IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR JUSTICE H.P. SANDESH

AND

THE HON'BLE MR JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.8 OF 2019
CONNECTED WITH
CRIMINAL APPEAL NO.917 OF 2018

CRL.A. NO.8/2019:

BETWEEN:

MALLIKARJUNA
S/O. THIMMAPPA
AGED ABOUT 28 YEARS
OCC: AGRICULTURIST AND
ALSO AUTORICKSHAW DRIVER
RESIDENT OF GUDISALAPALLI VILLAGE
D. HIREHAL MANDAL, RAYADURGA TALUK
ANANTHAPUR DISTRICT
ANDHRA PRADESH - 515 865.

…APPELLANT

(BY SRI P.B. UMESH, ADVOCATE, FOR SRI R.B. DESHPANDE)

AND:

THE STATE OF KARNATAKA
BY THALAK POLICE STATION
CHITRADURGA DISTRICT-577 543
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

…RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, S.P.P-II)

CRL.A. NO.917/2018:

BETWEEN:

1. SURESHA
S/O. THIMMA REDDY
AGED ABOUT 21 YEARS
OCC: AGRICULTURIST
RESIDENT OF GUDISALAPALLI VILLAGE
D. HIREHAL MANDAL, RAYADURGA TALUK
ANANTHAPUR DISTRICT
ANDHRA PRADESH STATE - 515 865.

2. PAMPANA GOWDA @ GOWDA
S/O. GOVAPPA
AGED ABOUT 21 YEARS
OCC: AGRICULTURIST
RESIDENT OF GUDISALAPALLI VILLAGE
D. HIREHAL MANDAL, RAYADURGA TALUK
ANANTHAPUR DISTRICT
ANDHRA PRADESH STATE - 515 865.

…APPELLANTS

(BY SRI P.B. UMESH, ADVOCATE, FOR SRI R.B. DESHPANDE)

AND:

THE STATE OF KARNATAKA
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…RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, S.P.P-II)

* * *

THESE CRIMINAL APPEALS ARE FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 6.2.2018 AND ORDER ON SENTENCE DATED 8.2.2018 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA, IN SESSIONS CASE NO.30 OF 2013, CONVICTING THE APPELLANTS/ACCUSED NOS.1 TO 3 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 397 AND 201 READ WITH SECTION 34 OF IPC.

THESE CRIMINAL APPEALS ARE HAVING BEEN HEARD AND RESERVED ON 21.01.2026 COMING ON FOR PRONOUNCEMENT, THIS DAY, ***VENKATESH NAIK T. J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P. SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T.)

Criminal Appeal No.8 of 2019 is filed by the appellant/accused No.1, whereas Criminal Appeal No.917 of 2018 is filed by the appellants/accused Nos.2 and 3 challenging the judgment of conviction dated 6.2.2018 and order on sentence dated 8.2.2018 in Sessions Case No.30 of 2013 passed against them by the Principal District and Sessions Judge, Chitradurga, (for short, 'trial Court') for the offences punishable under Sections 302, 397 and 201 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

2. The appellants were accused Nos.1 to 3 and the respondent-State was the complainant before the trial Court. For

the purpose of convenience, the parties are referred to henceforth as per their ranks before the trial Court.

3. The case of the prosecution is as follows:

On 15.11.2012, PW1-Basavaraja, then President of Doddaullarthy Grama Panchayat, lodged a complaint to the Police, alleging that when he was proceeding on a motorcycle, by the side of scene of offence, some shepherds informed about disposal of an unknown dead body. Thus, he had been to the spot (Doddaullarthy Kaval) and found dead body of an unknown person. Hence, he informed the Police, who in turn came to the spot and received complaint vide Ex.P1. Based on the complaint, a criminal case was registered in Crime No.149 of 2012 against unknown person. During the course of investigation, they arrested accused Nos.1 to 3, interrogated them and recorded their voluntary statements as per Exs.P39 to 41 and at their instance, incriminating articles were seized under seizure mahazars. During the investigation it was revealed that, Chinna Yarriswamy (hereinafter referred to as the 'deceased') was known to accused Nos.1 to 3. They borrowed a sum of Rs.2 lakh from the deceased and could not repay it. As the deceased insisted the accused for

repayment, they hatched a plan to eliminate him. Thus, on 12-11-2012, in the morning, they took the deceased in a Tata Ace, bearing Registration No.KA-34 TY-4141, and had dinner at Anitha Dhaba belongs to PW13-Nagaraja, situated on Doddaullarthy-Challakere Road, on the guise that they would show treasure at Boredevara Temple, Challakere Taluk. Accused Nos.1 to 3 assembled near Boredevara Temple along with the deceased, at that time, accused No.1 assaulted the deceased with chopper on his back and when he fell down, accused No.3 assaulted the deceased with chopper on the neck and accused No.2 assaulted the deceased with chopper on his head, neck, face and all over the body. Thus, the deceased succumbed to the injuries. Thereafter, the accused robbed gold neck chain-MO14, two golden finger rings-MOs.17 and 21, Titan watch-MO20, cash of Rs.2,500/- and disposed the dead body of the deceased by digging trench in the forest area, concealed the evidence and tried to destroy the evidence by screening themselves from legal punishment. Hence, the matter was investigated and the Investigating Officer-PW29 laid the charge-sheet against these accused.

4. The matter was committed to the Court of Sessions and the learned Sessions Judge framed charge against these accused for the offences punishable under Sections 302, 201 and 397 read with Section 34 of IPC. These accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined in all twenty-nine witnesses as PWs.1 to 29 and got marked Exs.P1 to P55 and MOs.1 to 26. After completion of the evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.') were recorded. The case of the accused was of total denial and they did not adduce any defence evidence.

6. Considering both oral and documentary evidence on record, the trial Court convicted the accused and held that, the prosecution proved its case beyond all reasonable doubt that, on 12.11.2012 during night hours, the accused committed the murder of the deceased and robbed his gold ornaments and other articles. Hence, the trial Court convicted the accused for the aforesaid offences. Aggrieved by the judgment of conviction and order on sentence, the accused have preferred these appeals.

7. We have heard Sri P.B. Umesh, learned counsel for Sri R.B. Deshpande, learned counsel for the appellants, and Sri Vijayakumar Majage, learned State Public Prosecutor-II for the respondent - State, and have examined the records.

8. Learned counsel for the appellants/accused Nos.1 to 3 has contended that the prosecution has utterly failed to prove its case. The solitary circumstances relied on the prosecution is the recovery of gold ornaments, but the recovery is not proved. The material objects are not produced before the Court and the same are not identified by any of them. As a result, no material whatsoever was available to connect the accused to the alleged offences. It is contended that, the extra-judicial confession attributed to the accused is also not proved. Therefore, such a confession would not have been made by the accused. Barring the oral evidence, no other material is available on record to establish the guilt of the accused. It is further contended that the trial Court has committed serious error in convicting the accused on the prosecution evidence, which is highly interested, contradictory, unreliable and artificial. The prosecution is guilty of suppression of material facts and has not come forward with true

version of the incident. The trial Court has committed serious error in holding that the prosecution has proved beyond reasonable doubt that the accused are guilty of the alleged offences.

9. Further, he submits that the learned Sessions Judge ought to have acquitted the accused on the ground that the complaint is filed against unknown person and taking advantage of the alleged incident, with the convenience of interested persons, a false case is concocted against the accused. Further, there was no motive on the part of the accused to commit murder of the deceased. The trial Court has committed serious error relying on interested testimonies, i.e., PWs.8, 9 and 15, who are relatives of the deceased and further, their evidence do not link the accused for the offences alleged against them. Further, the trial Court has committed serious error relying on the evidence of PWs.2 to 6, which is full of material omissions, contradictions and further suffers from legal infirmities. The trial Court ought to have acquitted the accused on the ground that nobody has last seen together the deceased with the accused and the evidence of PWs.9, 13, 15, 18 and 19, who alleged to be last seen witnesses

as projected by the prosecution, is full of material omissions, contradictions and suffer from infirmities. The trial Court should have acquitted the accused on the ground that recovery of material objects which are relied upon by the prosecution in the case are not recovered legally and the evidence of PWs.5 and 6, who are Pancha witnesses to Exs.P5 and P6 also suffers from legal infirmities. Further, the prosecution has failed to examine independent witnesses and there is missing link in the case of the prosecution. Thus, the trial Court ought to have acquitted the accused of the charges leveled against them. Thus, he prayed to allow the appeals.

10. Learned State Public Prosecutor-II has argued in support of the impugned conviction contending that the prosecution has proved its case beyond reasonable doubt. The circumstances of recovery of gold ornaments are proved by the evidence of PWs.5 and 6 and the ornaments are duly identified by them. This recovery directly connects the accused to the alleged offences and establishes that the deceased was murdered and the evidence of all prosecution witnesses makes out the ingredients of

offence of murder. Therefore, there is no reason to interfere with the well-reasoned judgment of the trial Court.

11. We have bestowed our careful attention on the submissions made at the Bar and have carefully examined the records. In view of the submissions made by the learned counsel for both parties, the point that arises for the Court's consideration is:

> *"Whether the judgment and order of conviction and sentence passed by the trial Court requires interference at the hands of this Court?"*

12. The prosecution rests its case entirely on circumstantial evidence. The motive, homicidal death, recovery of gold ornaments belonging to the deceased and the conduct of the accused. In the background of above circumstances, let us examine the prosecution witnesses.

13. PW1-Basavaraja, complainant, has deposed that he was the President of Doddaullarthy Village Grama Panchayat. When he was proceeding on a motorcycle, by the side of scene of offence, some shepherds informed about disposal of dead body. Accordingly, he had been to spot, i.e. Doddaullarthy Kaval and

found dead body of unknown person. Thus, he informed the said fact to the Police and lodged the complaint vide Ex.P1. Immediately, the Police came to the spot. In the cross-examination, nothing has been elicited to disbelieve the evidence of PW1 with regard to disposal of dead body and recovery of dead body at the spot.

14. PW2-Papaiah, witness to recovery mahazars-Exs.P2 and P3, has stated that on hearing the message, he came to know that someone has committed murder of an unknown person. Accordingly, the Police called him to act as Pancha, where the Police drew mahazar vide Ex.P2 and seized MO1-bloodstained mud, MO2-sample mud, MO3-bloodstained small stones, MO4-ash and the Police also conducted another mahazar vide Ex.P3 near the bridge, on the road of Chikkaullarthy, where the accused have shown MO5-chopper, MO6-bed sheet and MO7-mobile phone and the Police seized the same in his presence. PW2 was cross-examined at length. However, nothing has been elicited to disbelieve the evidence of PW2.

15. PW3-Hanumantharaya, another witness to recovery mahazars-Exs.P2 and P3. He reiterated the averments as that of PW2.

16. PW4-Thippeswamy, witness to recovery mahazar-Ex.P4, has stated that the Investigating Officer drew mahazar vide Ex.P4 and seized MO8-shirt, MO9-baniyan, MO10-underwear of the deceased in his presence. PW4 was cross-examined at length. However, nothing has been elicited to disbelieve the evidence of PW4.

17. PW5-Chidananda, witness to recovery mahazars-Exs.P5, P6 and P7, has stated that the Investigating Officer recovered MOs.11 to 14, i.e. shirt, lungi, mobile and gold neck chain, respectively, from the house of accused No.2 under Ex.P5; the Investigating Officer recovered MOs.15 and 16, i.e. shirt and lungi, from the house of accused No.1 under Ex.P6; and the Investigating Officer also recovered MOs.18 to 21, i.e. shirt, lungi, Titan watch and gold ring from the house of accused No.3 under Ex.P7. Though the learned counsel for the accused cross-examined this witness in length, however, nothing has been elicited to disbelieve his evidence.

18. PW6-Thippeswamy, witness to recovery mahazar-Ex.P8 (body exhume), has stated that about two years back on hearing the message, he had been to the spot i.e., near Boredevara Temple at Doddaullarthy Village. The Tahsildar and the Police came to the spot. At that time, the Police exhumed the dead body of a male person and drew mahazar as per Ex.P8, for which, he subscribed his signature as per Ex.P8(a). The Police seized MO22-bed sheet, MO23-pant, MO24-bloodstained mud and MO25-sample mud. Thus, this witness has stated about exhumation of dead body of the deceased and seizure of MOs.22 to 25.

19. PW7-Lakshmana, witness to inquest mahazar, has stated that the Police conducted inquest mahazar in his presence vide Ex.P9. He was cross-examined. In the cross-examination, the learned counsel for the accused has taken contention that Ex.P9 was drawn at the Police Station, however, the said suggestion was denied by this witness.

20. PW8-Dodda Yarriswamy is the brother of the deceased. He has stated that the deceased was his younger

brother. On 12.11.2012, the deceased left his house, but he did not return. They made best efforts to trace the deceased. Since he was not traced, he lodged a missing complaint before Dodda Hirehal Police Station, Andhra Pradesh. Later, on 15.11.2012, the Dodda Hirehal Police informed him that a dead body has been traced near Boredevara Temple at Doddaullarthy Village, Karnataka State. Accordingly, the family members of the deceased came to the spot and found dead body of Chinna Yarriswamy. It is his further evidence that the accused had borrowed a sum of Rs.2 lakh from the deceased, when the deceased demanded for repayment, these accused took the deceased pretending that they would show treasure, committed his murder and robbed his gold chain, ring, mobile, watch and disposed the dead body. PW8 was cross-examined by the learned counsel for the accused. He has admitted that the deceased was doing money lending business and he did not hold any license. Further, the deceased was missing since three days, hence, he accompanied the family members of Chinna Yarriswamy to the Police Station and lodged the missing complaint.

21. PW9-Kenchappa has stated that he is the resident of Doddaullarthy Village, Challakere Taluk, and he is working as Cook in Anitha Dhaba situated at Doddaullarthy Village. He further stated that one day accused Nos.1 to 3 and another person came to Dhaba and had dinner. After 3-4 days of the incident, accused Nos.1 to 3 came to Dhaba along with the Police. He identified accused Nos.1 to 3 and came to know that they committed the murder of the deceased for wrongful gain.

22. PW13-Nagaraj, witness to last scene theory, has stated that he is the owner of Anitha Dhaba. He reiterates the evidence of PW9. Both PWs.9 and 13 were cross-examined by the learned counsel for the accused, but nothing has been brought on record to disbelieve their evidence with regard to last scene theory.

23. PW10-Kum. Shilpa is a relative of accused No.2. PW14-Shivamurthy is a younger brother of PW10 as well as brother-in-law of accused No.2. PWs.10 and 14 have stated that they know accused No.2-Suresha as he is their relative. About eight years ago, prior to the incident at 8.00 p.m., accused No.2 came to their house along with other accused and the deceased.

They came to their house in a Tata Ace vehicle and demanded the bed sheet. According to PW10, she supplied the bed sheet to accused Nos.1 to 3 in the presence of PW14. Thereafter, they came to know that these accused have committed murder of the deceased during night hours on 12.11.2012. Later, accused Nos.1 to 3 came to their house along with the Police officials, at that time, the Police recovered MO6 and MO22- bed sheets. Thus, PW10 and PW14 have identified accused Nos.1 to 3. They also identified MOs.6 and 22-bed sheets, which were recovered at the instance of the accused. PW10 and PW14 were cross-examined by the learned counsel for the accused. In the cross-examination, PW14 has stated that he does not know about the deceased.

24. PW11-Rangappa and PW12-Yaraguntappa, witnesses to exhumation of the dead body from the gravel, have stated that as per the instructions of the Tahsildar, the dead body of Chinna Yarriswamy was exhumed and they found injuries all over the body of the deceased and they came to know that it was a dead body of Chinna Yarriswamy and they also noticed that the accused had robbed the jewelries of the deceased.

25. PW15-Gangamma, aunt of the deceased, has stated that about four years ago, in between 10.00 a.m. and 10.30 a.m., when her husband, CW24-Narayanappa was in the house, the deceased came in his motorcycle to her house and informed her that he intended to go to Doddaullarthy Village, Challakere Taluk, for some work and saying so, he parked his motorcycle in front of the house and boarded the Tata Ace vehicle, brought by accused Nos.1 to 3. After three days, the wife of deceased viz., Jayamma called her over phone and informed about missing of the deceased. Thereafter, she came to know about the dead body of the deceased found near Doddaullarthy Forest area. Hence, they went to the forest area of Doddaullarthy Village, Challakere Taluk and found the dead body of the deceased. Later, they came to know that accused Nos.1 to 3 have committed the murder of the deceased and robbed his gold neck chain, rings, watch and mobile and disposed of his body to avoid payment of Rs.2 lakh borrowed from the deceased. In the cross-examination, nothing has been elicited to discard her evidence.

26. PW16-Jayamma, wife of the deceased, has reiterated the evidence of PW8-Dodda Yarriswamy and PW15-Gangamma

and corroborated her testimony insofar the deceased going along with accused Nos.1 to 3 and later, finding of the dead body of the deceased in the forest area of Doddaullarthy Village, Challakere Taluk.

27. PW17-Ravindranatha Reddy, in whose presence the accused made extra-judicial confession, has stated that he knows accused Nos.1 to 3 and the deceased. He further stated that about four years ago, one day, at 9.30 p.m., accused Nos.1 to 3 came to his house and informed him that they have committed the murder of Chinna Yarriswamy and the Police will try to search them and requested him to protect them from the case and they also requested him that if the Police arrest them, he must assist them in their release. However, as it was night, he sent them stating that he shall discuss the issue on the following day. On the following day, he came to know that they were arrested by the Police in connection with the murder of the deceased. Later, he came to know that accused Nos.1 to 3 had borrowed a sum of Rs.2 lakh from the deceased and as they could not repay the said amount, they took the deceased stating that they would show the treasure and committed his murder.

28. PW18-Ramana Reddy and PW19-Venkatesha, last seen witnesses, have stated that during 2012, on the date of incident, they saw the deceased in the company of accused Nos.1 to 3 going in goods auto-rickshaw from Gudisalapalli Village towards Doddaullarthy Village and later, they came to know about the death of the deceased.

29. PW20-Dr. Dayanandababu, who conducted autopsy on the dead body of the deceased, and issued Ex.P21-Post-Mortem examination report.

30. PW21-Ramachandrappa, Tahsildar, who exhumed the dead body of the deceased and conducted inquest mahazar-Ex.P9.

31. PW22-Venkatesh, Police Constable, who carried F.I.R. to the Court.

32. PW23-T.V. Sathisha, Assistant Executive Engineer, who drew the sketch of scene of offence vide Ex.P31.

33. PW24-Priya B.R., Village Accountant, who issued R.T.C. extract of the land, where the body was exhumed as per Ex.P32.

34. PW25-Ramanjenaya, Police constable, who was entrusted to guard the dead body of the deceased at the scene of offence.

35. PW26-Obanna, Police Constable, who secured the accused and produced them before the Investigating Officer.

36. PW27-Raghu, Police Constable, who took photographs of the scene of the offence and during exhumation of the dead body of the deceased vide Exs.P22 to P27, and P33 to P36.

37. PW28-Boraiah, Sub-Inspector of Police, who received the complaint, registered F.I.R., secured the accused and produced them before the Investigating Officer.

38. PW29-Manjunatha, Circle Inspector of Police, who investigated the matter and filed the charge-sheet against the accused.

ANALYSIS

39. Admittedly, the case is based on circumstantial evidence. In a circumstantial evidence, the prosecution has to prove that the chain of circumstances from which the conclusion of the guilt has to be drawn should be fully established. It is a primary principle that the accused 'must be' and not merely 'may be' guilty before a Court to convict him. The Hon'ble Apex Court in the case of ***BOBY v. STATE OF KERALA,*** reported in ***2023 LIVELAW (SC) 50***, has held that, there is not only grammatical but a legal distinction between 'may be proved' and 'must be or should be proved', and it has been held that, the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty and the chain of evidence must be so complete as not to leave any reasonable ground to the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused. In the light of these guiding principles, we have to examine the present case.

40. According to the prosecution, these accused had borrowed a sum of Rs.2 lakh from Chinna Yarriswamy. As the deceased demanded for repayment, accused Nos.1 to 3 with common intention, hatched plan to eliminate the deceased to avoid repayment. Accordingly, they took the deceased pretending that they would show the treasure near Boredevara Temple and during night hours, accused Nos.1 to 3 committed his murder near Boredevara Temple, Doddaullarthy Village, Challakere Taluk, Chitradurga District, with chopper and in order to screen the offence, disposed of the dead body by digging a trench and robbed gold neck chain, two finger rings, Titan watch and cash of Rs.2,500/- from the deceased.

41. Burden is on the prosecution to prove that the accused committed murder of the deceased for gain. In order to establish this aspect, the prosecution relied on circumstantial evidence.

42. Where a case rests on circumstantial evidence, the inference of guilt can be justified till all the incriminating facts and circumstances are found incompatible with the innocence of the

accused. To prove the charges, the prosecution relied on the following circumstances:

(a) Nature of death of the deceased,

(b) Motive,

(c) Last seen together of the accused and the deceased before the deceased found dead,

(d) Recovery of gold articles of the deceased,

(e) Identification of gold articles,

(f) Extra-judicial confession, and

(g) Conduct of the accused under Section 106 of the Indian Evidence Act, 1872.

Reg-Nature of death of the deceased:

43. So far as the death of the deceased is concerned, PW1-Basavaraja (complainant), PW6-Thippeswamy, PW7-Lakshmana, PW8-Dodda Yarriswamy, PW15-Gangamma and PW16-Jayamma have stated that on 15.11.2012, they came to know that the dead body of the deceased was found in Doddaullarthy Kaval Forest area, the body was exhumed and they found visible injuries on the dead body of the deceased, the gold articles and wrist watch was missing from the dead body of the

deceased. Hence, PW1 lodged the complaint to the Police as per Ex.P1.

44. The prosecution relied on the evidence of PWs.2 and 3, who have stated that they saw the dead body at the scene of offence, where the Police conducted recovery mahazars as per Exs.P2 and P3. Further, PW7-Lakshmana has stated that he saw the dead body of the deceased near Forest area of Doddaullarthy Kaval, where the Tahsildar conducted inquest mahazar as per Ex.P9. Further, PW8-Dodda Yarriswamy, brother of the deceased, PW15-Gangamma, aunt of the deceased, and PW16-Jayamma, wife of the deceased, have stated that on 12.11.2012, the deceased had been to Doddaullarthy for some work along with accused Nos.1 to 3, but he did not return and after three days, the dead body of the deceased was found near Boredevara Temple, Doddaullarthy Kaval Forest area, where the dead body was exhumed and they identified the body as that of Chinna Yarriswamy, they identified injuries on the neck of the deceased and they came to know that accused Nos.1 to 3 committed murder of the deceased for gain. Therefore, PWs.1 to 3, 7, 8, 15 and 16 have categorically stated that they saw the dead body of

the deceased with homicidal injuries. Therefore, the oral testimonies of PWs.1 to 3, 7, 8, 15 and 16 clearly establish that they saw homicidal injuries on the person of the deceased. Their testimonies stand corroborated by the evidence of inquest mahazar witnesses and the evidence of the Investigating Officer. They have described visible injuries on the deceased, which determined the fact behind death of the deceased.

45. So far as the medical evidence is concerned, the prosecution relied on the testimony of PW20-Dr. Dayanandababu, who has stated that on 15.11.2012, he conducted autopsy on the dead body of the deceased at Mortuary of Government Hospital, Challakere, between 7:15 p.m. and 9:20 p.m. and made the observations that *'the body shows the signs of the decomposition. Eyeballs swollen, testis swollen, skin peels off and shows blebs at places'*. On examination of the dead body, he found the following external injuries:

i. "Penetration present over front of neck.
ii. Head is crust.
iii. Facial bones and skull bones are fractured at multiple places beyond alignment and reorganisation.
iv. Brain matter drained out through the skull."

46. PW20-Doctor opined that the death is due to multiple injuries sustained. Hence, he issued Post-Mortem examination report vide Ex.P21. He further opined that, injuries mentioned in the Post-Mortem examination report could be caused with stone and chopper.

47. The oral evidence of PW20 and the contents of Ex.P21-Post-Mortem examination report revealed that the death of the deceased was due to stab and crush injury sustained. Hence, the evidence of the Doctor, who conducted the autopsy and the evidence of the inquest mahazar witnesses go to show that the cause of death of the deceased was due to antemortem stab and crush injuries. Thus, the oral evidence of the prosecution witnesses is corroborated by the medical evidence as to the cause of death of the deceased. Hence, the homicidal death of the deceased stands proved.

Reg-Motive:

48. As per the prosecution, accused Nos.1 to 3 had borrowed a sum of Rs.2 lakh from the deceased. When the deceased demanded for repayment, accused Nos.1 to 3 with

common intention, hatched plan to commit the murder to avoid repayment and hence, they took the deceased near Boredevara Temple, where they committed murder of the deceased. To establish this aspect, PW16-Jayamma, wife of the deceased, stated that on 12.11.2012, when she was in her house, her husband told her that he would visit Urukonda Village, Ananthapura District, took his motorcycle at 10:30 a.m. and told her that he would park his motorcycle in front of house of PW15 Gangamma, aunt of the deceased. She further stated that on the same day, he called her over telephone and told that he will not return that night and assured her to come on the following day, but on 13.11.2012, her husband did not return, his mobile was switched off. Hence, her family members and herself searched for her husband. Since he was not traced, on 15.11.2012 at 7:00 a.m., she lodged the missing complaint vide Ex.P20 to the Police and later, at 3:00 p.m., she came to know about tracing of the body of her husband in Doddaullarthy Kaval Forest area. Thus PW8, PW15 and herself went to the forest area and found the dead body of her husband.

49. From the evidence of PW16, it goes to show that accused Nos.1 to 3 borrowed a sum of Rs.2 lakh from the deceased and could not repay it and in order to avoid the repayment; they hatched plan to eliminate the deceased. Thus, they called the deceased with assurance that they would show treasure near Boredevara temple, where they committed murder and snatched gold chain, rings and Titan watch of the deceased. Hence, the motive also stands proved.

Reg-Last seen together of the accused and the deceased before the deceased found dead:

50. The third ground on which the prosecution has placed reliance is the last seen theory. The last seen theory comes into play when there is proximity of time and place of sighting the accused and the victim together soon before the victim was found dead, thereby the possibility of any person other than the accused being the author of the crime becomes impossible.

51. Insofar as the last seen theory is concerned, we may refer to the ratio laid down in the case of ***STATE OF U.P. v. SATISH*** reported in ***(2005) 3 SCC 114,***

wherein the Hon'ble Apex Court at paragraph No.22 held as under:

> *"22. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs.3 and 5, in addition to the evidence of PW.2."*
>
> *(Emphasis supplied)*

52. PW9-Kenchappa, who was working as Cook in Anitha Dhaba situated at Doddaullarthy, Challakere Taluk, has stated that he knew accused Nos.1 to 3. About four year ago, from the date of recording of his evidence, one day, he was in Dhaba,

accused Nos.1 to 3 along with another person came in Tata Ace vehicle, had lunch and left the Dhaba. After three days, accused Nos.1 to 3 came to Dhaba along with the Police. At that time, he identified accused Nos.1 to 3 and later, he came to know about these accused committing murder of the deceased for wrongful gain. In the cross-examination, he has admitted that himself and another person are working in the Dhaba. He attends cooking work and another person supplies food. He further admitted that, many people visit the Dhaba and hence, movements of every customer cannot be remembered and rest of the suggestions was denied by him.

53. The prosecution further relied on the evidence of PW10-Shilpa, who is relative of accused No.2. In her evidence, she has stated that accused No.2 is none other than her maternal uncle. During 2012, she was studying in 9th Standard at Gowra Samudra School. She is permanent resident of Bande Thimmalapura Village. Her evidence is that about three years ago, from the date of recording of her evidence, when she was in her house along with her brother-PW14, accused Nos.1 to 3 and another person came to their house at 8.00 p.m. and accused

No.2 sought for two bed sheets and she supplied the same to him in the presence of her brother. After five days, she came to know that the person, who had accompanied accused Nos.1 to 3 to their house, was murdered by accused Nos.1 to 3. Accordingly, the Police brought accused Nos.1 to 3 to their house and seized MOs.6 and 22-bed sheets. In the cross-examination, she admits that her brother-PW14 handed over the bed sheets to accused No.2 and she was inside the house. She does not know the contents of her statement recorded by the Police. She specifically denied the suggestions that she is falsely deposing about three years ago accused Nos.1 to 3 came along with the deceased and sought for two bed sheets. The learned counsel for the accused did not elicit from the mouth of PW10 as to any animosity with accused Nos.1 to 3, more particularly, against accused No.2. No suggestions were put to her by the learned counsel for the accused to discredit her testimony.

54. The prosecution further examined PW18-Ramana Reddy, last seen witness, who has stated that he hails from Gudisalapalli Village, he knows accused Nos.1 to 3 and the deceased. His evidence is that during 2012, one day, when he

was near his house at Gudisalapalli Village, the deceased came in motorcycle and informed him that he would go to Doddaullarthy Village for some work and at the same time, accused Nos.1 to 3 followed him in goods auto-rickshaw towards Doddaullarthy Village. On the following day, the deceased and accused Nos.1 to 3 did not return to the Village. Hence, he enquired PW16-Jayamma about the deceased, in turn, she told that she called her husband, but his phone was switched off. Later, they searched for the deceased and when they did not find the deceased, the wife of the deceased lodged the missing complaint. After three days, the dead body of the deceased was traced in Forest area of Doddaullarthy Village. Later, he came to know that accused Nos.1 to 3 had borrowed a sum of Rs.2 lakh from the deceased and could not repay it. Hence, they pretended that they would show treasure to the deceased and took the deceased to Boredevara Temple and committed murder of the deceased. He also came to know that these accused robbed gold neck chain, rings, watch and mobile phone of the deceased. In the cross-examination, nothing worthwhile has been elicited to discredit his testimony, except the admission that he does not know the registration number of the Tata Ace vehicle.

55. PW19-Venkatesh, another last seen witness, has stated that he knows these accused and the deceased. The deceased is his uncle. During 2012, one day, the deceased went to Doddaullarthy for his work and following him, accused Nos.1 to 3 went in Tata Ace Vehicle towards Doddaullarthy Village and on the same day, these accused and the deceased did not return. Hence, they searched the deceased, but he was not traced. On the following day at 6:00 a.m., he had been to attend nature call, at that time, accused Nos.1 to 3 came to Gudisalapalli Village in Tata Ace vehicle, but the deceased did not return. Later, his aunt, PW16 lodged the missing complaint. Later, he came to know that accused Nos.1 to 3 had borrowed a sum of Rs.2 lakh from the deceased and could not repay it. Hence, they pretend that they would show treasure to the deceased and took the deceased to Boredevara Temple and committed the murder of the deceased. He also came to know that these accused robbed gold neck chain, rings, watch and mobile phone of the deceased. In the cross-examination, nothing worthwhile has been elicited to discredit his testimony, except the admission that he does not know the registration number of the Tata Ace vehicle.

56. The evidence of PWs.9, 10, 18 and 19 clearly establishes that on 12.11.2012, accused Nos.1 to 3 and the deceased went towards Doddaullarthy Village in Tata Ace vehicle and the deceased not returning to his Village. Therefore, the evidence of PWs.9, 10, 18 and 19 substantiates the prosecution version that on the relevant date and time, the accused and the deceased went towards Doddaullarthy Village and the deceased was in company of the accused and later, the deceased found dead in Doddaullarthy Kaval Forest area with homicidal injuries.

57. Accused Nos.1 to 3 have not offered any explanation as to how and when they parted the deceased. In cases of "last-seen together" circumstantial evidence, when an accused fails to offer a plausible explanation regarding how and when they parted ways with the deceased, an adverse inference can be drawn against them. The last-seen theory is strongest when the time gap between being seen together and the death is minimal. Thus, the lack of an explanation for their separation creates a strong presumption of guilt. Therefore, the evidence of PWs.9, 10, 18 and 19 proved the last seen theory as propounded by the prosecution beyond reasonable doubt.

Reg-Recovery of gold articles of the deceased:

58. So far as recovery of gold articles, the prosecution relied on the evidence of PW5, who has stated that he knew these accused and the deceased and they are from the same Village. His evidence is that in connection with the murder of the deceased, the Police brought the accused to Gudisalapalli Village, at that time, the accused disclosed that they would furnish certain articles and accordingly, accused No.2 accompanied the Police, CW8-Palaksha and himself to his house and furnished MOs.11 to 14, i.e. shirt, lungi, mobile and gold neck chain, respectively. Thus, the Police seized those articles under Ex.P5-recovery mahazar.

59. It is his further evidence that thereafter, accused No.1 accompanied the Police, CW8-Palaksha and himself to his house and furnished MOs.15 to 17, i.e. shirt, lungi and gold finger ring, respectively. Thus, the Police seized the same under Ex.P6-recovery mahazar and accused No.1 also furnished Tata Ace vehicle.

60. It is his further evidence that thereafter accused No.3 accompanied the Police, CW8-Palaksha and himself to his house

and furnished MOs.19 to 21, i.e. shirt, lungi and gold ring, respectively. Thus, the Police seized the same under Ex.P7-recovery mahazar. PW5 identified all the seized articles and also identified the photographs taken at the time of conducting mahazars.

61. PW5 was cross-examined. In the cross-examination, he admits that the Police did not issue any notice in writing to him to act as Pancha. He does not know to read, write and speak the Kannada language. However, he knows the contents of all the three recovery mahazars. He further admits that as soon as he visited the house of accused Nos.2 and 3, the doors were open and it was not locked. The Police did not seal and packed the seized articles in his presence. There were several houses near the houses of accused Nos.1 to 3 and rest of the suggestions was denied by PW5.

62. In order to corroborate the oral testimony of PW5, the prosecution examined PW29-Investigating Officer. He deposed supporting recoveries of MOs.11 to 21 under Exs.P5, P6 and P7 at the instance of accused Nos.1 to 3. The evidence regarding

circumstance was cogent and consistent. Therefore, the trial Court was justified in holding that the said circumstance was proved.

63. In the case of ***PULUKURI KOTTAYYA AND OTHERS v. KING EMPEROR*** *reported in* ***1946 SCC ONLINE PC 47***, the Hon'ble Privy Council has held as under:

> *Head Note: xxx xxx "fact discovered" within the section as equivalent to the object produced, xxx xxx. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.*
>
> *"27. xxx xxx The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence."*

64. In this case, these accused during their Police custody confessed regarding the place, where incriminating articles, namely, gold neck chain-MO14, gold ring-MO17, Titan watch-MO20, and gold ring-MO21 were placed. Hence, these accused

led the Police and Panchas to their respective houses, produced those articles along with their clothes, mobile phones and other articles. That amounts to discovery of the fact which was within their special knowledge and the said fact discovered is very relevant.

65. It could thus be seen that Section 27 of the Indian Evidence Act, 1872, requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to that and the information given must relate distinctly to the said fact. Having regard to the evidence discussed above, it goes to show that the circumstance of recovery of incriminating material is proved.

Reg-Identification of gold articles:

66. The prosecution in order to identify the gold articles belonging to the deceased, which were seized from the possession of these accused, got examined PW16-Jayamma, wife of the deceased. She identified MOs.13, 14, 17 and 20, i.e. mobile, gold neck chain, ring and Titan watch, respectively, belonging to the deceased. Therefore, identification of seized properties stands proved.

Reg-Extra-judicial confession:

67. The prosecution also relied on the extra-judicial confession of accused Nos.1 to 3. An extra-judicial confession made to a person, other than Judge or Magistrate, is generally considered as weak piece of evidence. While it can form the sole basis for consideration, if proven voluntary, truthful, and reliable, however, it shall be corroborated by other circumstances. In this regard, the prosecution examined PW17-Ravindranatha Reddy, in whose presence these accused made extra-judicial confession. He has stated that himself, accused Nos.1 to 3 and the deceased hails from the same Village. He stated that about four years ago, one day, at 9.30 p.m., accused Nos.1 to 3 came to his house and informed him that they have committed the murder of Chinna Yarriswamy. Hence, the Police will search them and requested him to protect them from the case and they also requested him that if the Police arrest them, he must assist them in their release. Since it was night, he sent them stating that he shall discuss the issue on the following day. On the following day, he came to know that these accused were arrested by the Police in connection with the murder of Chinna Yarriswamy. Later, he came to know

that accused Nos.1 to 3 had borrowed a sum Rs.2 lakh from the deceased and as they could not repay the said amount, they took the deceased stating that they would show the treasure near Doddaullarthy Village, Chitradurga, and committed the murder of the deceased.

68. The trial Court has relied on this piece of evidence as extra-judicial confession. In our view, the evidence of PW17 satisfies the requirement of extra-judicial confession so as to render accused Nos.1 to 3 guilty for the murder of the deceased.

69. Regarding the appreciation of evidence in Extra-Judicial confession, the Hon'ble Apex Court in the case of ***SAHADEVAN AND ANOTHER v. STATE OF TAMIL NADU*** reported in ***(2012) 6 SCC 403***, at paragraph No.16, has held as follows:

> *"16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-*

judicial confession alleged to have been made by the accused:

> ***(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.***
>
> *(ii) It should be made voluntarily and should be truthful.*
>
> ***(iii) It should inspire confidence.***
>
> ***(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.***
>
> *(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*
>
> *(vi) Such statement essentially has to be proved like any other fact and in accordance with law."*
>
> *(emphasis supplied)*

70. The Hon'ble Apex Court in the case of ***PAWAN KUMAR CHOURASIA v. STATE OF BIHAR*** reported in ***2023 SCC OnLine SC 259***, at paragraph No.6, has held as follows:

> *"6. As far as extrajudicial confession is concerned, the law is well settled.* ***Generally, it is a weak piece of evidence.*** *However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement.* ***The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith.*** *Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extrajudicial confession is corroborated by other evidence on record, it acquires more credibility."*
>
> *(emphasis supplied)*

71. The judgments cited *supra* and the evidence of PW17 indicate that the accused were acquainted with him as he is also resident of the same Village and moreover, he was Sarpanch (Chairman of Gram Panchayat) of Hirehal Mandal, Rayadurga Taluk, Andhra Pradesh. Even if his evidence is believed, it would go to show that he met these accused. The evidence indicates that there was interaction between PW17 and these accused and these accused reposed confidence in PW17 and therefore, it shows that these accused had implicit faith in PW17. He was in a position to help these accused. Therefore, it can be believed that these accused approached PW17 and confessed the alleged crime with him. The statement of PW17 inspires confidence to hold that these accused had made such confession before him.

Reg-Conduct of the accused under Section 106 of the Indian Evidence Act, 1872:

72. According to the prosecution, on committing the crime, accused Nos.1 to 3 came to their respective houses by robbing MOs.13, 14, 17, 20, and 21, i.e. mobile, gold neck chain, gold ring, Titan watch and gold ring, respectively, belonging of the deceased. The incident took place on 12.11.2012, the dead body of the deceased was found on 15.11.2012 and the belonging of

the deceased was seized on 17.11.2012 under recovery mahazars-Exs.P5, P6 and P7 at the instance of accused Nos.1 to 3, pursuant to their voluntary statements vide Exs.P39, P40 and P41, respectively. Hence, this is also one of the chain links in the evidence.

73. So far as invoking Section 106 of the Indian Evidence Act, 1872, the prosecution must first establish that there was some fact within the special knowledge of the accused. In a case of circumstantial evidence, the accused being the master of the crime alone knows the circumstances which led to death. This Section mandates that the facts that are within the exclusive knowledge of the accused shall be explained by him alone. Non-explanation of incriminating circumstances leads to an inference that the accused and the accused alone is the author of the crime.

74. Once the prosecution is able to establish that, at the relevant time, these accused took the deceased pretending that they would show treasure near Boredevara Temple, committed his murder and robbed his gold articles, watch, mobile, and same were seized from the possession of these accused. Thus, how the deceased died and how his belonging came in possession of these

accused are exclusively within the knowledge of these accused. The burden of proof would lie upon these accused to explain that. Whereas, in this case, these accused have not offered any explanation for the said circumstances and their failure to offer reasonable explanation itself provides an additional link in the chain of circumstances.

75. It is now well settled that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. There should be no gap left in the chain of circumstances. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the instant case, the circumstances proved by the prosecution, in our opinion, form a complete chain unerringly pointing to the guilt of these accused for the murder of the deceased. It is established beyond pale of doubt that these accused murdered the deceased and robbed his belongings for gain. The recovery of the gold articles at the instance of these accused establishes the fact that murder was committed by them for gain.

76. After hearing the learned counsel appearing for the parties and on examining the material on record, we find no error in the case of the prosecution. On overall consideration of all the above facts and circumstances, we are of the considered opinion that the prosecution has proved the guilt of these accused beyond reasonable doubt for the alleged offences. The trial Court, therefore, was justified in convicting these accused for the aforesaid offences. We do not find any error or infirmity whatsoever in the findings recorded by the trial Court. Even on reconsideration of the material on record, we do not find any reason to differ with the view taken by the trial Court. As a result, the conviction of these accused for the offences punishable under Sections 302, 397 and 201 of IPC needs to be confirmed. Hence, we pass the following:

O R D E R

i. Criminal appeals are ***dismissed***.

ii. The judgment of conviction dated 6.2.2018 and order on sentence dated 8.2.2018 in Sessions Case No.30 of 2013 passed by the Principal District and Sessions Judge, Chitradurga, against the appellants/accused Nos.1 to 3 for the offences punishable under Sections 302, 397 and 201 read with Section 34 of the Indian Penal Code, 1860, are hereby confirmed.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

AM / MN / KVK