickshaw and when he spoke to the deceased, he told him that the Auto was hired for bringing the scrap items. Thereafter, all the three went in the said auto. He has identified another person present in the autorickshaw as accused No.1. In the cross-examination, he has stated that it was on a Monday, which could be on 12.10.2015.



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27. A perusal of the evidence of PW4 goes to show that deceased was known to the said witness and when he was having a cup of tea with him, at about 04.30 p.m., accused No.1 came to the place where they were present and hired the autorickshaw of the deceased stating that he has to bring some scrap items. Thereafter, accused No.1 went in the autorickshaw of the deceased. After four days, he saw the accused in the police station.

28. The incident took place on 12.10.2015. On the very next day i.e. on 13.10.2015 itself, a missing complaint was lodged by the brother of the deceased, which shows that from 12.10.2015, the deceased was missing and he was not traceable. The dead body was found lying in the deep quarry with several injuries, on 14.10.2015. Accused No.1 was arrested on 17.10.2015. PW4 has stated that he has seen the accused in the police station after four days.



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29. PW2 has deposed in his evidence that on 13.10.2015, accused No.2, along with her children, came to his house stating that the deceased who had left the house on the previous afternoon, had not returned. PW4 has stated that he has informed the Police about the accused taking the deceased in the autorickshaw. After the arrest of the accused, PW4 has identified accused No.1 in the Police station. Hence, even though there was no test identification parade conducted by the prosecution, the evidence of PW4 cannot be disbelieved. The evidence of PW4 that he saw accused No.1 hiring the autorickshaw of the deceased and he going along with the deceased in the autorickshaw to purchase scrap items is believable.

30. When the evidence of PW4 is acceptable, there is no explanation given by the accused as to when he parted the company of the deceased after he engaged his autorickshaw. Further, there is material on record to show that both accused 1 and 2 came to the house of the



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deceased in the said autorickshaw, as spoken by PW3, daughter of the deceased.

31. Insofar as the evidence of PW6 is concerned, while he was waiting at the bus stop, he saw accused No.3, brother of accused No.2, standing at the bus-stop. The deceased came in the autorickshaw along with another person and accused No.3 also got into the said autorickshaw. When he enquired with the deceased, he informed him that they were going to bring some scrap items. From the cross-examination of PW6, it can be gathered that the accused nos.1 and 3 went along with the deceased in his autorickshaw on a Monday and it was on 12.10.2015, i.e. the date of incident. However insofar as accused No.3 is concerned, except the said evidence of PW6, we find no other material to connect him with the crime in question. Further, there is no material placed on record to show that even the said accused was nurturing ill-will against the deceased.



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Accused showing the place of incident:

32. After the arrest of accused 1 and 3, their voluntary statements were recorded as per Ex.P38 and P40. According to the prosecution, the said accused have led the police to the place where they have committed the murder and threw the blood-stained clothes of accused No.1. However, the said statement of the accused and they showing the place where the murder was committed or where they threw the blood-stained clothes, has no relevance because, admittedly the blood-stained clothes of the accused were not recovered. The learned SPP-II contended that it was thrown in the gutter where there was flow of water and therefore, the pant and shirt of accused No.1 could not be traced.

Recovery evidence:

33. Insofar as the recovery of blood-stained weapons is concerned, it is the case of the prosecution that after the commission of the crime, both accused 1



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and 3 threw the two knives used to commit the murder and also the knife which was with the deceased in the bush near the place of incident. The prosecution has got examined PW8-panch witness to the recovery mahazar Ex.P12.

34. The learned counsel for the appellant contended that the recovery was not in accordance with law and in view of the judgment of Hon'ble Apex Court in the cases of **HANSRAJ v. STATE OF MADHYA PRADESH** reported in **2024 INSC 318 SC**, **ANAND JAKKAPPA PUJARI @ GADDADAR v. STATE OF KARNATAKA** reported in **2026 INSC 417**, and **SHAHAJA @ SHAHAJAN ISMAIL MOHAMMED SHAIK v. STATE OF MAHARASHTRA** reported in **2022 LIVE LAW (SC) 725** recovery evidence is not believable and mere discovery cannot be interpreted as sufficient to infer ownership or concealment by the person who discovered the weapon. He contended that the Investigating Officer who recorded the disclosure



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statement of the accused and effected recovery, did not prove the disclosure memo as required by law.

35. PW26 is the Investigating Officer. He arrested accused 1 and 3 and effected the recovery of the weapons MOs7 to 9 from them under a mahazar-Ex.P12. In his testimony, he has stated that accused 1 to 3 have confessed to show the place where they committed the murder and also the place where they threw the weapons. Thereafter, the said accused took them near the bush, in between Neelagiri plants and produced two knives which were blood-stained. Another knife was also shown by the accused, used by the deceased to inflict injuries on accused No.1. He has further stated that the three knives were sent to FSL for examination.

36. PW8 is the panch witness to Ex.P12. He has deposed that the accused Nos.1 and 3 confessed to have committed the murder of Hameedullah Qureshi and accused No.1 took them to Neelagiri plantation and from



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the bushes produced two knives and another knife from nearby place. The said knives were recovered under mahazar Ex.P12. The evidence of the PW26-Investigating Officer and PW8, goes to show that it was only accused No.1 who has shown the place where the knives were concealed and it was at his instance, the said knives were seized. The fact that accused No.1 has given the voluntary statement and led the police and panchas to the place where the knives were concealed and the fact that the said knives were recovered from the said place, would clearly show his involvement in the concealment of the weapons and establish that he had the knowledge of the existence of the weapons at the place. The recovery of MOs.7 to 9 at the instance of accused No.1 is believable insofar as Accused No.1. The prosecution has got marked Ex.P57-FSL report, as per which the knives were stained with human blood of 'A' group, which matched with the blood stains found on the clothes of the deceased, seized at the time of conducting post-mortem examination.



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Injury to Accused No.1:

37. The prosecution has also got examined the Doctor-PW25 who has issued the wound certificate pertaining to accused No.1 marked as Ex.P34. According to the prosecution, during the incident, accused No.1 also sustained certain injuries on his hand and his palm, caused by the deceased. After the arrest of the accused, PW25 examined accused No.1 and noticed an incised wound measuring 3 x 2 x 1cm on the right palm. The counsel for the appellant contended that accused No.1 would have sustained the said injury in some other incident and therefore, the said injury cannot be connected with the crime in question. Accused No.1 has nowhere explained as to how he sustained the injury to his hand. The fact that after his arrest, the injury was noticed on his right palm leads to a conclusion that he sustained the injury at the time of incident, which is another link in the chain of circumstances.



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Purchase of new cloths and its recovery:

38. PW7 has stated that accused No.2 had come to his shop and purchased the pant and shirt (MO5 and MO6) for a sum of Rs.600/-. The shirt and pant were recovered from the house of accused No.1 under Ex.P13. PW7 has identified the pant and shirt and stated that said clothes were purchased from his shop, by accused No.2.

Causing disappearance of the evidence:

39. Insofar as causing disappearance of the evidence by accused No.2, i.e. by washing the blood-stains found in the autorickshaw, the prosecution is relying on the evidence of PW3, the daughter of the deceased. In her testimony, PW3 has stated that at about 9.30 pm, both accused 1 and 2 came to the house in the autorickshaw and after parking the autorickshaw, accused No.1 went away. Her mother i.e. accused No.2 washed the said autorickshaw and when she enquired about her father, her mother told her that he would come later. On



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the next day, they went to the house of their uncle PW2 and informed him that their father had not returned home. Her uncle i.e., PW2 went to the police station and lodged the missing complaint.

40. The above evidence on record goes to show that after the incident, accused No.2 has not only purchased the pant and shirt for accused No.1 which were seized from the house of the said accused, she washed the autorickshaw on that night, thereby attempting to destroy the evidence. The said act of accused No.2 clearly establishes that she had a knowledge about the commission of the offence by accused No.1, or had a reason to believe that an offence was committed by accused No.1 and then caused the evidence of the commission of offence to disappear, with an intention of screening the offender from legal punishment. Admittedly, accused No.2 was not present when the murder was committed. Hence, the prosecution has



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proved the charge against her under Section 201 r/w 34 of IPC.

41. For the reasons discussed above, the prosecution has established the guilt of accused No.1 for the offences punishable under Sections 302 of IPC and 201 r/w 34 of IPC and against accused No.2 for the offence punishable under Section 201 r/w 34 of IPC. However, the circumstantial evidence relied by the prosecution is not sufficient to establish the charges levelled against accused No.1 for the offence punishable under Section 114 r/w Section 34 of IPC and against accused No.2 for the offence punishable under Section 302, 114 r/w 34 of IPC and against accused No.3 for the offences punishable under Section 302, 201, 114 r/w Section 34 of IPC. For the foregoing, we proceed to pass the following:

ORDER

- i. Appeal is **partly allowed**;



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- ii. Judgment of conviction and order on sentence dated 17.01.2019 passed by the Court of V Additional District and Sessions Judge, Devanahalli, insofar as convicting and sentencing accused No.3 for the offence punishable under Section 302, 201 and 114 r/w Section 34 of IPC is **set aside** and he is **acquitted** of the said offences;
- iii. Judgment and order insofar as convicting and sentencing accused 2 for offences punishable under Sections 302, 114 r/w 34 of IPC is **set aside**.
- iv. Judgment and order insofar as convicting and sentencing accused No.1 for the offences punishable under Section 114 r/w 34 of IPC is a **set aside**;
- v. Judgment and order convicting and sentencing accused No.1 for the offences punishable under Section 302 and 201 r/w 34 of IPC, is **confirmed**.
- vi. Judgment and order convicting and sentencing Accused No.2 for the offence punishable under Section 201 r/w 34 of IPC is **confirmed**;



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- vii. Accused 1 and 2 are entitled to set off for the period of imprisonment already undergone by them under section 428 of Cr.P.C (Section 468 of BNSS);
- viii. If accused No.2 has undergone the sentence imposed against her for the offence punishable under section 201 r/w 34 IPC and has deposited the fine amount, she shall be set at liberty, if she is not required in any other case;
- ix. Accused No.3 shall be set at liberty forthwith, if not required in any other case.
- x. The sentence imposed against accused No.1 for the offence punishable under Sections 302, 201 read with 34 IPC shall run concurrently.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE