



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 865 OF 2018

BETWEEN:

SRI. MADHU
S/O LATE RAMAIAH,
AGED ABOUT 29 YEARS,
R/AT VAPPACHANAHALLI,
MALUR TALUK,
KOLAR DISTRICT-563 160.

...APPELLANT

(BY SRI. M.R. NANJUNDAGOWDA, ADVOCATE (P/H))

AND:

1. V. BEERESHA
S/O VEERABHADRAPPA,
AGED ABOUT 24 YEARS,
R/AT VAPACHCHAHALLAI,
LAKKURU HOBLI, MALUR TALUK,
KOLAR DISTRICT-563 160.
2. P. NATARAJA
S/O PUTTAPPA,
AGED ABOUT 30 YEARS,
R/AT VAPACHCHAHALLAI,
LAKKURU HOBLI, MALUR TALUK,
KOLAR DISTRICT-563 160.



3. T. KALLESHA
S/O THIMMARAYAPPA,
AGED ABOUT 22 YEARS,
R/AT VAPACHCHAHALLAI,
LAKKURU HOBLI, MALUR TALUK,
KOLAR DISTRICT-563 160.
4. ASHOKA
S/O VANAMAPPA,
AGED ABOUT 22 YEARS,
R/AT VAPACHCHAHALLAI,
LAKKURU HOBLI, MALUR TALUK,
KOLAR DISTRICT-563 160.
5. STATE OF KARNATAKA
BY MALUR POLICE STATION,
R/P BY SPP,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.

...RESPONDENTS

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL A/W
SRI. N.A. KARIAPPA, ADVOCATE FOR R1 TO R4 (P/H);
SMT. RASHMI JADHAV, ADDL. SPP FOR R5 (P/H))

THIS CRL.A IS FILED U/S.372 OF CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT OF ACQUITTAL PASSED BY THE
I ADDITIONAL SESSIONS JUDGE, KOLAR IN S.C.NO.205/2014
DATED 11.01.2018 AGAINST THE RESPONDENT NOS.1 TO 4
FOR THE OFFENCE P/U/S 302, 201, 392 R/W 34 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL JUDGMENT

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

The defacto complainant has preferred this appeal under Section 372 of Cr.P.C., challenging the judgment of acquittal, dated 11.01.2018 passed by the Court of I Additional Sessions Judge, Kolar in S.C.No.205/2014, wherein accused Nos.1 to 4 are acquitted of the offences punishable under Section 302, 392 and 201 r/w Section 34 of IPC.

2. Heard the learned counsel Sri. M.R.Nanjudagowda appearing for the appellant, Smt. Rashmi Jadhav, learned Additional SPP for the State / respondent No.5 and learned senior Counsel Sri. Hashmath Pasha, appearing for accused Nos.1 to 4. Perused the evidence and materials on record.

3. Brief facts of the prosecution case: The property bearing Survey No.79, measuring about 1 acre 33 guntas, situated at Vapachchanahalli Village of Malur Taluk, was owned by first informant V.R.Madhu (PW.1) and his mother,



Thimmamma (deceased). PW1 had entered into an agreement with accused No.1 to sell the said property. The deceased had refused to sell the property and register the property in the name of accused No.1. Hence accused No.1 was nurturing ill will against the deceased and hatched a plan along with accused Nos.2 to 4 to commit her murder. On 22.08.2013 at about 12.00 p.m., accused No.2 in the guise of taking the deceased to Maluru, took her in his Maruti Omni car bearing registration number TN-70/C-0913. Accused Nos.1, 3 and 4 also joined them and all of them took the deceased to a Eucalyptus grove belonging to one Raghuram Reddy, situated between Tarabahalli-Siddanahalli. Accused Nos.1 to 4 covered the face of the deceased with a gunny bag, held her tightly and throttled her and committed her murder. Thereafter, to cause disappearance of the evidence, they covered the dead body in the gunny bag and hid it in a bush. On the same night at about 08.30 p.m., accused Nos.1 and 3 went in a Hero Honda Splender Pro motorcycle bearing Registration No.KA-08/L-8145 to the place where they had



concealed the dead body and removed the gold ornaments worn by the deceased and threw the mobile phone and a key bunch at the spot. Thereafter, they shifted the dead body in the motor cycle and threw in a river near Pathakota, Udhanapally, Tamil Nadu.

4. PW1-Madhu, son of the deceased, on 08.09.2013, lodged a missing complaint as per Ex.P1, regarding missing of his mother Thimmamma. PW.21-PSI of Malur Police Station on receiving the said complaint registered a missing case in Crime No.283/2013 and issued the FIR-Ex.P18 to the jurisdictional Court.

5. On 13.09.2013 at about 10.00 a.m., PW8-R.Rajini, Village Administrative Officer of Thuppaganapally Village Panchayath received a message from some public about a gunny bag lying by the side of Thenpenneyar river. He visited the spot and informed the matter to the police.

6. PW.11, Head Constable of Uddhappanapally Police Station, on receiving the said information from PW8, went to



the spot along with other police officials and noticed the decomposed dead body of a female in the gunny bag. The dead body was sent to Hosur Government Hospital. Since, an information was received from Malur police about missing of a woman, they informed the matter to Malur police. PW1 visited the police station and then went to the hospital. He identified the dead body as that of his mother. PW11 then proceeded to the spot where the dead body was found and prepared the Mahazar as per Ex.P5.

7. PW.22-CPI of Malur Circle took over the investigation from PW.21, he visited the hospital and conducted the inquest panchanama-Ex.P4. The accused were arrested and at the instance of accused No.1, the gold ornaments belonging to the deceased, marked as MOs.6 to 10 were recovered. Further, mobile phone - MO.4 and key bunch-MO.5, which the accused had thrown at the spot were also recovered. The motorcycle and Maruti omni vehicle were recovered at the instance of accused Nos.1 and 2. PW.23, the CPI took over investigation from PW.22 and on receiving the



DNA report, etc., filed charge sheet against accused Nos.1 to 4.

8. The case of prosecution rests on circumstantial evidence. The prosecution has relied on the following circumstances:

- i. Homicidal death of Thimmamma.
- ii. Motive for the accused to commit the offence.
- iii. Identification of the dead body.
- iv. Accused and the deceased last seen together.
- v. Recovery of gold jewellery belonging to the deceased, MOs.4 to 10.
- vi. Seizure of mobile phone and key chain, MOs.4 and 5.
- vii. Seizure of Omni Van and Motorcycle.
- viii. Accused showing the place where the offence was committed.

9. The learned Sessions Judge, on appreciation of the oral and documentary evidence on record, came to the conclusion that the prosecution has miserably failed to adduce cogent and sufficient evidence to prove the guilt of the accused persons beyond all reasonable doubt and



therefore, extended the benefit of doubt to the accused and acquitted them vide impugned judgment.

10. Assailing the impugned judgment, the learned counsel Sri M.R.Nanjundagowda, appearing for the appellant contended that the reasons assigned by the trial Court for recording an order of acquittal are not in accordance with law. The learned Sessions Judge has not appreciated the evidence and material on record in the proper perspective. The prosecution has established the homicidal death of Thimmamma. Kith and kin of the deceased have identified the dead body and identification is also established by DNA examination. The motive aspect is also proved by the prosecution wherein PWs.1, 5 and 6 have deposed about the property dispute between accused No.1 and the deceased. After the arrest of the accused, a key bunch and a mobile phone belonging to the deceased were recovered. The gold ornaments worn by the deceased were recovered at the instance of accused No.1 and PW10, 12 and 14 have supported the case of



prosecution. They have clearly deposed that MOs.4 to 10 were recovered at the instance of the said accused. PW3 is the witness who has last seen the deceased in the company of the accused on the date of her missing. The accused have also shown the place where the offence was committed and the dead body was thrown in the river. The panch witnesses-PW7 and PW9 have supported the case of prosecution. Further, at the instance of accused No.1, a motorcycle was recovered under Ex.P12 and at the instance of accused No.2, omni car was seized under Ex.P10 and the witnesses PW6 and PW15 have supported the case of prosecution. He, therefore, contended that the prosecution has established the charges levelled against the accused beyond all reasonable doubt by proving all the links in the chain of circumstances and therefore, the trial Court committed a grave error in acquitting the accused.

11. The learned counsel for the appellant has relied on a decision of the Hon'ble Apex Court reported in **AIR 2025 SC 691** in the case of **Abdul Nassar v. State**



of Kerala regarding the principles that the Court must adhere to, while appreciating and evaluating the evidence in cases based on circumstantial evidence.

12. Learned Senior counsel Sri Hasmath Pasha, appearing for accused Nos.1 to 4 contended that this is a case based on circumstantial evidence and the prosecution has failed to prove all the links in the chain of circumstances relied by it to establish the charges levelled against the accused. Firstly, he contended that the prosecution has failed to establish that this is a case of homicidal death, as there is no opinion regarding cause of death given in the PM report. He contended that as per the inquest report, PW1 i.e., son of the deceased was the person who has last seen the deceased and therefore, the case of prosecution that PW2 and PW3 are the witnesses who have last seen the deceased in the company of the accused cannot be believed. He, further contended that PW2 has completely turned hostile to the prosecution and according to PW3, he has not seen accused Nos. 1, 3



and 4 along with the deceased and his evidence that he has seen the deceased going in the car of accused No.2 is not believable. He further contended that the deceased was missing on 22.08.2013 and her dead body was found on 13.09.2013 and therefore, there is a long time gap between the deceased last seen in the company of the accused and tracing of her dead body and in that event, the accused cannot be held to have committed the murder.

13. Learned Senior counsel further contended that the prosecution has failed to prove the motive for the accused to commit the offence. He contended, even accepting that there was an agreement-Ex.P14 between accused No.1 and PW1, there is nothing to show that the property belonged to the deceased and therefore, the case of prosecution that the deceased was objecting to transfer the said property in the name of accused No.1 cannot be believed.



14. Learned Senior counsel further contented that the recovery of MO.4 to MO.10 at the instance of accused No.1 is not proved, since the owner of the shop where the said accused is alleged to have pledged the ornaments is not examined and the receipt for having pledged the ornaments is not produced, though PW14 has stated that such a receipt was handed over to the police. He contended that there is no register or any documents produced by the prosecution to show that the gold ornaments were pledged by accused No.1 in one Heera Jewellery Shop. He contended that the evidence of PW10 and PW11, the panch witnesses to Ex.P7 is also not believable.

15. Learned Senior counsel further contended that though the missing complaint is alleged to have been lodged on 22.08.2013, the same was received by the jurisdictional Court on 07.10.2013 i.e., after the discovery of the dead body and arrest of the accused. Hence, he contended that the missing complaint is manipulated to



suit the prosecution case and therefore the entire investigation is tainted.

16. Lastly, the learned Senior counsel contended that this is an appeal against the judgment of acquittal and the trial Court has given benefit of doubt to the accused holding that the prosecution has not proved all the chain of circumstances. Hence, if two views are possible on evidence on record, one taken by the trial Court in favour of the accused should not be disturbed. Learned Senior Counsel, in support of his arguments relied on the following judgments:

- i) **Jabir & Ors. v. The State of Uttarakhand** reported in 2023 Supreme (SC) 39.
- ii) **Chandrappa & Ors. v. State of Karnataka** reported in (2007) 4 SCC 415.
- iii) **Sirajuddin alias Siraj v. State of Karnataka.** reported in (1980) 4 SCC 375.



iv) **Abdul Nassar v. State of Kerala** reported
in AIR 2025 SC 691.

17. Learned Additional SPP contended that the prosecution has established all the circumstances relied by it and even though the cause of death was not furnished by the doctor who conducted autopsy, the fact that the dead body was found in a gunny bag itself shows that it is a case of homicidal death. She contended that the prosecution has adduced sufficient evidence in the form of circumstantial evidence and all the circumstances are established. She contended that the reasons assigned by the learned Sessions Judge for acquitting the accused are not in accordance with law and accordingly sought to convict the accused for the charges levelled against them.

18. The case of prosecution is that the complainant-PW1 and his mother-Thimmamma (deceased) are the joint owners of property bearing Sy.No.79, measuring 1 acre 33 guntas situated at Vapachchahalli village of Malur Taluk.



PW1 had entered into an agreement with accused No.1 to sell the said property. However, deceased was refusing to sell the property to accused No.1. Hence, the said accused had a grouse against her. In view of the said enmity, accused No.1 hatched a plan with accused Nos.2 to 4 to commit the murder of Thimmamma and in furtherance of the same, on 22.08.2013 at about 12.00 Noon, accused No.2 took Thimmamma in a Maruthi Omni Car bearing Reg.No.TN-70/C-0913 in the guise of taking her to Malur and on the way, accused Nos.1, 3 and 4 also got into the car. Thereafter, all the accused took the deceased to the Eucalyptus grove situated between Tarabanahalli and Siddhanahalli village. They covered her face with a gunny bag and committed her murder by throttling her. The body was then put in a gunny bag, tied and hid in the bushes. Again, on the same day at 8.30 p.m., accused Nos.1 and 3 returned to the said spot in a Hero Honda Splender Pro motorcycle bearing Registration No.KA-08/L-8145 and accused No.1 removed all the gold ornaments, threw the



mobile phone and key bunch at the spot and shifted the dead body on the motorcycle and threw it in a river near Pathakota, within the jurisdiction of Uddanapalli Police Station, Tamil Nadu.

19. In **Abdul Nassar's** case (supra), the Apex Court has laid down the following principles, which the Courts must adhere to, while appreciating and evaluating evidence in cases based on circumstantial evidence, which are as follows:

"(i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii) Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the



circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv) The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis."

20. The Apex Court has further held that the following conditions must be fulfilled before a case against the accused is said to be fully established, in a case based on circumstantial evidence:

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



It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793: 1973 SCC (Cri) 1033: 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the



conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”.

21. It is also relevant to extract Para-42 of the judgment referred in **Chandrappa's** case (supra).

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong



circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."



22. In order to prove that the deceased died a homicidal death, the prosecution has got marked the PM report as Ex.P15. The doctor, who conducted the autopsy is examined as PW17. In his evidence, he has deposed that on examination of the dead body, the identification marks could not be made out as the body was decomposed and rigor mortis was absent. He has noticed the following External appearance and Internal examination :

External appearance: Body decomposed, skin peeled off, both knee joint exposed fair separated from the scalp.

Internal Examination: Hyoid bone intact, ribs intact, heart weighs 100 grams, Lungs (r) 150 grams, (l) 130 grams, cut section was congested, Liver weighs 700 grams, cut section was congested, stomach empty, kidneys weight 700 grams each, cut section congested, spleen 80 grams, cut section congested, Bladder empty, Uterus cavity empty, All organs partially liquefied, skull



intact, Membrane intact, brain liquefied, base of skull intact.

23. PW17 has opined that the deceased would appear to have died about more than 2 weeks prior to autopsy and stated that since he has not received the FSL report, he has not given final opinion as to the cause of death.

24. According to prosecution, the offence was committed on 22.08.2013. The decomposed dead body was traced on 13.09.2013. The autopsy was conducted on 14.09.2013. PW17 has not given any opinion regarding the cause of death. From his evidence it can only be gathered that the death took place about more than two weeks prior to autopsy.

25. It is the contention of the learned Additional SPP that the dead body was found in a gunny bag which itself shows that it is a case of homicidal death. There is some force in the arguments of the learned Additional SPP.



However, as per the evidence of PW17 and the PM report-Ex.P15, there is nothing to indicate that the deceased died a homicidal death.

26. In this case, PW1, son of the deceased has deposed that he identified the dead body as that of his mother on the basis of bangles, ring and saree. PW21 has also deposed about PW1 identifying the dead body. The defence has not disputed the same. The DNA report-Ex.P26 further confirms that the dead body found in this case is that of Thimmamma, mother of PW.1.

27. Even accepting the case of prosecution that the deceased Thimmamma died a homicidal death, the other chain of circumstances relied on by the prosecution have to be established.

28. The motive aspect has been stated by PW1, PW5 and PW6. PW1 is the son of the deceased. He has deposed that there was an agreement executed in favour of accused No.1, but his mother (deceased) had not



registered the property in the name of accused No.1 as the amount mentioned in the agreement was insufficient. Hence, he has stated that the accused have committed the murder.

29. PW5 is a relative of the deceased. He has stated that after the dead body was traced, PW1 lodged the complaint against accused No.1 as he was suspecting that the said accused has committed the murder in view of the property dispute.

30. PW6 has deposed, there was a dispute between accused No.1 and deceased Thimmamma in connection with the property and therefore, he suspected that accused No.1 has committed the murder.

31. In the cross-examination of PW1 conducted by the defence it was suggested to him that on 15.03.2012, he and his wife had executed an agreement in favour of accused No.1 in respect of 1 acre 30 guntas out of the total 06 acres in Sy.No.79 of Vapachchanahalli Village, for



a sum of Rs.6,20,000/- and out of the said amount Rs.4,70,000/- was already received and he had agreed to register the property within a period of 03 months after receiving the balance amount. The said suggestion was admitted by PW1.

32. Ex-P14 is the agreement dated 15.03.2012 entered into between accused No.1 and PW.1 and his wife. The defence has not disputed the said document.

33. It is the case of the defence that after receiving Rs.4,70,000/- from accused No.1, he did not part the said money with the deceased and therefore, the deceased was angry with her son, PW.1 and left the house.

34. It is the contention of learned Senior Counsel that the deceased was missing from 22.08.2013 and till 08.09.2013, no missing complaint was lodged. He contended that the deceased was angry with PW.1, since he had received the money from accused No.1 and cheated her by not parting the said amount. Hence, she



left the house. He therefore contended that since there was no opinion regarding cause of death, it cannot be said that the deceased was murdered and there may be other reason for her death.

35. From the evidence of PW.1 and the document at Ex-P14, it can be gathered that the agreement was between accused No.1 and PW.1 and his wife. Deceased is not a party to Ex-P14. There is no material placed to show that the property belonged to the deceased, except the oral testimony of PW.1 that the deceased was objecting for registration of the property in the name of accused No.1. When the prosecution has not proved that the deceased had any rights over the property mentioned in Ex-P14, it cannot be said that the deceased was either objecting for registration of the property in the name of accused No.1 or refusing to sell the property him.

36. The trial Court while appreciating the motive aspect, has observed that the evidence of PW.1 does not



point to show that accused No.1 had entered into an agreement with the deceased in respect of landed property belonging to her and since Thimmamma had refused to register the property in the name of accused No.1, he developed ill will against Thimmamma, due to which, the accused have committed the murder. The reasons assigned are on proper appreciation of the evidence on record.

37. It is the case of prosecution that the deceased was taken by accused No.2 in his Maruthi Omni car towards Malur and on the way, even accused Nos.1, 3 and 4 got into the car and thereafter they took the deceased to a Nilgiri Grove and committed her murder. The prosecution is relying on the evidence of PW.2 and PW.3 to show that the deceased was last seen in the company of the accused.

38. PW.2 has not supported the case of prosecution in entirety. He was treated hostile by the prosecution.



There is nothing elicited in his cross-examination to show that he had seen accused No.2 taking the deceased in a car towards Malur.

39. PW3, in his evidence has stated that, on one day, in 2013, he saw accused No.2 taking Thimmamma in his car and after 20 days, he saw the dead body of Thimmamma in the Government Hospital. However, he expressed his ignorance about how the deceased died and about the assailants. He denied having given any statement before the police regarding all the information he had about the case. Hence, he was treated hostile.

40. It is the contention of learned counsel for the appellant/complainant that the said evidence of PW.3 clearly establishes that the deceased was seen in the company of accused No.2 and after 20 days, her dead body was recovered, leading to the conclusion that the accused have committed the murder.



41. In the cross-examination, PW.3 has denied having seen accused Nos.1, 3 and 4, near the shop of Nataraja- accused No.2 and from there, the said accused going in a motorcycle towards Malur. However, he has stated that he has seen the deceased going along with accused No.2 in his car.

42. In the cross-examination of PW.3, he has clearly admitted that the police have not recorded his statement. If that is so, he is giving his evidence before the Court for the first time that he saw accused No.2 taking the deceased in the car. This is relevant because, in his chief examination, he has stated that he knows PW.1, deceased as well as the accused. The deceased was missing from 22.08.2013 and the missing complaint was lodged on 08.09.2013. The dead body was traced on 13.09.2013. When PW.3 knew PW.1 very well, neither in the missing complaint nor in the evidence of PW.1, it is forthcoming that after the deceased was found missing,



this PW.3 had informed PW.1 about he seeing the deceased in the company of accused No.2.

43. Further, according to prosecution, deceased was seen in the company of accused No.2 on the date of incident i.e., on 22.08.2013. The dead body was found on 13.09.2013 i.e., after 20 days. In Jabir and others(supra), it is held by the Hon'ble Apex Court that 'the 'last seen' doctrine has limited application, where the time lag between the time the deceased was seen last with the accused and the time of murder, is narrow'. Even accepting the medical evidence, that the time of death was 2 weeks prior to conducting of autopsy and since there is no specific time given regarding the date of death, it cannot be said that the time lag between the time the deceased was seen last with the accused and the time of murder is narrow. In view of specific admission given by PW.3 that the police have not recorded his statement, we are of the considered view that the evidence of PW.3



insofar as the last seen circumstance relied upon by the prosecution is not proved.

44. The prosecution is also relying on the recovery of gold ornaments(MO.6 to MO.10), at the instance of accused No.1.

45. It is the case of prosecution that after the arrest of accused No.1, his voluntary statement was recorded as per Ex.P19 by PW.22 and at his instance, MO.6 to MO.10 were recovered from one Heera Jewellery Shop under Ex.P7. The prosecution has got examined PWs.10 and 12-panch witnesses to Ex.P7. PW.14 is the brother of owner of the said shop.

46. PW.10 has stated that, when he and PW.12 had gone to Berki for some work, the police had come near Heera Jewellery Shop and along with them, accused No.1 was present. The police informed them that accused No.1 had pledged the gold ornaments belonging to the deceased and asked them to identify them. The owner of



the shop gave the ornaments to the police and informed them that the said ornaments were worn by the deceased. The said ornaments were seized and their signatures were taken on Ex.P7. He has identified MO.6 to MO10 as the ornaments, which were seized under Ex.P7. In the cross-examination, PW.10 has admitted that the police did not seal the ornaments after seizure, but kept in a cover and pinned it.

47. PW.12 has stated that when he had been to Berki along with PW.10, they were called to the jewellery shop by the police. Accused No.1 was present with the police and the police informed them that accused No.1 had pledged the ornaments in the said shop. They conducted mahazar as per Ex.P7 and seized the ornaments MOs.6 to 10. In the cross-examination, PW.12 has stated that he has signed Ex.P7, but he did not sign any other papers including the packet, in which, the ornaments were kept.



48. A perusal of evidence of PW.10 and PW.12 do not indicate that accused No.1 confessed regarding pledging of the ornaments in Heera Jewellery Shop and the said accused led the police and panchas to the said shop, from where, MO.6 to MO.10 were seized. On the other hand, according to PW.10 and 12, it was the police who informed that accused No.1 pledged the gold ornaments in the shop.

49. The evidence of PW.14 assumes importance in this case regarding recovery of ornaments at the instance of accused No.1. PW.14 has deposed that on 19.09.2013, accused No.1 had brought the gold ornaments (MOs.6 to 10) to pledge the same in his shop and they gave him a sum of Rs.15,375/-. He has further stated that on 24.08.2014, the police brought accused No.1 to the shop and seized the ornaments by drawing up a mahazar/Ex.P7.



50. According to prosecution, after removing the gold ornaments (MOs.6 to 10), accused No.1 pledged the ornaments in one Heera jewellery shop. He was arrested on 18.09.2013. If at all accused No.1 had pledged the ornaments, then he should have pledged it before his arrest, whereas, PW.14 has stated that accused No.1 pledged the ornaments in his shop on 19.09.2013, which is obviously after his arrest, on which day Ex.P7 was drawn, which is not believable. Further, PW.14 has stated that the police brought accused No.1 to his shop on 24.08.2014 and seized the ornaments, whereas seizure is on 19.09.2013, as per Ex.P7. The evidence of PW.14 is therefore, not in consonance with the case of prosecution and on the basis of his evidence, it cannot be said that the ornaments were pledged by accused No.1 in his shop and they were recovered at the instance of the said accused. Furthermore, in the cross-examination, PW.14 admitted that at the time of pledging the ornaments, they would issue receipts by retaining a copy and the name and



address of the person, who pledges the ornaments will be written in the receipt. Though, he has stated in the cross-examination that at the time of the seizure of the ornaments, he gave the original and duplicate receipts to the police, no such receipts are produced or marked in evidence.

51. Further, according to PW.14, accused No.1 came to the shop to pawn the jewels and raise the loan and the security thereof. In fact, the brother of PW-14 was a licensed Pawn Broker, who was required to maintain proper accounts in regard to all the loan transactions entered into by him. But in this case, neither PW.14 nor his brother(Owner of Heera Jewellery Shop), has made any entry in their account books or anywhere else regarding lending of Rs.15,375/- on the security of ornaments pledged by accused No.1.

52. According to prosecution, a Nokia mobile phone(MO.4) and a key bunch(MO.5) belonging to the



deceased were recovered at the instance of accused Nos.1 and 3 under Ex.P6. Accused Nos.1 to 3 are said to have gone back to the spot, where the dead body was kept in a gunny bag and while removing the gold ornaments and shifting the dead body, they threw the mobile phone and the key bunch at the spot. The IO-PW.22 has stated that accused No.1 in his voluntary statement confessed to show the place, where the mobile and key bunch were thrown and as per the voluntarily statement of the accused, they proceeded to the spot i.e. Niligiri grove of one Raghuram Reddy and seized the mobile phone and key bunch in the presence of panch witnesses, by drawing a mahazar as per Ex.P6.

53. The prosecution has examined PW.9 panch witness to Ex. P6. According to him, accused Nos.1 and 3 led them to the Niligiri Grove and they showed the place from where the Nokia mobile and key bunch were seized. The voluntary statement of accused No.3 is not marked in evidence. The mobile phone is marked as MO.4 and key



bunch is marked as MO.5. PW.1 has not identified the key bunch as the one belonging to his deceased mother. Insofar as MO.4- mobile phone is concerned, it is relevant to mention that the decomposed dead body was found in the gunny bag on 13.09.2013 and the police shifted the dead body to the Government Hospital, Hosur. PWs.2, 5 and 6, who had gone to the hospital and saw the dead body have deposed in their evidence that in the gunny bag, there was a small bag and in the said bag, there was a mobile phone. If a mobile phone was found in a small bag kept in the gunny bag on 13.09.2013 itself, then seizure of MO.4- mobile phone at the instance of accused No.1 appears to be doubtful. The prosecution has not clarified as to which is that mobile phone, which was found in the gunny bag, when the body was shifted to the hospital. The same is also not marked separately in evidence. Further, none of the witnesses including PW.1, have identified the key bunch as belonging to the deceased. Hence, the recovery of key bunch and mobile



phone at the instance of the accused, is not proved beyond reasonable doubt.

54. It is the case of prosecution that after the accused were arrested, they showed the place, where the dead body was thrown. A mahazar was drawn as per Ex.P5. However, no incriminating articles were seized from the said spot. Except the voluntary statement of the accused, there is no material to show that at the spot, where the mahazar was conducted, the murder was committed.

55. The prosecution would rely on seizure of Omni Car from accused No.2 and a motorcycle from accused Nos.1 and 3 to show that in the said Omni car, accused No.2 took the deceased and in the motorcycle, accused Nos. 1 and 3 went to the spot and shifted the dead body and threw it in a river.

56. Neither PW.2 nor PW.3, who are said to be the witnesses, who have last seen the deceased in the



company of the accused have given the registration number of the Maruthi Omni Car. There is no evidence to show that Maruthi Omni Car bearing registration No. TN-70/C-0913 or the Honda Splendor motorcycle bearing registration No.KA-08/L-8145 were used in the commission of the offence. The seizure of the vehicles therefore has no relevancy to prove the link of chain of circumstances.

57. PWs.15 and 16 have merely deposed about the seizure mahazars Exs.P10 and P12 while seizing the Maruthi Omni Car and Motor cycle. In the instant case, the relevant and prime witnesses such as PWs.1, 2 and 3 have not identified the Maruthi Omni Car and the motorcycle. Therefore, the recovery of Maruthi car and motorcycle alone cannot be treated as a substantial piece of evidence against the accused.

58. It is vehemently contended by learned counsel for the appellant that at the time of lodging the missing



complaint itself, the description of all the gold ornaments worn by the deceased are mentioned and those gold ornaments were recovered at the instance of accused No.1. He therefore contended that this is an important circumstance appeared against the said accused and in the absence of any explanation given by accused No.1, the said circumstance is proved against him.

59. In this case, the deceased was missing from 22.08.2013. According to prosecution, PW.1 lodged a missing complaint on 08.09.2013. PW.21- PSI has stated that at about 08.30 a.m. on 08.09.2013, PW.1 appeared before him and lodged a written missing complaint and after registering the case, he forwarded the FIR-Ex.P18 to the jurisdictional Court. From his evidence, it is not forthcoming as to when the FIR was forwarded to the jurisdictional Court. A perusal of FIR-Ex.P18 shows that the said FIR was received by the Court on 07.10.2013 at about 7.30 p.m., as per the endorsement on the FIR. The same goes to show that the FIR was forwarded to the



Magistrate not immediately after filing of the complaint, on the other hand, after the arrest of the accused on 18.09.2013 and after the drawing up of recovery mahazar-Ex.P7.

60. It is contended by learned Senior Counsel appearing for the accused that the FIR is manipulated subsequent to finding of the dead body, arrest of the accused and alleged recovery of MOs.6 to 10 so as to suit the prosecution case.

61. There is considerable force in the said argument advanced by learned Senior Counsel for the respondents/accused Nos.1 to 4. There is no material to show that the missing complaint, which was lodged by PW.1 on 08.09.2013 was received by the Court on 08.09.2013. On the other hand, as per the endorsement-Ex.P18, the FIR was received on 07.10.2013. The same gives rise to the genuineness of the prosecution case. It is also relevant to mention that as per PW.21, PSI of Malur



Police Station, after PW.1 visited the Government Hospital, Hosur and identified the dead body, he lodged one more complaint and he registered a case under Sections 302 and 201 IPC. However, the said complaint has not been marked. We find from the record that even the said report was received by the learned Magistrate on 07.10.2013.

62. We have re-appreciated the entire evidence and material on record. We are of the considered view that the circumstances relied upon by the prosecution are not proved beyond reasonable doubt, the circumstances are not of conclusive nature and tendency so as to exclude the possible hypothesis except the one to be proved. There is several missing links in the chain of evidence and they are not fully established.

63. This is an appeal preferred against the judgment of acquittal. We are of the considered view that the reasons assigned by the trial Court is in accordance with law and do not suffer from any infirmity or perversity



so as to reverse the judgment. Accordingly, we pass the following:

ORDER

i) Appeal is **dismissed**.

ii) While passing the judgment, the trial Court has confiscated MO.4-mobile phone and MOs.6 to 10-gold ornaments to the State, without assigning any reasons. The said articles are directed to be released in favour of PW1, on proper identification, if not destroyed or confiscated.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**