

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

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PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.795 OF 2019

BETWEEN:

THE STATE OF KARNATAKA
BY CIRCLE POLICE INSPECTOR
GONIKOPPAL CIRCLE
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SRI. SUHAS GOWDA M, HCGP)

AND:

CHERANDA MOHAN
S/O LATE KUSHALAPPA
AGED ABOUT 32 YEARS
FARMER, KUTTANDI VILLAGE
VIRAJPET TALUK
KODAGU DISTRICT-571218.

...RESPONDENT

(BY SRI. ABHISHEK JANARDHAN &
SRI. KARTHIK N, ADVOCATES)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND ORDER DATED 30.11.2018 PASSED IN S.C.NO.92/2015 ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU, MADIKERI, SITTING AT VIRAJPET, THEREBY ACQUITTING THE

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Location: HIGH
COURT OF
KARNATAKA

ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND SECTIONS 3 AND 25 OF INDIAN ARMS ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed by the State questioning the judgment of acquittal dated 30.11.2018 passed in S.C.No.92/2015 on the file of II Additional District and Sessions Judge, Kodagu, Madikeri (sitting at Virajpet) for the offence under Section 302 of IPC and Section 3 read with 25 of the Indian Arms Act and prayed this Court to set aside the said judgment and convict and sentence the accused for the offences.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the prosecution before the Trial Court that on 07.09.2015 at about 08.00 a.m., the deceased-Sabu Nanaiah was returning to his house on his two

wheeler bearing No. KA12-K-369 who has gone to summon the workers to work in his coffee estate. When deceased was in his estate road, the accused who has having rivalry against the deceased in connection with getting the katha of the property in his name, concealed himself beneath silver oak tree in the coffee estate of deceased-Sabu Nanaiah by holding SBBL gun has fired on the face, rib of the deceased for 3 rounds with an intention to kill the deceased and the deceased has succumbed to the bullet injuries sustained. Thereby, accused has committed the offence under Section 302 of IPC and Section 3 and 25 of the Indian Arms Act.

4. Based on the complaint of wife of the deceased, the police have registered the case and conducted investigation in the matter. Accused went and surrendered himself with gun and the same was seized and recovery was made at his instance. IO who conducted the investigation, collected the material and filed the charge sheet. Having filed the charge sheet, matter was committed to Sessions Court. The accused appeared before the Court and he was enlarged on bail and thereafter he did not plead guilty and claims the trial.

5. In order to prove the case, the prosecution has examined the witnesses as PW1 to PW34 and got marked the documents at Ex.P1 to P91 so also, marked the material objects at MO1 to MO23. The accused was subjected to 313 statement and he made the submission that he has no defence evidence and marked the documents at Ex.D1 to D8.

6. The Trial Court having considered the material on record comes to the conclusion that it is a case of homicidal of the deceased. However, comes to the conclusion that the prosecution fails to prove the charges levelled against the accused for both the offences under Section 302 of IPC and also Section 3 read with 25 of the Indian Arms Act and gave the benefit of doubt in favour of the accused on appreciation of evidence of both oral and documentary evidence placed on record and acquitted the accused.

7. Being aggrieved by the judgment of acquittal by the Trial Court, the present appeal is filed by the State before this Court.

8. The learned High Court Government Pleader appearing for the State would vehemently contend that the Trial Court failed to consider the evidence available on record in

a proper perspective which has resulted in miscarriage of justice. The counsel would contend that Trial Court comes to the wrong conclusion that there is no material evidence to connect the accused with the crime. The judgment of the Trial Court is bereft of any reasoning. While passing the judgment, Trial Court has not at all appreciated the evidence on record and no sound reasons are assigned. The counsel would contend that Trial Court, except discussing the evidence led, has not at all appreciated the evidence on record and absolutely there is no deliberation and discussion on the evidence. The Trial Court fails to consider the material on record and has reached a wrong conclusion that case is rest upon the circumstantial evidence and prosecution has failed to prove the guilt of the accused and proceeded only on hypothesis.

9. The counsel further would vehemently contend that the Trial Court has failed to consider the evidence of PW4, who is none other than the wife of the deceased since the evidence of PW4 is very accurate and consistent that the accused made the confession statement with her that he had taught a lesson to her husband and PW4 immediately informed the same to the police and police came and inspected the spot. Based on her complaint, the case was registered. The counsel would contend

that Trial Court also failed to consider the evidence of ballistic expert i.e., PW33 who has examined the SBBL gun and the cartridges and opined in his report at Ex.P73 that bullets found on the body of the deceased and also at the spot matched with the gun and empty cartridges found at the spot was fired from MO1. The MO1 was seized at the instance of the accused in the presence of PW21 and PW21 has supported the case of seizure of gun and so also the empty cartridges were seized where he had thrown the same after the incident and both the articles were also recovered. The counsel would contend that the FSL report and evidence of PW33 is very clear that those empty cartridges are fired from the said SBBL gun and injuries found on the dead body is also on account of usage of said cartridges. Thus, the Trial Court failed to consider the evidence of PW33 and nothing is discussed in the judgment with regard to the ballistic expert evidence and report. The counsel would contend that Trial Court has committed an error in appreciating the evidence since the prosecution has proved the motive and recovery of the weapon which was used at the instance of the accused and there is a corroborative evidence of both scientific and medical and fails to take note of all the chain of circumstances against the accused which point out the very act

of the accused. The counsel also contend that Trial Court has glorified the minor discrepancies which do not go to the very root of the case of the prosecution and committed all error in acquitting the accused.

10. The learned High Court Government Pleader appearing for the State in his arguments also vehemently contend that the usage of single SBBL gun is not in dispute and also shot the deceased in the same gun is not in dispute. The only defence which was taken by the accused is that he had not committed the offence of murder. The Trial Court fails to consider the evidence of PW4 who has categorically deposed that accused only confessed with her that he taught a lesson to her husband. The expert i.e., PW33 evidence is very clear that the very same SBBL gun was used in the alleged incident. The counsel would contend that it is not in dispute that MO1 is a single barrel gun and the same was subjected to use gunshot. PW4 also identified the gun which accused was carrying immediately after he shot her husband and PW21 also supports the case of prosecution for recovery of the gun at the instance of the accused and accused himself went along with gun to the police station and surrendered himself and produced the gun was seized and PW21 also deposes with regard to the recovery

of empty cartridges which were thrown by the accused and accused only pointed out the same. The counsel further contend that accused voluntarily surrendered before the police on the very same day at 03.15 p.m. and gun was seized. The counsel would contend that there was a motive to commit the murder as there was a dispute with regard to the change of katha.

11. The counsel brought to notice of this Court the voluntary statement of accused at Ex.P79 and portion of the same was marked with regard to handing over the weapon and recovery of empty cartridges at the instance of the accused. The FSL report at Ex.P72 is very clear with regard to usage of MO1 in the incident and the evidence of the doctor-PW1 who conducted the PM also very clear with regard to the nature of the injuries which the deceased has sustained and both the scientific and medical evidence supports the case of the prosecution. The mahazar was drawn with regard to the seizure of the weapon at the police station and recovery also made. All these materials clearly disclose that accused only done the act of murder of his senior uncle in view of the dispute with regard to the change of katha of the property. But the Trial Court committed an error in not relying upon these evidences. Hence,

prayed this Court to convict the accused based on the material available on record.

12. Per contra, the learned counsel appearing for the respondent in his arguments would vehemently contend that there is no chain of circumstances in the case and the same is not established. The counsel would vehemently contend that there are contradictions in the evidence of PW4, PW7, PW8, PW9 and PW16. Though FSL report is marked as Ex.P72, the same will not helpful to the prosecution since the expert says that 'MO1 may be used' as per the evidence of PW33 and there is no positive evidence before the Court. The counsel would contend that even though the gun belongs to accused, no need to explain the same under Section 313 statement of incriminating evidence. The counsel would contend that his gun was stolen. But fairly admits that no complaint was given for having stolen his gun. The counsel would contend that there is no any legal evidence and this accused has not fired on the deceased. The counsel would contend that there is no any basis for conviction and the recoveries also not proved by a positive evidence. Hence, there cannot be a conviction based on the suspicion.

13. The counsel for the respondent in support of his arguments, relies upon the judgment of the Apex Court reported in **(2003) 12 SCC 377** in the case of **MOUSAM SINGHA ROY AND OTHERS vs STATE OF W.B.** and brought to notice of this Court paragraph 27 wherein the Apex Court discussed that the burden of proof in a criminal trial never shifts on the accused and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. The counsel referring this judgment vehemently contented that law does not permit the Court to punish the accused on the basis of suspicion alone.

14. In reply to this arguments, the counsel appearing for the State would contend that the evidence of PW1-doctor who conducted the PM tallies with the evidence of PW33 who is the ballistic expert. The Trial Court has not considered the ballistic report as well as the evidence of PW33. Both medical evidence and ballistic expert's scientific evidence matches with each other. Accused also has not explained how his SBBL gun was missing and how other person had used his gun for committing the murder of the deceased. The counsel would contend that motive is very clear that there was a dispute prior

to this incident with regard to the change of katha as the deceased has not given consent for change of khata.

15. Having heard the learned High Court Government Pleader appearing for the State as well as the learned counsel appearing for the respondent and reanalysing both oral and documentary evidence placed on record, the Point that would arise for consideration of this appeal before this Court is:

1. Whether the Trial Court has committed an error in acquitting the accused for the offence committed under Section 302 of IPC and Section 3 and 25 of the Indian Arms Act and whether the appreciation of evidence available on record by the Trial Court is perverse which leads to miscarriage of justice and whether this Court can convert the judgment of acquittal into a conviction considering the material on record?
2. What order?

Point No.1:

16. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, it discloses that the prosecution has mainly relies upon the evidence of PW1 to PW34 and documentary evidence of

Ex.P1 to P91 and also the material objects. Before considering both oral and documentary evidence on record, this Court would like analyse that whether it is a case of homicidal or not. The Trial Court considered the evidence of PW1-doctor who conducted the post mortem and the document of Ex.P1-PM report wherein, opinion is given that due to hemorrhagic shock as a result of injury to vital organs, he died. However, kept pending final opinion till the FSL report. The doctor on perusal of post mortem finding and also the State Forensic Science Laboratory report, given the final opinion that cause of death is an account of due to shock and haemorrhage as a result of injury to vital organ, i.e., an account of gunshot injury sustained from a close range. The final report is also marked as Ex.P1(b) and P1(c) through PW1 and his signature is also marked as Ex.P1(d). The Trial Court while answering Point No.1, also taken note of this evidence and there is no serious dispute with regard to the fact that the deceased died on account of the gunshot injury. While answering Point No.1, Trail Court taken note of the evidence of PW1 as well as FSL report. When there is no serious dispute with regard to the cause of death is concerned as a result of haemorrhage and shock to the vital organs like liver, lungs of the deceased, this Court also

affirms the finding of the Trial Court with regard to the fact that it was a case of homicidal of the deceased.

17. Now, this Court has to consider the material available on record to comes to the conclusion that whether accused has committed the offence or not and whether the Trial Court has committed an error in appreciating both oral and documentary evidence placed on record or not.

Analysis of both oral and documentary evidence available on record and discussion:

18. The Court has to analyse and appreciate both oral and documentary evidence available on record. The prosecution in order to prove its case mainly relies upon the evidence of PW1 to PW34. However, the evidence available before the Court is PW1, PW4, PW21 to PW23 and also other official witnesses who are the part of investigation and recovery and also the expert evidence particularly the evidence of PW33 and PW34.

Law set in motion.

19. PW4 who is the wife of the deceased has given the complaint in writing as per Ex.P3. It is also her case that having heard the firing sound on three times, she rushed to the spot

where she heard the sound and immediately she noticed the accused who was coming with SBBL gun and having met the accused, he confessed with her that he taught a lesson to her husband. Having heard the statement of the accused, she proceeded further and found the dead body of her husband and also the motorcycle in which the deceased was proceeded. In the complaint at Ex.P3, PW4 stated about the motive to commit the murder that her husband was Pattadhar of the land and there was also a partition. But with regard to the change of katha is concerned, her husband has refused to give consent for the same since the accused was having an intention to sell the property. Hence, accused was declaring in the village that he is going to take away the life and her husband informed the same to her. PW4 further stated in her complaint at Ex.P3 that as a routine, her husband went to summon the labours in his two wheeler at 07.00 a.m. and he used to come at around 08.30 a.m. That on 07.09.2015, when she was in the house, at 08.00 a.m. she heard the firing sound three times and immediately, she rushed towards her plantation land and found the accused who was coming with the gun and having witnessed her, he confessed that he taught a lesson to her husband, go and see and she went towards the plantation and

saw that her husband was lying and scooter was also lying there and he was pooled with blood and found the injuries on the face and her husband has already lost his life. Immediately she got the neighbours and they also witnessed the same. It is her statement that due to motive, accused had fired her husband. PW4 gave the written complaint at 09.30 a.m. to the police and the same was forwarded to the police station and case was registered in Crime No.95/2015. PW4 reiterated corollary to the contents of the complaint at Ex.P3. Thus, the Court has to take note of the evidence of PW4.

20. Apart from this, she has deposed that Manu and Shanthi came to the spot. Immediately, she rushed to the house and informed the police over the phone and again she came back to the spot. By that time, people also gathered. The Circle Inspector and Sub Inspector came to the spot at around 09.00 a.m. and she gave the written complaint in terms of Ex.P3 and she identified the signature in Ex.P3. The police have conducted the inquest. At the spot, vehicle two wheeler was also lying. Thereafter, body was shifted to the hospital for post mortem. PW4 also identifies the MO1-SBBL gun which was in the hands of the accused and she also identifies the cloth of the deceased at MO2 to MO7 and also the damaged scooty meter

board and vehicle and drawing of mahazar and photographs at Ex.P6 to P17 and both stained and non-stained mud at the spot. It is also her evidence that empty cartridge was also found at the spot and identifies the same as MO9. It is also her evidence that she came to know that the accused took two empty cartridges and had thrown the same in different places. PW4 also identifies the application which was pending before the Tahsildar Office wherein, the next date was fixed as 03.10.2015. Instead of waiting till that date, accused committed the murder of her husband. PW4 also identifies her signature in Ex.P18 mahazar. PW4 is also a signatory to the mahazar for having seized the documents. This witness also speaks about the other documents of Ex.P20 to 24.

21. This witness was subjected to cross-examination. In the cross-examination, she admits that there was already a division in the family properties. The witness also admits that in the partition, some extent of property is standing in the name of deceased as well as the father of the accused. PW4 also admits that the katha was not changed in the revenue records and the same is got elicited from the mouth of PW4 by making the suggestion by the defence itself. The witness also admits that earlier, a case was registered against her husband in

Crime No.3/1992 in the police station of Gonikoppa. It is also admitted that there was a division in the year 1990 itself and in respect of division is concerned there was no dispute between her husband and also the brother of her husband. It is also elicited making the suggestion that in the Tahsildar office, in respect of changing of katha concerned, there was a matter and the same is pending and this suggestion is made by the defence itself and got elicited the evidence. Hence, it is very clear that there was a dispute between the deceased and accused before the office of Tahsildar and case was pending. Hence, it is very clear that there was a motive to commit murder. But it is the contention of the defence that in view of the said proceedings, accused has been falsely implicated in this case. But it is the case of the prosecution that in view of the dispute regarding change of katha, accused committed the murder of the deceased.

22. The Court has to take note that there was a dispute between the family of the deceased and accused. It is not in dispute that the husband of the deceased is the Pattadhar and without his consent, RTC will not be transferred and the same is elicited in the cross-examination of PW4.

23. The law was set in motion at the instance of PW4 as the evidence of PW4 is with regard to the confession made by the accused with her and immediately she rushed to the spot. PW4 categorically admits that the distance between her house and the place where her husband's body was lying is only 5 minutes walk and firstly, she heard the firing sound at 08.00 a.m. and within 2 seconds, she heard second firing sound and within 4 seconds, third firing sound was heard. This evidence supports the fact that there were three times gunshot. It is also her evidence that when she found the dead body of her husband, she called Manu and Shanthi and asked them to be there at the spot and she went to home and informed the police and one Appacchan called the neighbours. The evidence of PW4 is consistent with regard to having heard the gunshot and she rushed to the spot and found the accused and accused made the confession statement and immediately she called Manu and Shanti and also she went and informed the police and police also came to the spot and further procedure was made. Thus, the evidence of PW4 is very clear with regard to setting of law in motion by registering the case.

24. In order to prove that law was set in motion, this Court has to consider the evidence of PW30-PSI wherein he deposed that he has received the phone call from PW4 and immediately he went to crime spot along with his staff i.e., Kushalappa, ASI-Nagaraju and HC-Ganapathi and found the dead body and PW4 gave the written complaint and the same was received and sent to the police station through Kushalappa. He identifies his signature at Ex.P3 as Ex.P3(d). it discloses that the evidence of PW30 is only for the limited purpose as he having received the phone call from PW4, went to the spot along with his staff and having received Ex.P3, sent it to the police station with Kushalappa. But in the cross examination, he categorically says that when he had been to the spot, PW4 was already written the complaint and the same was received by PW30. PW30 deposed in the cross-examination that he had received the phone call at 8.20 a.m. and he went to the spot. The evidence of PW30 is that the distance between the Gonikoppa and the place where incident has taken place that is Kuttandhi Village is 18 to 20 kilometers. It is also his evidence that when he went to the spot, he found labours and also the villagers at around 20 in number. The distance between the house of PW4 and to the incident spot is one k.m.

and near the incident spot there are labourers line houses, but this lines are not visible from the house of PW4.

25. Now, this Court has to consider the evidence of PW28-Mr. U.T. Madaiah who registered the case having received the written complaint of PW4 which was given at the spot at 09.30 to PSI-PW30 which was brought by Kushalappa and he also identifies his signature at Ex.P3 and he registered the FIR in terms of Ex.P2 and his signature is also identifies at Ex.P2(a). The evidence of PW28 is very clear that FIR was sent to the Court through PC-214 and entrusted the papers to PSI. In the cross-examination, he admits that PW4 did not visit the police station. Except this answer, nothing is elicited. But his evidence is very clear that the FIR was registered in between the timings of 10.30 a.m. to 11.00 a.m and also deposes that PSI has sent the complaint. The case of prosecution is also that complaint was given at the spot by PW4 to PW30 and PW30, in turn, forwarded the same to his staff PW28 and he registered the FIR. Thus, law was set in motion by registering the FIR and timing mentioned in the FIR is also very clear that after receiving the information, went to spot and in the FIR it is clearly mentioned that incident was at 08.00 a.m. and FIR was registered at 10.30 a.m. and Magistrate received the FIR at

04.45 p.m. on the same day through PC-311 of Gonikoppa police station. Having considered all these material evidence it is clear that the law was set in motion and there was no any delay in lodging the complaint and registering the case. Hence, the law was set in motion and could be accepted as against the accused.

Motive:

26. The second circumstance is with regard to motive. Having perused the complaint which came immediately after the incident in terms of Ex.P3, it is very clear that there was a dispute between the accused and her husband and accused used to quarrel with her husband in respect of change of katha and accused was forcing him for the same as he intended to sell the property but her husband was not agreed to do the same.

27. In this regard, this Court also would like to rely upon the document of Ex.P19. This document is very clear that the deceased being a Pattadhar gave the objection in respect of issuance of coffee land holding certificate in favour of the accused and the same was given on 11.06.2015. So also the document of Ex.P20 is the letter which was given by the

accused as well as other two brothers and the document of Ex.P21 is the letter dated 15.11.2001 by the accused addressing the same to his senior uncle and so also produced the document of Ex.P22 to show that there was a partition between the very same family and also the document of Ex.P23 – Partition Deed. The evidence of the Shirestedar of the Taluk office who has been examined is very clear that there was a dispute in respect of the change of katha. The Shirestedar also deposed that he gave the documents to the police in respect of accused as well as the deceased with regard to mutation copy and documents are marked as Ex.P60 to P62.

28. The Court has to take note of the suggestion made to PW4 wherein also the defence categorically admitted with regard to the dispute in respect of change of katha is concerned and the deceased being the Pattadhar, objecting for the same. These are the answers elicited from the mouth of PW4 when defence itself suggesting the same to PW4 in respect of the extent of land standing in the name of both the deceased family and accused family. The answer is elicited from the mouth of PW4 that in respect of transfer of revenue documents from the name of her husband to his brother's name, her husband has not allowed and there was a partition in the year

1990. But there was no dispute to that effect. The only dispute is in respect of change of katha. It is elicited in paragraph 26 that there was a case in the office of Tahsildar which is pending in the respect of change of katha since her husband objected for the same. The land of Kushalappa was standing in the name of her husband and he is the Pattadhar. Without the permission or consent of the Pattadhar, RTC will not be changed.

29. Having taken note of this evidence available on the record, it is very clear that there was a motive to commit the murder. Other circumstances for committing the murder is also proved through the suggestion made to PW4 by the defence itself as well as the evidence available on record. The Court has to consider the evidence of PW4 in keeping the provisions of Section 6 of Evidence Act and also Section 134 of Evidence Act.

30. This Court also would like to rely upon judgment of the Apex Court in **GENTELA VIJAYAVARDHAN RAO AND ANOTHER v. STATE OF A.P.** reported in **(1996) 6 SCC 241** regarding application of principle res gestae. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognized in English law. The essence of the doctrine is that a fact which, though not in issue, is so

connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. Having taken note of this principle, it is very clear that though deceased has not made any statement, but P.W.4, who is the wife of the accused, who suddenly came to the spot found the accused and the accused made such statement. Hence, Section 6 of the Evidence Act comes to the rescue of the prosecution when such contemporaneous statement was made by the accused himself with P.W.4.

31. This Court also would like to rely upon judgment of the Apex Court in **SUKHAR v. STATE OF U.P.** reported in **(1999) 9 SCC 507**, wherein the Apex Court discussed in detail the scope of Section 6 and in paragraph Nos.6, 7 and 8 of the

judgment discussed the meaning and principle of res gestae, which reads as follows:

"6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:

"Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to

allow the assumption that the exciting influence continued."

7. Sarkar on Evidence (15th Edn.) summarises the law relating to applicability of Section 6 of the Evidence Act thus:

"1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & c the declarations of all concerned in the common object are admissible.

4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated."

8. This Court in Gentela Vijayavardhan Rao v. State of A.P. [(1996) 6 SCC 241 : 1996 SCC (Cri) 1290] considering the law embodied in Section 6 of the Evidence Act held thus: (SCC pp. 246-47, para 15)

"15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue 'as to form part of the same transaction' that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however

slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae."

32. Even in paragraph No.9 of **Sukhar's** case, considered the judgment of **RATTAN SINGH v. STATE OF H.P.** reported in **(1997) 4 SCC 161**, wherein the Apex Court gave an example that A is accused of a murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact and held that the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. In the case on hand, though victim has not made the statement, the victim went to the spot and found the accused with a gun and there is a proximity to the incident and statement made by the accused.

33. This Court also would like to rely upon judgment of the Apex Court in **DHAL SINGH DEWANGAN v. STATE OF CHHATTISGARH** reported in **(2016) 16 SCC 701**, wherein

the Apex Court discussed with regard to Section 6 and Rule of res gestae as exception to general rule that hearsay evidence was not admissible and rationale behind rule of res gestae, key expressions and requirements are explained.

34. This Court would like to rely upon the judgment of the Apex Court in the case of **STATE OF MAHARASHTRA v. KAMAL AHMED MOHAMMED VAKIL ANSARI AND OTHERS** reported in **(2013) 12 SCC 17**, wherein in paragraph No.36 it is observed that if the accused persons had made such confessional statements immediately after the occurrence of the bomb blasts, as a natural reaction in immediate proximity of the occurrence, so as to constitute a part of the occurrence itself, there may have been a live link between the blasts and the confessional statements, and such confessional statements, may have been perceived as a part of the same, and therefore, may (in such eventuality) have been admissible under Section 6 of the Evidence Act. The Madras High Court in the case of **VENKATESAN v. STATE** reported in **1997 Cri.L.J. 3854**, held that, in a murder case where the accused who had assaulted the deceased had made a statement about the assault to the brother of the deceased within half an hour of the act, the evidence of the brother was held to be "res gestae", and

therefore, admissible under Section 6 of the Evidence Act.

Paragraph Nos.17 and 18 of the said judgment reads as under:

"17. The above proposition of law has been laid down by the Apex Court and the same followed by other Courts. We have to see whether there is an interval or time-lag between the act committed by the accused and the time of statement given to the witnesses and was it a long one so as to give time or opportunity for fabrication. In the instant case the occurrence took place at 11.30 p.m., and the statement made by the appellant to P.W.1 at 12 mid night i.e. half an hour later. In the light of the facts of this case, it cannot be stated that there is a long interval so as to given opportunity for any fabrication. After the occurrence was over, P.W.2 and P.W.3 informed to P.W.1 and immediately on receipt of the information rushed to the house of the appellant where the appellant was found standing near the victim. Therefore, as per illustration (a) to Section 6 of the Evidence Act-

"Whatever was said by the accused to the witness shortly after the occurrence also would form part of the transaction and so it has to be considered to be the relevant facts and circumstances of the case."

18. Therefore we hold that the statement made by appellant to P.W. 1 immediately after the occurrence without any long time lag would be admissible under Section 6 of the Evidence Act."

35. Now, the Court has to consider whether the quantity of evidence or quality of evidence is required that is important in the case on hand. Having perused the evidence available on record, the evidence of prosecution witnesses is

very clear that the Court has to see the quality of evidence. The evidence of P.W.4, who rushed to the spot found the accused and the accused though not went to the police station immediately, but at 3.15 which was spoken by P.W.33, the gun was seized when he went along with gun to the police station. The evidence of P.W.21 is very clear and the expert evidence is also very clear that the gun belonging to the accused was only used for committing the murder and the same is not disputed except the evidence that the gun was stolen. To that effect, no material available on record and the Court has to see the quality of evidence.

36. This Court would like to rely upon judgment of the Apex Court in **NAMDEO v. STATE OF MAHARASHTRA** reported in **(2007) 14 SCC 150**, wherein the Apex Court held that it is no doubt true that there is only one eyewitness who is also a close relative of the deceased, it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact and also discussed the scope of Section 134 of the Evidence Act and held that neither the legislature nor the judiciary mandates that there must be a particular number of witnesses to record an order of conviction against the accused.

Even one credible witness outweighs the testimony of a number of other witnesses of indifferent character.

37. This Court would like to rely upon judgment of the Apex Court in **KUNJU ALIAS BALACHANDRAN v. STATE OF TAMIL NADU** reported in **(2008) 2 SCC 151**, wherein the Apex Court discussed with regard to Section 134 of Evidence Act and in paragraph No.8, relied upon the judgment in **VADIVELU THEVAR V. STATE OF MADRAS**, wherein it had gone into the controversy and held that it is well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact, whether it is wholly reliable, wholly unreliable, neither wholly reliable nor wholly unreliable. In the above judgment also held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. But, in the case on hand, P.W.1 immediately rushed to the spot and found the accused with gun and he had confessed that he only taught a lesson to her husband.

38. This Court also would like to rely upon judgment of the Apex Court in **BIPIN KUMAR MONDAI v. STATE OF WEST BENGAL** reported in **(2010) 12 SCC 91**, wherein the Apex Court has held that in cases of circumstantial evidence, motive is significant. Evidence about motive forms chain of event in circumstantial evidence. Even if motive is strong, accused cannot be convicted if evidence is not convincing and the Court has to see the motive as well as quality of evidence and it is not the quantity, but quality of evidence that is material.

39. This Court would like to rely upon judgment of the Apex Court in **VADIVELU THEVAR v. STATE OF MADRAS** reported in **(1957) 1 SCC 700**, wherein also scope of Section 134 with regard to sole eyewitness is concerned, held that as a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. No doubt, in the case on hand, though P.W.1 has not witnessed the firing, but immediately she rushed to the spot having heard sound and found the accused, who is coming along with gun and also made the statement that he had taught a lesson and it is very clear that there was an ill-will between the deceased and the accused and there was a dispute with regard to change of

khata and the matter was pending before the office of Tahsildar.

40. This Court also would like to rely upon judgment of the Apex Court in **GULAM SARBAR v. STATE OF BIHAR** reported in **(2014) 3 SCC 401**, wherein the Apex Court referring Section 134 of Evidence Act held that there is no requirement under law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is not the number of witnesses but quality of their evidence which is important.

41. This Court would like to rely upon judgment of the Apex Court in **VEER SINGH AND OTHERS v. STATE OF UTTAR PRADESH** reported in **(2014) 2 SCC 455**, wherein the Apex Court discussed with regard to Section 134 of Evidence Act and testimony of single witness, the Court can and may act upon, provided witness is wholly reliable and held that legal system has laid emphasis on value, weight and quality of evidence rather than on quantity.

42. This Court would like to rely upon judgment of the Apex Court in **MITESH @ T.V. VAGHELA v. THE STATE OF GUJARAT** in **CRL.A.NO.212/2012** dated **11.05.2026**,

wherein the Apex Court has held that it is the quality of the evidence and not the quantity and it is settled principle of criminal jurisprudence that it is the quality and not the quantity of evidence which is determinative.

43. This Court also would like to rely upon judgment of the Apex Court in **YANOB SHEIH ALIAS GAGU v. STATE OF WEST BENGAL** reported in **(2013) 6 SCC 428**, wherein also the Apex Court held that it is not always the quantity but the quality of the prosecution evidence that weighs with the court in determining the guilt of the accused or otherwise. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature.

The use of MO1-SBBL gun:

44. The MO1 - SBBL gun is the weapon which used to take away the life of deceased. The evidence of PW1-doctor is very clear with regard to nature of injuries and the cause of death. As per the PM report at Ex.P1, the death was due to shock and haemorrhage as a result of injury to vital organ i.e., liver and lung with the gunshot. The evidence of PW33 and his report at Ex.P72 is clear that death was an account of injuries

sustained by the victim. Thus, the medical evidence and also the opinion of the expert is very clear that injuries present in skin piece in Article No.18 and 19 are caused due to impact and passage of lead projectiles and which could have been fired through the SBBL gun in Article No.1. The wad and lead shots in Article No.20 are the component of a 12 bore cartridge and which could have been fired through the SBBL gun in Article No.1. Hence, it is very clear that the MO1 gun was used for firing. The opinion number 8 is also very clear that wad in Article No.12 are the component of a 12 bore cartridge and which could have been fired through the SBBL gun in Article No.1 and the holes present on the muffler in Article No.23 are caused due to impact and passage of lead projectiles and which could have been fired through the SPL BBL gun in Article No.1 i.e. the muffler belongs to the deceased and so also the holes present on the right side chest region, left side chest region and left sleeve of the shirt in Article No.24 are caused due to impact and passage of lead projectiles and which could have been fired through the SBBL gun in Article No.1. The range of firing with respect to the hole present on the right side of the chest region of the shirt in Article No.24 is from contact shot range. So also holes present on the right side chest region of

the banion in Article No.26 are caused due to impact and passage of lead projectiles which could have been fired through the SBBL gun in Article No.1.

45. These are the opinions read with the evidence of PW33 abd the same is very clear that he conducted the examination of MO1 and method of examination and reasons furnished is also set out in the opinion in respect of each of the articles along with report at Ex.P72. Nothing is elicited from the mouth of PW33 that this weapon was not used for firing. Hence, it is very clear that gunshot was made by using MO1 on the deceased and the same is also not disputed by the accused and only defence is that he did not shot him.

46. It is unfortunate to say that the Trial Court fails to discuss the expert evidence of PW33 and nowhere in the judgment discussed with regard to the use of MO1 for firing and also the nature of injuries which was spoken by PW1-doctor and also the FSL report. The Trial Court also not discussed anything about Ex.P1-P.M. report, nature of injuries and also the Ex.P73 wherein signature of PW33 is also identified. The same is not disputed. Except the defence of this accused that he has not caused the gunshot injuries on the deceased, he has

not led defence evidence and only a general defence was taken that he did not use the same and the Trial Court accepted the said defence without looking to the material on record.

Gun SBL MO1 belongs to accused

47. Now, this Court has to examine that whether the gun belongs to the accused or not. No dispute to the fact that the gun belongs to the accused and accused never disputed that the said gun is not belongs to him. But the counsel for the respondent, during the course of arguments, would submit that the said gun was stolen. But in order to prove the same, no complaint was given and also there is no explanation that how this gun gone to the hands of third party who have caused the gunshot on the deceased. The prosecution also obtained the document of exemption certificate issued by the concerned authority to show that the accused being a Kodava and having Jamma property, he was exempted to have the licence. The said document is marked as Ex.P46 through PW20 and the same stands in the name of the accused only and exemption certificate is issued subject to the provisions as laid down in Karnataka Wildlife Protection Act, 1992 and the exemption certificate holder shall obey the rules there. It is not disputed

in the argument that this exemption certificate was not issued in favour of accused. Hence, accused was having the gun and exemption certificate was issued to accused is not in dispute.

48. The other circumstances which connect the accused to prove that the gun belongs to him and also he had obtained the exemption certificate from the concerned authority is the evidence of PW32. To prove the same, examined the witness-PW32 who is a retired Deputy Commissioner who gave the sanction to file the charge sheet under the Arms Act and issued the permission in terms of document of Ex.P68 and identifies the signature at Ex.P68 and so also exemption certificate in terms of Ex.P46. In the cross-examination, except eliciting that exemption certificate to be issued only to the Kodava who is having the Jamma properties, nothing is elicited from the mouth of this witness-PW32 in respect of both the documents are concerned. Thus, the other circumstance is also proved against the accused and established the chain of circumstances.

Seizure of Gun as well as recovering of empty cartridges:

49. Now, the question before this Court is with regard to involvement of the accused in committing the crime and also with regard to the recovery of empty cartridges at the instance

of the accused so also seizure of gun from the accused. The case of the prosecution is that the accused has surrendered before the police at 03.15 p.m. and the same is spoken by PW34 who conducted the further investigation in the matter.

50. This Court would like to consider the evidence of Investigating Officer P.W.34 with regard to seizure of gun as well as empty cartridges coupled with the evidence of P.W.21, who is the witness to seizure of gun as well as empty cartridges at the instance of the accused. P.W.34, the Investigating Officer in his evidence says that having received the information, he took up further investigation in the matter from P.S.I-Mahesh, who conducted inquest in the presence of panch witnesses and saw the nature of injuries sustained by the victim and instructed to seize the clothes of the deceased after inquest. It is his evidence that he witnessed the damages caused to the two wheeler found at the spot and the same was seized. It is also his evidence that mahazar was drawn in the spot as per Ex.P55 and found empty cartridges at the spot and the same was seized. It is also his evidence that accused surrendered before Gonikappa Police Station at 3.15 and arrest process was done and recorded his voluntary statement. In his voluntary statement i.e., Ex.P79, he volunteers to state that he

will produce the gun as well as unused cartridge. So also, he made the statement that, if he is taken, he will produce two empty cartridges, where he had thrown the same and the signature of the accused was marked as Ex.P79(a). It is his evidence that in the presence of panch, seized the gun as well as cartridge and mahazar was drawn in terms of Ex.P48 and his signature is identified as Ex.P48(b). It is also his evidence that the accused took him and also the panch witnesses to Kuttandi Village and instructed to stop the vehicle near Kundachappa temple road and he had pointed out two used empty cartridges and the same were also seized by drawing mahazar in the presence of panch witnesses, who accompanied them in terms of mahazar Ex.P51 and he identifies his signature as Ex.P51(b) and identifies M.O.11 and photos were taken in terms of Ex.P52 and Ex.P53. It is also his evidence that spot mahazar drawn at the spot which was shown by the accused is marked as Ex.P55 and his signature is identified as Ex.P55(b) and also drawn the spot sketch in terms of Ex.P56 and his signature is identified as Ex.P56(b).

51. In the cross-examination of this witness with regard to recovery of gun and empty cartridges at the spot where the same was pointed out by the accused, he admits that when the

mahazar was drawn in terms of Ex.P48 and Ex.P51, the relative of P.W.1 was present and he had signed the same and except eliciting this answer regarding seizure is concerned, nothing is elicited. It is also suggested that in Ex.P16, when the scooter was seized, headlight doom was damaged and two holes were found and witness says that there were three holes and five small holes and not two holes when the suggestion was made to him and nothing is elicited with regard to seizure of gun in the police station and not disputed the same that the accused has not produced the same in the police station and no such mahazar was drawn.

52. This Court has to consider the evidence of P.W.21, who is also a part of seizure of gun and empty cartridges when the accused took all of them and pointed out the same. The Court has to take note of evidence of P.W.21 and he says that when he went along with one Achaiah to Gonikoppa Hospital to see the dead body. He also categorically says that both of them were asked to come to police station and accordingly, they went to police station and accused was there in the police station. The accused gave the gun and also unused cartridge to the Inspector and himself and Achaiah signed the mahazar Ex.P48 and his signature is identified as Ex.P48(a) and also

identifies the photos which were taken while sizing the gun and the cartridge as Exs.P49 and P50. It is also his evidence that accused led them to spot, since he made the statement that he will show the place where he had thrown the empty cartridges and he himself produced empty cartridges near the drainage of Kundachappa temple, the same was seized and mahazar was drawn in terms of Ex.P51 and his signature is identified as Ex.P51(a) and he identifies the photographs Exs.P52, P53 and P54. It is also his evidence that accused took all of them near plantation and he had pointed out the place where he had gunshot the deceased and mahazar was drawn in terms of Ex.P55 and identifies his signature as Ex.P55(a). The spot sketch was also prepared as per Ex.P56 and his signature is identified as Ex.P56(a).

53. This witness was cross-examined and he admits that he directly went to Gonikoppa Hospital from Boyikeri along with Achaiah and he cannot tell at what time, body was shifted. But, he says that cremation was done at 7.30. He admits that while seizing the gun and cartridge, he had signed the mahazar. He had put two signatures near the temple and also put his signature when the spot was shown by the accused and also made many number of signatures. He also says that when

they went to spot, scooter was also there at the spot and admits the photograph Ex.P50. He denies the photo which was shown to him with regard to scooter is concerned. But, he says that in that photo while producing the gun, he is not there and he categorically says that he was sitting by that time. He also admits when the suggestion was made that photo was taken while producing the unused cartridge and Ex.D6 is marked and the same was confronted and he was not there in that photo and except eliciting the answer that he is not found in the photo, nothing is elicited and no answer is elicited from the mouth of this witness that he was not present while seizing the gun, unused cartridge as well as empty cartridges from the place where both the cartridges are seized and there is no serious dispute with regard to seizure of the same.

54. Having considered the evidence of P.W.34, the Investigating Officer as well as the evidence of P.W.21, it is very clear with regard to conducting of spot mahazar and seizure of gun as well as seizure of used cartridges at the spot as well as two used cartridges which were recovered at the instance of the accused where he pointed out the same. The evidence of P.W.34 and P.W.21 is consistent, except the answer elicited from the mouth of P.W.34 that he is the relative

of the deceased and the evidence of P.W.21 is consistent and so also the evidence of P.W.34. Though other witnesses are not examined, but evidence of P.W.21 is consistent with regard to seizure of gun and also the cartridges.

55. This Court would like to rely upon judgment of the Apex Court in **STATE, GOVT. OF NCT OF DELHI v. SUNIL AND ANOTHER** reported in **(2001) 1 SCC 652**, wherein the Apex Court held that mere absence of independent witness when investigating officer recorded the statement of the accused and the article was recovered pursuant thereto is not sufficient ground to discard the evidence. The evidence of police officer regarding the recovery at the instance of the accused should ordinarily be believed. It is for the accused to show that such evidence is unreliable. The official acts of police should be presumed to be regularly performed, for example, archaic notion to approach actions of police with initial distrust should be discarded. In the case on hand, not only the evidence of police witness is before the Court, but also the evidence of independent witness, though he is a relative of deceased, who has been examined as P.W.21, his evidence is consistent.

56. This Court would like to rely upon the judgment of the Apex Court in **PRAMOD KUMAR v STATE (GOVERNMENT OF NCT OF DELHI)** reported in **(2013) 6 SCC 588**, wherein the Apex Court held that appreciation of evidence of police witness would depend upon veracity, credibility and unimpeachability of their testimony. If testimony of police official is found to be reliable and trustworthy, court can definitely act upon the same. Whereas, if court finds evidence of police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a police witness should be viewed with distrust. The quality of evidence weighs over quantity of evidence.

57. This Court also would like to rely upon judgment of the Apex Court in **AJMER SINGH v. STATE OF HARYANA** reported in **(2010) 3 SCC 746**, wherein the Apex Court held that arrest and recovery made by police, reliability of evidence, testimony of official witnesses, even in the absence of its corroboration by independent evidence, can form the basis of conviction if court is satisfied, on careful and cautious appreciation of evidence, that it is otherwise believable.

58. This Court also would like to reply upon judgment of the Apex Court in **KASHMIRA SINGH v. STATE OF PUNJAB** reported in **(1999) 1 SCC 130**, wherein also the Apex Court held that in the circumstances, absence of independent witness to support the recovery not fatal, conviction on the basis of evidence of police officials not bad.

59. This Court also would like to reply upon judgment of the Apex Court in **GIRIJA PRASAD (DEAD) BY LRS. v. STATE OF M.P.** reported in **(2007) 7 SCC 625**, wherein the Apex Court held with regard to recording of conviction solely on basis of testimony of police officials and discussed with regard to permissibility of the same and held that can be recorded, if on careful scrutiny of their evidence the same is found to be reliable and trustworthy and not necessary to be corroborated by independent evidence. In the case on hand, not only the evidence of police witnesses is available before the Court and even the evidence of P.W.21 is very clear regarding seizure of gun and also empty cartridges which were found at the spot and accused had showed the place where he had thrown the same and there is recovery under Section 27 of the Evidence Act in respect of seizure of empty cartridges.

60. This Court would like to reply upon judgment of the Apex Court with regard to evidence of ballistics expert and in corollary to the evidence of Doctor, who has been examined as P.W.1 with regard to injuries, wounds and weapons to connect the accused in other circumstances.

61. This Court would like to rely upon judgment of the Apex Court in **PAWN KUMAR ALIAS MONU MITTAL v. STATE OF UTTAR PRADESH AND ANOTHER** reported in **(2015) 7 SCC 148**, wherein the Apex Court held that when the death is by gunshot and Ballistic expert evidence is available, in every case of gun firing, it is not required that each and every bullet should hit target. There may be attempts by deceased or victim to save himself from raining bullets, and in which case, bullets may not hit the target, when the victim was shot dead and recovery of bullets from the accused along with blood stained cloth allegedly used in cleaning murder spot cumulatively establish the place of incident.

62. This Court also would like to rely upon judgment of the Apex Court in **KALUA v. STATE OF UTTAR PRADESH** reported in **(1956) 2 SCC 630**, wherein the Apex Court held that Expert evidence i.e., Ballistic expert opinion is conclusive

to prove that a cartridge was fired from a particular pistol and in a criminal trial, Medical Jurisprudence/Evidence firearm injury, proof of firing of cartridge from a particular pistol and Expert evidence in this case shows that he had fired and test-cached cartridges from the very same pistol and that itself is enough and High Court was accordingly justified in coming to the conclusion that cartridge found near the place of incident as well as recovery is made and conviction is upheld.

63. This Court would like to rely upon judgment of the Apex Court in **STATE OF PUNJAB v. BHURA SINGH AND OTHERS** reported in **(1985) 1 SCC 37**, wherein the Apex Court in paragraph No.3, taken note of the possibility of the weapon having been planted was altogether excluded. The owner of a licensed gun would normally keep it in a secure place so that it is not used by unauthorised persons and so that no mishap occurs on account of an accidental firing of the gun. But, in the case on hand, the counsel during the course of argument would submit that the gun was stolen, but to that effect, there is no complaint or not explained the same in 313 statement how the gun gone to the hands of third person and also not denied the fact that the very same gun was used.

64. This Court would like to rely upon judgment of the Apex Court in **VINEET KUMAR CHAUHAN v. STATE OF UTTAR PRADESH** reported in **(2007) 14 SCC 660**. In this judgment also, the Apex Court in paragraph No.8 held that it was also obligatory on the part of the prosecution to send the bullet, allegedly recovered from the body of the deceased, for being examined by the ballistic expert, so as to connect the recovered licensed revolver of the appellant's father with the crime. The Apex Court also discussed in paragraph Nos.11 and 12 that where direct evidence is not available or that there is some doubt as to whether the injuries could or could not have been caused by a particular weapon, examination of an expert would be desirable to cure an apparent inconsistency or for the purpose of corroboration of oral evidence. But, in the case on hand, it is very clear that Expert evidence is clear that very same gun was used and P.W.4 also speaks that accused was coming along with gun M.O.1 and so also, he confessed with her stating that he has taught a lesson to her husband and the evidence of P.W.4 and the expert evidence i.e., Ballistic report and so also the evidence of the Doctor and medical evidence supports the case of prosecution.

65. This Court also would like to reply upon judgment of the Apex Court in **SUBHASH AGGARWAL v. STATE OF NCT OF DELHI** reported in **(2025) 8 SCC 440**, wherein the Apex Court held that death by firearm and plea as to suppression of evidence of gunshot residue in the hands of the deceased when no material. In the case on hand, no doubt, no such residues were found when the swab was collected. But, the fact is that incident has taken place in the morning at 8.00 a.m. and accused went to police station at 3.15 a.m. In the meanwhile, he might have washed his hands also and there would be no such swab of gunshot residue and the same is not doubtful. The Apex Court also in paragraph No.13 held that evidence of the ballistic expert coupled with that of the doctor clearly indicates that the death was caused due to a gunshot injury sustained by the deceased and that it could not have been a self-inflicted injury.

66. Now this Court has to consider the explanation, if any given by the accused with regard to the weapon which belongs to him being used in committing the murder and the same is not disputed. However, the accused has not given any explanation and the same is not found in the case and scope of Section 313 is very clear that examination of accused is not a

mere formality. In the case on hand, it is total denial and no explanation is offered.

67. This Court would like to refer to the judgment of the Apex Court in the case of **MUNNA KUMAR UPADHYAY ALIAS MUNNA UPADHYAYA v. STATE OF ANDHRA PRADESH THROUGH PUBLIC PROSECUTOR** reported in **2012 (6) SCC 174**, wherein it is held that in order to prove his innocence, the accused ought to have given satisfactory explanation in his examination under Section 313 of Cr.P.C when incriminatory evidence goes against him. The very purpose of examination of the accused under Section 313 of Cr.P.C. is to explain with regard to the incriminating circumstances appearing against him. Twin purpose of accused's examination is to give an opportunity to him to furnish explanation, and to draw adverse inference where accused denies established facts. Accused's silence or false explanation – such conduct, held, entitles Court to tilt in favour of prosecution case invoking Section 106 and Section 114(iii)(g) of the Evidence Act, 1872. The scope of Section 313 of Cr.P.C. is in detail discussed by the Apex Court in paragraph Nos.72, 73 and 74, referring the judgments of the Apex Court in the case of **ASRAF ALI v. STATE OF ASSAM** reported in **(2008) 16 SCC 328** and in the case of **MANU SAO**

v. STATE OF BIHAR reported in **(2010) 12 SCC 310**. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance therewith the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime.

68. This Court also would like to rely upon judgment of the Apex Court in the case of **MUNISH MUBAR v. STATE OF HARYANA** reported in **(2012) 10 SCC 464**, wherein it is held that when the case depends upon the circumstantial evidence and also the material available on record showing incriminating circumstances against the accused, the accused must explain under Section 313 of Cr.P.C. It is obligatory on part of accused while being examined under Section 313 of Cr.P.C. to furnish some explanation with respect to incriminating circumstances associated with him. The Court must take note of such explanation, even in a case of circumstantial evidence, so as to decide whether or not, the chain of circumstances is complete.

69. This Court also would like to rely upon judgment of the Apex Court in the case of **SANJEEV v. STATE OF KERALA**, passed in **Criminal Appeal No. 1134/2011** dated 09.11.2023. Paragraph No.41 of the said judgment reads as under:

"41. Notably, no less than 627 questions/ circumstances were put to A10 and A11 each under Section 313 of the Code of Criminal Procedure, 1973. This Court has clarified on numerous occasions that in law, the accused has a duty to furnish some explanation of an incriminating circumstance, with the prosecution crossing the threshold of proving its case beyond reasonable doubt. However, no explanation, much less, a plausible one, is put forth. In the event of complete denial or silence, the Court is entitled to draw an adverse inference against the accused. Applying this to the case at hand, in the statements under Section 313, the accused persons failed to justify the incriminating circumstances appearing against them."

70. This Court also would like to rely upon judgment of the Apex Court in the case of **CHETAN v. STATE OF KARNATAKA** reported in **(2025) 9 SCC 31**. Paragraph Nos.143, 144, 145 and 146 which reads as under:

"143. In this regard, we may also refer to the decision in this Court rendered in Triumukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 where it was held that where the circumstantial evidence is the basis for any case, where no eyewitness account is available, and when the incriminating circumstances are put to the accused, if the accused does offer any explanation or offers the explanation that is found to be false, it provides an additional link to the chain of circumstances as observed in para 21 of the aforesaid decision which is reproduced herein below: (SCC p. 694)

"21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]

144. We may not also lose sight of the significance of the provision of Section 313 Cr.P.C. in the case. As a trial comes to a conclusive phase and all the evidence are adduced by the prosecution, the veracity and credibility of which are tested with the tool of cross-examination and when a certain clear picture emerges based on the incriminating materials on evidence, as a procedural safeguard, the court draws the attention of the accused to these incriminating evidence to

enable the accused to explain these facts and circumstances which point to his guilt. While the accused is not obligated to answer the questions put to him and still can maintain his silence or deny the evidence, yet silence or evasive or wrong answers to the questions put by the court provides a perspective to the court in properly evaluating the incriminating materials which have been brought forth by the prosecution by drawing necessary inference including an adverse one. [See, Manu Sao v. State of Bihar, (2010) 12 SCC 310].

145. Examination of an accused under Section 313 Cr.P.C. is an important component of the process of judicial scrutiny of the evidence sought to be relied upon by the prosecution against an accused. At the time of indictment and framing of charges against an accused, the untested evidence marshalled by the investigating authority in the course of the investigation is laid bare before the accused, who would have an idea as to the nature of evidence and case being built up against him by the prosecution. This is to enable the accused to prepare and strategize his defence. He will have all the opportunities to discredit any prosecution witness or question any evidence through the tool of cross-examination. He will thereafter have the opportunity to lead his defence evidence if any. It is in this context that the answers given by an accused assume great significance in assessing the evidence by the court.

146. In the present case, despite the incriminating evidence which has come up against him has been pointed out to him by the Court, he has not explained any of these but merely denied or feigned ignorance to which necessary inference can be drawn against him.

71. But in the case on hand, it is very clear that gun was seized at the instance of accused and he went with weapon to the police station and mahazar was also drawn. Even though other witnesses have turned hostile, the evidence of P.W.4, P.W.21, P.W.1-Doctor and medical evidence supports the case of prosecution and so also, expert evidence i.e., P.W.33 supports the same and mahazars were drawn in terms of Exs.P48, P51 and P55 which are very clear with regard to seizure of gun and empty cartridges at the spot and also in the spot where he had thrown the same after the incident and the evidence is consistent. The Court has to take note of circumstantial evidence of last seen theory that is spoken by P.W.4 i.e., immediately when she thrice heard the gunshot sound, she immediately rushed towards the spot, wherein she found the accused and the accused also made confession statement that he had taught a lesson to her husband. Within a span of 5 minutes of firing, found the accused at the spot and distance between the house of PW4 and place of incident is hardly 1 k.m. as per the evidence of Investigating Officer. immediately, informed police and complaint was given, case was registered and accused voluntarily went and surrendered

with gun and same was seized and also pointed out where he had thrown the empty cartridges which were seized.

72. The Court also while weighing the material available on record, even at the time of conducting the trial as well as appreciating the evidence, should not be a mute spectator and weigh the evidence available on record and find out the truth and duty of the Court is to quest for truth. Unfortunate that in a gunshot case the Trial Court even not discussed the evidence PW33 ballistics expert evidence and not touched upon the same while considering the material on record.

73. This Court would like to rely upon the judgment of the Apex Court in the case of **STATE OF RAJASTHAN v. ANI ALIAS HANIF AND OTHERS** reported in **(1997) 6 SCC 162**.

Paragraph Nos.12 and 13 of the judgment reads as follows:

"12. Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the

correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.

13. In this context it is apposite to quote the observations of Chinnappa Reddy, J. in Ram Chander v. The State of Haryana (AIR 1981 SC 1036):

"The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

We respectfully concur with the aforesaid observations. We find no wrong in the trial court interjecting during cross-examination of PW-3 with a view to ascertain the correct position."

74. This Court would also like to rely upon the judgment of the Apex Court in the case of **BABLU KUMAR AND OTHERS v. STATE OF BIHAR AND ANOTHER** reported in **(2015) 8 SCC 787**. Paragraph No.22 of the said judgment reads as follows:

"22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the Court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a "mock trial". It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The Court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The Court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are

issued, they are actually served on the witnesses. If the Court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the Court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

75. This Court would like to rely upon the judgment of the Apex Court in the case of **DINESH KUMAR v. STATE OF HARYANA** reported in **(2023) 20 SCC 49**. The Apex Court in this judgment referring Sections 165 and 45 of the Evidence Act, 1872, held that, it is the duty of trial Judge to ask pertinent questions. Paragraph Nos.22, 23, 24 and 25 of the said judgment reads as follows:

"22. We are afraid that by pointing out the weakness in the cross-examination of the defence the Presiding Judge indirectly admits to the weakness in the trial itself. We say

this for the reasons that under Section 165 of the Act, a trial Judge has tremendous powers to "ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant". It is in fact the duty of the Trial Judge to do so if it is felt that some important and crucial question was left from being asked from a witness. The purpose of the trial is after all to reach to the truth of the matter.

23. Section 165 of the Act reads as under:

"165. Judge's power to put questions or order production.— The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

24. *The powers of a Presiding Judge in a criminal trial and his duty to get to the truth of the matter have been laid down in a seminal judgement of this Court authored by O. Chinnappa Reddy, J. which is Ram Chander v. State of Haryana. O. Chinnappa Reddy, J. in the said judgment refers to his earlier Judgment given by him as a Judge of the Andhra Pradesh High Court, where it was said : (Intha Ramana Reddy case, SCC Online AP para 2)*

"2. Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a Presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

25. *The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial "by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth." While referring to a decision of Lord Denning in Jones v. National Coal Board (1957) 2 WLR 760 (CA) the learned Judge had said that it is the duty of the Judge to ask questions to the witnesses when it becomes necessary to clear up any point that has been overlooked or left obscure, then he goes on to say as under: (Ram Chander v. State of Haryana (1981) 3 SCC 191) Scc p.194, para 3)*

"3. We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

Conclusion

76. The case of the prosecution is that the accused has committed the murder and in order to prove the same, relies upon both oral and documentary evidence. The incident of gunshot was taken place at 8.00 a.m. According to the prosecution, the accused has done the same. The evidence of P.W.4, who is the wife of the deceased, is very clear that having heard the gunshot sound thrice, she rushed towards the place i.e., towards her property. While proceeding she found the accused, who was coming along with SBBL gun, which is marked as M.O.1. The same is identified during the course of

evidence by P.W.4. It is also her statement that the accused made a confessional statement within a span of five minutes of gunshot that he had taught a lesson to her husband. The said statement made by the accused and deposed by P.W.4 comes within the purview of the principles of "res gestae" under Section 6 of the Evidence Act. This Court also taken note of scope of Section 134 of Evidence Act with regard to solitary witness to the incident. Though P.W.4 is not an eye witness to the firing, but she immediately rushed the spot on hearing gunshot sound and found the accused along with the gun and he made the statement regarding confession made by the accused. But circumstance is very clear that the accused only shot her husband and confessed. This Court taken note of quality of evidence and not the quantity while relying upon the evidence of P.W.4 and also the scope of Section 134 of Evidence Act. This Court also taken note of that immediately she had called the police at 8.20 a.m. making phone call and the same is spoken by the person who has received the phone call in the station. The police came to spot on information given by P.W.4 and thereafter, law was set in motion without any delay by registering the case based on the written complaint given by P.W.4 at the spot. The same is spoken by the witness

who has received the written complaint at the spot and also sent the same to the police station to register the case through his staff and accordingly, the Station House Officer registered the FIR and dispatched the same to the Court. The police have also conducted the spot mahazar and seized the articles at the spot. This Court also relies upon the evidence of P.W.21, who categorically deposes that accused was very much present in the police station and the same was also spoken by P.W.34, Investigating Officer in whose presence accused was surrendered with gun and who took the further investigation in the case. He says that accused came to the police station at 3.15 p.m. along with gun with unused cartridges. The evidence of P.W.34 and evidence of P.W.21 is very clear that gun was seized in the police station and thereafter, the accused made the statement that he would take them to the place where he had thrown the empty cartridges which were used to shoot the victim and accordingly, he took them and recovery is made at the instance of the accused under Section 27 of Evidence Act. The evidence of P.W.21 and P.W.34 is consistent and there is a recovery under Section 27 of the Evidence Act, since the same was within the exclusive knowledge of the accused, where he had thrown the empty cartridges, which were used for gunshot.

77. The medical evidence of the doctor who has been examined as P.W.1 is very clear regarding nature of injuries of entry and exit wound and cause of death. The evidence of P.W.33, ballistic expert who conducted the examination of the weapon, matches with the medical evidence of P.W.1 that the very same M.O.1 was used to gunshot which belongs to accused. The evidence of P.W.33 is very clear that bullet injuries, which have been sustained by the deceased are fired with the very same gun of SBBL, which is marked as M.O.1. The medical evidence as well as the ballistic expert evidence also corroborates with the case of the prosecution. The motive for committing the murder is also spoken by P.W.4 that there was a dispute with regard to the change of khatha in respect of the family of the accused and the deceased. The Shiresthedhar, who has been examined before the Court also spoken about the same that the issue of change of katha was pending in the office of the Tahsildar and relevant documents are also marked through him and hence, it is clear that there was a motive to commit the murder. The accused has not given any explanation under Section 313 of Cr.P.C. to explain the incriminating circumstances when the gun belongs to the accused was used for committing the murder. Though an attempt was made

during the course of argument that the gun was stolen, to that effect there is no any complaint or any explanation by the accused. This Court considered the quality of evidence and not the quantity and also the principles of res gestae as contemplated under Sections 6, so also Section 134 and 27 of the Evidence Act with regard to the recovery is concerned. The medical evidence and expert evidence of ballistic also point out the very role of the accused in taking away the life of the deceased. The Trial Court committed an error in appreciating all these materials and the same amounts to perversity and also it leads to miscarriage of justice as the Trial Court did not discuss the ballistics expert evidence and in view of the judgment of the Apex Court in the case of **MALLAPPA AND OTHERS v. STATE OF KARNATAKA** reported in **(2024) 3 SCC 544**, wherein principles are also relied upon to convert the acquittal appeal into the conviction. Having considered all these materials available on record, it is a fit case to reverse the same and hence, we answer the point accordingly. When this Court comes to the conclusion that accused only had done away the life of the victim, this Court has to consider the principles laid down in the judgment with regard to imposing of sentence is concerned.

78. In this regard, this Court would like to rely upon the judgment of the Apex Court in the case of **SURYAMOORTHY AND ANOTHER v. GOVINDASWAMY AND OTHERS** reported in **(1989) 3 SCC 24**, wherein the Apex Court discussed the very scope of Section 235(2) of Cr.P.C. The accused convicted under Section 392 of IPC for the first time reversing the judgment of the Trial Court and the High Court, hence accused entitled to an opportunity of being heard on the question of sentence in compliance with Section 235(2) of Cr.P.C. The same is discussed in paragraph No.14.

79. This Court also would like to rely upon the judgment of the Apex Court in the case of **ALLAUDDIN MIAN AND OTHERS, SHARIF MIAN AND ANOTHER v. STATE OF BIHAR** reported in **(1989) 3 SCC 5**. The relevant portion of paragraph No.10 of the said judgment reads as under:

"10. Even a casual glance at the provisions of the Penal Code will show that the punishments have been carefully graded corresponding with the gravity of offences; in grave wrongs the punishments prescribed are strict whereas for minor offences leniency is shown. Here again there is considerable room for manoeuvre because the choice of the punishment is left to the discretion of the Judge with only the outer limits stated. There are only a few cases where a minimum punishment is prescribed. The question then is what procedure does the Judge follow for determining the

punishment to be imposed in each case to fit the crime? The choice has to be made after following the procedure set out in sub-section (2) of Section 235 of the Code. That sub-section reads as under:

"If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."

The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality....."

80. This Court would like to rely upon the judgment of the Apex Court in the case of **MUKESH KUMAR YADAV v. STATE (UT OF ANDAMAN AND NICOBAR ISLANDS) ETC.**

reported in **2026 SCC ONLINE SC 938**. Paragraph No.11, 12, 13 and 16 of the said judgment reads as follows:

"11. One more judgment which requires mention in this context is Dagdu v. State of Maharashtra (1977) 3 SCC 68, wherein a question arose as to what if the convicting court sentences the accused without hearing him on the sentence. This Court held that the higher court can on confirming the conviction, remedy the breach by giving a hearing to the accused on the question of sentence. This Court held that the Court may, in appropriate cases, adjourn the matter in order to give to the accused sufficient time to produce necessary data and to make his contentions on the question of sentence. The Court went on to add that this procedure must inevitably happen where the conviction is recorded for the first time by a higher court. Para 79 reads as follows: -

*"79. But we are unable to read the judgment in Santa Singh as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. **But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence.** That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. **The Court may, in appropriate cases, have to adjourn the matter***

in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court." [Emphasis supplied]

12. Equally, situations may arise where the trial court acquits the accused. In an acquittal, the question of hearing on sentence will not arise. On appeal by the State or by the victim/informant, what should be the position if the higher court reverses the acquittal and for the first time convicts the accused. To appreciate this position, a reference needs to be made to Section 386, Cr.P.C. (equivalent to Section 427, BNSS). Section 386(a), Cr.P.C., which is relevant for our purpose reads as under:-

"386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

....."

13. It can be seen from Section 386(a), Cr.P.C., that where in an appeal from an order of acquittal, the court hearing the appeal finds the accused guilty it is required to pass a sentence on him according to law.

16. The appellate court which will include the High Court, in a given scenario, while recording a conviction after reversing the acquittal, should adjourn the matter to a

suitable date, hear the convicts, and impose an appropriate sentence itself."

81. Though this Court is having conscious of the above judgments, the punishment provided under Section 302 of IPC is life imprisonment is minimum sentence and the case will not come within the ambit of rarest of rare case considering the mitigating circumstances and aggravating circumstances to impose the death sentence and hence, no need to hear the accused regarding sentence.

82. In view of the discussions made above, we pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment of acquittal dated 30.11.2018 passed in S.C.No.92/2015 is set aside.
- (iii) The accused is convicted for the offence punishable under Section 302 of IPC and Section 27 of Indian Arms Act.
- (iv) The accused is sentenced to life imprisonment for the offence under Section 302 of IPC with fine of Rs.1,00,000/- payable within 4 weeks. On deposit, to pay the fine amount of

Rs.90,000/- to P.W.4, on proper identification. In default to pay fine, to undergo further imprisonment for 6 months.

- (v) The accused is sentenced to undergo imprisonment for 3 years for the offence under Section 27 of the Arms Act, 1959 and to pay fine of Rs.10,000/- within 4 weeks and in default, to undergo further 2 months imprisonment.
- (vi) The accused is directed to surrender before the Trial Court within one week. If the accused fails to surrender, the Trial Court is directed to secure the accused and send him to prison by issuing conviction warrant.
- (vii) The sentence for both the offences shall run concurrently.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

SN/ST/MD