

KADK010001622014



Presented on : 19-08-2014
Registered on : 19-08-2014
Decided on : 25-06-2026
Duration : 11 years 10 months 6 days

**IN THE COURT OF THE II ADDL. DISTRICT &
SESSIONS JUDGE, D.K., MANGALURU**

Present:

SRI. JAGADEESH V.N.

B.A., M.L.,

II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 25th day of June 2026

SC/80/2014 and SC/105/2024

Complainant in
both the cases:

The State – through
Police Inspector,
Surathkal Police station, Mangaluru.

(Rep. by learned Public Prosecutor, D.K., Mangaluru)

Versus

Accused in
SC/80/2014 :

Shivaram, (A1)
Aged 44 years
S/o. Devi Singh,
R/at Kapoora Maluka, Datta Ka Beda,
Bayana Taluk, Bharathpur District,
Rajasthan State.

(By Sri Rajesh Kumar Amtady, Advocate)

Accused in
SC/105/2024 :

Shahanavaz @ Shanu, (A3)
Aged 32 years
S/o. Yahashan,
R/at Rampura Tega, Mandidanora Taluk,
Amroha District, Uttar Pradesh State.

(By Sri K.P.A. Shukoor, Advocate)

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|----------------------------------|---|--|
| 1. Date of commission of offence | : | On 08.02.2014 between 16.00 -20.00 hours |
| 2. Date of report of occurrence | : | On 08.02.2014 at about 22.15 hours |

3. Name of the complainant: : PW.1- Gurudas Prabhu
4. Offence complained of : U/Sec. 449, 392, 302 and 120B r/w Section 34 of I.P.C.
5. Date of arrest of the accused. : A1 & A3: 20.04.2014
- A1 granted bail by I Addl. District Court, D.K., Mangaluru and again he remained absent and secured on 06.03.2025.
- A3 granted bail in Criminal Petition No.5132/2014 by Hon'ble High Court of Karnataka, Bengaluru and again he remained absent and secured on 07.08.2025.
- Accused Nos.1 and 3 are in judicial custody.
6. Date of commencement of trial : 07.08.2024
7. Date of closing of trial : 17.02.2026
8. Opinion of the Judge : As per final order.

JUDGMENT

The accused Nos.1 and 3 faced trial before this Court on the charge sheet filed by the Police Inspector, Surathkal Police Station, Mangaluru for the offence punishable under Sections 449, 392, 302 and 120B r/w Section 34 of I.P.C.

2. Sri Gurudas Prabhu s/o. Late Damodar Prabhu has lodged a complaint on 08.02.2014 at 10.00 p.m. It was stated in the complaint he, his wife and children are staying at Kulai. His mother Smt. Sumathi Prabhu was staying alone nearby his house. His sister was married and residing with her husband. His brother's family was residing in a separate house nearby his house. There were 5 rooms behind his mother's house and some Rajasthani persons were staying in the said rooms. His mother was alone in the house and used to take care of herself. On 08.02.2014 at night when he was in his house, his neighbour Basheer called him over phone and told his mother was murdered. Immediately, he, his brother came to the house, front door of the house was latched from inside, hence, he went from backside door

and saw his mother was lying in a pool of blood in the living hall and TV was on. His mother was dead. Nearby his mother, one knife was also lying. The neck was cut and body was drenched with blood. His mother used to wear gold ornaments, but, gold ornaments were missing. His neighbour Abdul Khader told around 4-4.30 p.m. when Abdul Khader came out of the house to go Masjid, at that time, two persons came in Discovery red colour motorcycle, went front-yard of his mother's house, among them one person was black in colour wearing jeans pant and T-shirt, another person was around 25 years old and medium personality. Based on the complaint given by complainant, the police have registered a case against suspected two accused persons in Crime No.44/2014 for the offence punishable under Sections 449, 392 and 302 of I.P.C.

3. Investigation was ensued. After concluding investigation, the investigating agency has submitted charge-sheet against accused Nos.1 to 3 for the offence punishable under Sections 449, 392, 302 and 120B r/w Section 34 of I.P.C.

4. The committal court furnished charge sheet papers to the accused. Since the offence was exclusively triable by Court of Session, the case was committed to Court of Session. The Hon'ble Principal District and Sessions Judge made over the case to this court for trial.

5. The accused Nos.1 to 3 were in judicial custody and represented by their counsel. In the meantime, accused No.3 was released on bail as per the order passed in Criminal Petition No.5132/2014 by Hon'ble High Court of Karnataka, Bengaluru and accused Nos.1 and 2 were granted bail in CrI.Mis.C.No.817/2014 and 956/2014 by I Addl. District & Sessions Court, D.K., Mangaluru.

6. After hearing learned Public Prosecutor and learned counsel appearing for the accused Nos.1 to 3, since there were sufficient materials and grounds against the accused, this Court has framed charge for the offences punishable under Sections 449, 392, 302 and 120B r/w Section 34 of I.P.C. The charge was read over and explained to the accused in the language known to them, the accused denied the charges. Thereafter, fixed

the trial and issued summons to the witnesses. Later accused Nos.1 to 3 remained absent. Accused No.1 was arrested and produced before the court on 06.03.2025 and remanded to judicial custody. Then case against accused Nos.2 and 3 was ordered to be split-up and a separate case was registered in S.C. No.105/2024. Trial was commenced as the accused No.1 was in judicial custody. During the trial, the accused No.3 was secured. Subsequently witnesses were recalled only in so far as evidence against the accused No.3 and evidence was concluded against accused Nos.1 and 3. After the trial, the matter was posted for arguments. During arguments, once again accused No.2 was secured, since the trial was already concluded, case against him was ordered to be split-up and a separate case was registered against him in S.C. No.71/2026.

7. The prosecution in order to substantiate its case, examined in all 26 witnesses out of 42 witnesses cited as PW.1 to PW.26 and produced in all 52 documents as Ex.P.1 to Ex.P.52 and material objects at MO.1 to MO.11. The statement of the accused Nos.1 and 3 was recorded under section 313 Cr.P.C, wherein they denied

incriminating evidence and submitted written statement. The accused Nos.1 and 3 have examined Nodal Officer of Bharathi Airtel Ltd. as DW.1 and portions marked in the statement and further statement of PW.15 were got marked as Ex.D.1 and Ex.D.2 on behalf of accused Nos.1 and 3.

8. Heard, the learned Public Prosecutor and learned counsel for accused Nos.1 and 3.

9. It is contended by learned Public Prosecutor that accused No.1 was the earlier tenant of the deceased, he knew the deceased used to wear gold ornaments and deceased was alone in the house. He used to visit rented rooms wherein other boys were staying and as the deceased used to be alone in the house, he hatched a plan with accused Nos.2 and 3 to commit the murder of deceased for gain. Accordingly, accused Nos.2 and 3 came to the house of deceased on the pretext of making an enquiry about a room and after making enquiry, they were waiting near the house of deceased, since PW.11 and another person were in one of the rooms, again accused No.1 came to the said room, took them out of

the house on the pretext of giving work to them, then accused Nos.2 and 3 entered the house of deceased committed murder and robbed gold articles of the deceased. Accused Nos.1 to 3 have pre-planned to commit the murder and committed murder and robbed gold articles.

10. Learned Public Prosecutor submits no doubt no one had witnessed the incident. But, the witnesses who have seen the accused Nos.1 to 3 had seen the accused near the house of deceased have clearly deposed accused Nos.1 to 3 came to the house of deceased on that day in the morning around 10.30-11.00 a.m. and at 1.30 p.m. The accused No.1 came first and dropped accused No.3, accused No.2 came by walk, then accused No.1 again took PW.11 and another from the room and thereafter accused Nos.2 and 3 went inside the house of deceased and committed murder. PW.4 who is the neighbor, she has clearly deposed in her deposition that she had seen the accused No.1 and another person in the house of deceased at 1.30 p.m. PW.15 also deposed in his deposition in the afternoon, he had seen accused No.1 and other two persons in the house of deceased. The

complainant in his complaint has clearly deposed his neighbor Abdul Khader had seen 2 persons in the evening along with Discovery motorcycle. Further, PW.11 has also deposed accused No.1 came to their room and asked why they had not gone to work, when they told today they had no work, the accused No.1 took them on the pretext of giving work and dropped them at Thokkottu site, returned back stating that he would bring back machinery, but did not return to the said working place. That clearly indicates the accused No.1 had hatched a plan to commit an offence and committed the offence, accordingly.

11. It is further contended by learned Public Prosecutor that during investigation, the Investigating officer has obtained call records of accused Nos.1 and 3. The call records of accused Nos.1 and 3 clearly indicates on 08.02.2014 on the date of incident between 10.00 and 11.00 a.m. the presence of accused Nos.1 and 3 at Hosabettu- Kulai, wherein house of deceased is situated. The call records further indicate between 1.00 and 1.30 p.m. the presence of accused Nos.1 and 3 at Hosabettu- Kulai wherein house of deceased is situated. Though in

the complaint, it was stated death might have taken place around 4-8 p.m., the call records clearly indicate death was occurred at 1-1.30 p.m. The accused No.1 after taking PW.11 and another from the rented room of deceased, accused Nos.2 and 3 once again entered inside the house of deceased on the pretext of asking room, committed murder and robbed gold articles. The prosecution has proved last seen theory that the accused persons were present at the house of the deceased at the last.

12. Learned Public Prosecutor further contends the prosecution has relied upon another major circumstance i.e. recovery at the instance of accused. The Investigating officer recovered gold articles, cloth and motorcycle from the accused persons. After commission of offence, the accused persons absconded. After search of accused at various places including Madhya Pradesh, Rajasthan, Delhi etc., the accused Nos.1 to 3 were apprehended at Someshwara by the Investigating officer and accused Nos.1 to 3 have voluntarily admitted about commission of offence. In the voluntary statement, they have volunteered by volition that they would produce gold

articles, cloth and motorcycle. At the instance of accused Nos.1 to 3, the Investigating officer recovered some gold articles from the accused No.1 from his room, motorcycle from accused No.1 and clothes from accused No.3. The Investigating officer also recovered major gold articles from accused No.2. The said gold articles were sold in Rajasthan by the accused No.2. After commission of the offence, accused No.2 took gold articles to Rajasthan and sold in jewelry shops. Some of the gold articles were converted into ingot. The said ingot was also seized by the Investigating officer. The recovery at the instance of the accused has been proved by the prosecution. The gold articles which were seized by the accused were identified by the family members of the deceased. The very same gold articles of deceased were recovered from the accused persons. From the above, it is very clear the prosecution has also proved recovery at the instance of accused. The motive for commission of offence by the accused is for gain. When the prosecution has proved the recovery and last seen theory, the motive is also proved by the prosecution. The evidence placed on record clearly indicates the accused persons have committed robbery

and murder of deceased. Hence, she seeks to convict the accused Nos.1 and 3 for the offences charged against them.

13. On the other hand, *Sri R.K.A.* and *Sri K.P.A.S.*, learned counsels for the accused Nos.1 and 3 have vehemently contended admittedly the case of the prosecution is based on circumstantial evidence. The circumstances relied upon by the prosecution is motive, last seen theory and recovery. The prosecution has failed to prove any one of the circumstances. When the link between chains is not proved and even a single chain is missing, the case of the prosecution case must fail. It is contended by learned counsel for accused Nos.1 and 3 that in so far as last seen theory is concerned, the prosecution has relied upon the evidence of PW.4, 11, 12 and 15. They have also relied upon the evidence of PW.1 and complaint. Even according to the complaint, one Abdul Khader, the grand father of PW.15 had seen 2 persons going to the house of deceased around 4-4.30 p.m. But PW.4 deposes in he deposition two persons including accused No.1 came to the house of deceased around 10.10.30 a.m. and again at 1.00 p.m. and made

enquiry for room. PW.11 deposes in his deposition at 1.00 p.m. accused No.1 came to their room, took him and CW.7 on the pretext of giving work, dropped in working place and left by saying he would bring machinery, but did not bring machinery to the working place and when they returned to the house, they saw deceased was murdered. They thought involvement of accused No.1 at that time. PW.15 is another eyewitness who saw the accused Nos.1 to 3 near the house of deceased. He deposes in his deposition in the afternoon accused No.1 and two persons came to the house of deceased, made enquiry for room. He thought usually people used to visit to make enquiry for rent, he did not give much concentration on that. Around 8.00 p.m., he came to know deceased was murdered. At that time, he suspected some foul-play was played by the 3 persons who came in the afternoon. If the evidence of PW.4, 11, 15 and complaint averments is seen, they contradict with each other. In one breathe, witnesses say, 2 persons came to the house of deceased. In another breathe, witnesses say 3 persons came and in one more breath witnesses say 2-3 persons came at 10.30 a.m. and in another breathe

witnesses say 2-3 persons came at 1.00 p.m. and the complaint averments state two persons came at 4-4.30 p.m. There is no clear evidence from the oral testimonies of PW.4, 11 and 15 to prove the presence of accused Nos.1 to 3 in the house of deceased on the date of incident. When such being the case, the prosecution has failed to prove accused Nos.1 to 3 came to the house of deceased on that day by preplan and committed the offence.

14. It is further contended by learned counsel for accused Nos.1 and 3 that the prosecution has also relied upon call records of accused Nos.1 and 3 to prove the presence of accused No.1 and 3 at the house of deceased on the date of incident. According to the prosecution, the mobile of accused Nos.1 and 3 were recovered after their arrest. As per the recovery, one mobile with 2 IMEI numbers and with two sim cards of accused No.1, one mobile, 2 IMEI numbers and two sim cards of accused No.3 were recovered. During investigation, the Investigating officer has obtained only two call records of accused Nos.1 and 3. Other two call records of accused Nos.1 and 3 were not obtained. Even the IMEI of accused

No.3 mobile forthcoming in the call records is not matching with the IMEI numbers mentioned in the mahazar. Even otherwise also, the call records have not been proved in accordance with Section 65B of Indian Evidence Act. When such being the case, the prosecution also failed to prove the last seen theory circumstance through call records.

15. It is further contended by learned counsel for the accused Nos.1 and 3 the prosecution has also failed to prove the recovery at the instance of accused. According to the prosecution, the Investigating officer recovered gold articles, clothes and motorcycle from accused Nos.1 to 3. Ex.P.17 and Ex.P.18 are the recovery mahazars at the instance of accused Nos.1 to 3. If recovery mahazars are seen, the said recovery is not in accordance with Section 27 of the Indian Evidence Act. The incident took place on 08.02.2014. The accused Nos.1 to 3 were alleged to have been apprehended on 20.04.2014 after 2 months of the incident. According to the investigating agency, some of the gold articles sold by the accused No.2 were recovered at Rajasthan, some of the articles were recovered from accused No.1 in his house and clothes of accused No.3

were recovered and motorcycle of accused No.1 was recovered. As per the recovery mahazars, except some articles, all the articles were sold in Rajasthan by the accused No.2. When maximum articles were sold in Rajasthan, how remaining articles were kept by the accused No.1 is not explained by the prosecution. The clothes of accused No.3 were recovered from the house of accused No.1 at the instance of accused Nos.1 to 3. According to the prosecution, the clothes were stained with blood traces. The said clothes were sent for examination and report indicates blood group could not be determined as it was inconclusive. That clearly indicates it is not clear whether or not the bloodstains on the clothes are of bloodstains of deceased. Mobile, some of the gold articles and clothes were recovered on 20.04.2014, however motorcycle was recovered on 27.04.2014 from the accused No.1. Even there is no explanation for delay in recovery of motorcycle at the instance of accused No.1. Another recovery relied upon by the prosecution is gold articles at the instance of accused No.2. The witnesses to said recovery have not fully supported the case of prosecution. Some gold

articles were recovered and some gold articles were already converted into ingot and ingot was also recovered, but it is not forthcoming whether the said articles were converted into ingot. The witnesses from whom said gold articles were recovered have not completely supported the case of prosecution. With the aforesaid evidence, it cannot be said the prosecution has proved the guilt of the accused beyond reasonable doubt. By looking from any angle, it is evident the prosecution has failed to prove the guilt of the accused. Hence, they seek to acquit the accused Nos.1 and 3.

16. I have perused entire materials available on record. Having heard learned counsel for the parties and on perusal of entire evidence on record, the points that arise for my consideration are;

1. Whether the prosecution proves beyond all reasonable doubt that accused No.1 who was the earlier tenant of deceased Smt. Sumathi Prabhu had noticed gold articles of deceased and in order to rob the same, accused No.1 along with split up accused Nos.2 and accused No.3 with their common intention to commit offence conspired with each other in the rented

room of accused No.1 at Someshwara Uchila and thereby committed an offence punishable under Section 120(B) r/w Section 34 of IPC?

2. Whether the prosecution further proves beyond all reasonable doubt that on 08.02.2014, accused Nos.1 and 3 and split up accused No.2 came to the house of deceased Sumathi situated at Kordabbu Kala of Kulai-Hosabettu village and accused No.1 sent accused No.3 and split up accused No.2 to the house of deceased and on the same day at about 2.00 p.m. when nobody was on the house, accused No.3 and split up accused No.2 on the pretext of asking room for rent committed house trespass into the house of deceased and thereby committed an offence punishable under Section 449 r/w Section 34 of IPC?
3. Whether the prosecution further proves beyond all reasonable doubt that on the above said date, time and place, accused No.3 and split up accused No.2 with their common intention committed criminal trespass into the house of deceased, pressed the leg on the neck of deceased, snatched 14 pawan Havala chain, 2 pawan Navarathna gold chain from the neck, 1½ pawan gold earrings, 3 pawan gold 2 hand bangles and 4 pawan two bangles, totally

25 pawan gold articles worth Rs.3,80,000/- and thereby committed an offence punishable under Section 392 r/w Section 34 of IPC?

4. Whether the prosecution further proves beyond all reasonable doubt that on the above said date, time and place, accused No.3 and split up accused No.2 with their common intention committed criminal trespass into the house of deceased, robbed gold articles of deceased, when deceased screamed, split up accused No.2 assaulted on the face of deceased and put his hand on the mouth of deceased and when deceased bit the hand of split up accused No.2, split up accused No.2 took knife from accused No.3 and stabbed on the neck of deceased and further accused No.3 again came inside the house and on seeing deceased was breathing, stabbed on the neck of deceased with knife and thereby committed the murder of deceased Sumathi, punishable under Section 302 of IPC?

5. What Order?

17. My findings to the above raised points are as under:

Point No.1 to 4: As per final order

Point No.5: As per final Order,
for the following:

REASONS

18. **Point Nos.1 to 4:** In order to avoid the repetition, I have taken these points for my common discussion.

19. PW.1 is the complainant and son of the deceased. He deposes he knows accused Nos.1 to 3. He further deposes he knows accused No.1 as accused No.1 was his mother's tenant and he saw accused Nos.2 and 3 after the incident when they were arrested. His mother name was Sumathi Prabhu. After the death of his father, his mother was staying in the house near Kordabbu Temple at Kulai. Her mother was alone in the house. There were five rooms behind his mother's house and they were given for rent to CW.6, 7, 8 and accused No.1. On 08.02.2014 at 8.30 p.m. Basheer called him over phone and told his mother was murdered, immediately he, his brother and his family members came to his mother's house. CW.6 Naresh and others were present. Front door of the house was latched from inside, hence

he went from back door, TV was on and his mother was lying in a pool of blood. A knife was lying nearby his mother. He saw injuries over neck and thigh. His mother used to wear gold articles regularly, the said gold articles were missing. CW.3 Abdul Khader told CW.3 had seen two persons near the house and the said two persons took CW.6 and 7 from the room. He lodged complaint to the police and the police came and conducted seizure mahazar and seized bloodstains, knife and pair of slipper. On 09.02.2014, he went to police station. On 20.04.2014, police called him to police station. The police showed 3 persons and told said 3 persons committed murder and robbed articles from his mother. He identified the accused No.1 as accused No.1 was a previous tenant. He came to know accused Nos.2 and 3 joined with accused No.1 and committed the offence. On that day, the police have shown some gold articles. Again on 27.04.2014, the police called him to police station and showed some of the gold articles, he identified the gold articles. Learned counsel for the accused Nos.1 and 2 have cross-examined the witness. It was admitted by him there are several houses surrounding the house of his

mother. It was also admitted by him his mother gave room for rent to Hindi persons. It was also admitted by him, he does not know the complete details of tenants. It was further admitted by him on 20.04.2014, the police showed only some gold articles and said gold articles were kept in plastic transparent cover. It was further admitted by him on 27.04.2014, police showed other gold articles and they were not sealed. It was admitted by him he had not seen accused No.3 Shahanavaz prior to the incident. He came to know about accused Nos.2 and 3 only on 20.04.2014.

20. PW.2 is the brother of PW.1. He deposes almost similar to PW.1. He deposes on 08.02.2014 around 9.00 – 9.30 p.m. his neighbor came to his house and told his mother was murdered. Immediately, he and his family members went to the house of his mother and his mother was lying in pool of blood. Immediately on giving information, police came to the spot. He saw his mother was dead. Nearby his mother, one knife was also lying, neck was cut and gold articles of his mother were missing. On 20.04.2014, the police called him and his family members to the Surathkal police station. In the

police station, police showed three persons and told the said persons committed the murder of his mother. The police showed a pair of hand bangle, Mangalasuthra, cut ear bangle and solid gold and broken Havala. From the police, he came to know the said 3 persons have committed the murder of his mother for gain. Learned counsel for the accused cross-examined him. It was admitted by him there are other houses surrounding his mother's house. It was also admitted by him 5 houses were given to tenants by his mother. He does not know complete details of tenants. It was admitted by him except accused No.1, he had no acquaintance with other accused persons. It was also admitted by him on 20.04.2014, the police showed some gold articles and on 27.04.2014, the police showed some gold articles.

21. PW.3 is the relative of the owner of the house wherein accused No.1 had stayed. He deposes he does not know deceased Sumathi. Bharati is his sister-in-law. Bharati and her husband are staying in Mumbai. The house of Bharati and her husband is nearby his house. The said house consists of two floors. His sister-in-law Bharati gave first floor of the house to the tenant on rent

and ground floor was kept to use by Bharathi whenever she visits. The tenants who were stayed in the first floor were from Rajasthan and speaking in Hindi and they were doing tile work. Three tenants stayed in the house. Among the three persons, one person name was Shivaram. Since he knows Hindi, he used to speak with them whenever he meets them. On 20.04.2014, he was called to the house of Bharati as he was a relative of Bharati. The police had brought three persons to the said house. At that time he came to know the said three persons committed murder for gain and kept stolen items in the house and the said items were taken by the police on that day. Learned counsel for the accused cross-examined him. It was admitted by him he does not know if any documents were executed by Bharathi to the tenants. On 20.04.2014, when the police brought three persons, the said three persons were not covered with masks. The police were present in the house of Bharati for about ½ an hour on that day. It was suggested to him on 20.04.2014, the police did not bring Shivaram and other two persons to the house of Bharati, he denies the same. It was denied by him police did not take anything

from the house of Bharati at the instance of aforesaid persons.

22. PW.4 is the neighbour of the deceased. She deposes on 08.02.2014, around 9.00 p.m. when the police came to the house of Sumathi, she came to know about murder of Sumathi. She had met Sumathi in the morning on that day while visiting shop. When she met Sumathi, Sumathi was holding water with a bucket to clean room, in turn she enquired Sumathi whether any tenant was coming to the room. Around 12.00 noon two persons came and went to see room belongs to Sumathi for rent. She saw said two persons. Again at 1.30 p.m. the said two persons came to see room. She did not see how two persons went thereafter. She had seen Shivaram, the accused No.1 who was a tenant of Sumathi prior to 6-7 years of the incident. She had seen Shivaram on the date of incident who visited to see the room. She identified accused No.1. She does not remember the date; nearly one month after the incident, they were called to the police station. Police showed three persons and told said three persons committed murder of Sumathi. Among three persons she identified

Shivaram as she had seen him. The police showed Mangalya Chain, hand bangles, ear bangles and gold solid to them. The said gold articles belonged to Sumathi. Learned counsel for the accused cross-examined her. It was suggested to her she did not see two persons in the front-yard of the house of deceased, she denies the same. She admits police enquired her on 09.02.2014.

23. PW.5 is a witness to seizure of clothes of accused and seizure of motorcycle from accused No.1. He deposes on 09.02.2014, Nataraj, PI, the Surathkal police station called him and CW.14. They went to police station at 2.00 p.m. In the police station WPC produced one Saree and Blouse belong to Sumathi. A mahazar was prepared between 2.00 and 3.00 p.m. by the PI, packed and seized the said cloths in white cloths. On the cover packets D and E seals were affixed. After conducting mahazar, his signatures were taken. On 27.04.2014, again the police called him and Yogish to police station. Shivaram took them to a rented house situated at Kulai belongs to Guljar Sing and showed Pulsar motorcycle bearing Reg.No.KA-19-EE-6793. The police prepared mahazar between 12.45 and 1.45 noon and seized said

motorcycle. He affixed signature on the mahazar. Learned counsel for the accused cross-examined him. It was suggested to him whether any photographs took while conducting respective mahazars, he states no photographs were taken. It was suggested to him he signed on the mahazar in the police station at the instance of police, he denies the same.

24. PW.6 is a witness to recovery at the instance of the accused Nos.1 to 3. He deposes he does not remember the date, after arrest of assailants, the police called him and CW.14 to the police station. In the police station, the police showed three persons. Among them he identified Shivaram as he had seen him earlier. Shivaram was a tenant of Sumathi Prabhu. From the police he came to know the aforesaid three persons committed murder of Sumathi Prabhu for gain. The said three persons took them and police in police jeep to Uchchila, Someshwara stating that they had stayed in a house there on rent and produce incriminating articles. Shivaram and two persons showed the house. They were taken to first floor of the rented house. In a passage before entering the house, among the three persons, one

person took out a plastic cover and produced the same stating that he kept cloths in the said packet. The said person also told the said cloths were wearing by him on the date of incident. On opening of the plastic bag, it contained one pant and one shirt. Further the said persons took them inside a room, Shivaram showed a rack and took out gold items and told the said gold items belonged to Sumathi and produced the same before the police. The said gold items were one cut chain, one ear bangle, a set of hand bangle and beats. The police prepared mahazar and seized cloths and gold articles. Learned counsel for the accused cross-examined him. It was admitted by him Someshwara is in a distance of 40 km from Surathkal police station. It was admitted by him when they went to the house of accused No.1, other persons were present nearby the house. It was suggested to him, accused Nos.1 to 3 did not take him and did not conduct any mahazar, he denies the same.

25. PW.7 is a witness to seizure of mobiles of accused Nos.1 and 3. He deposes on 20.04.2014, Surathkal Police called him to the police station and he went to police station at 11.30 a.m. The police told they

have apprehended the accused who murdered Sumathi and to conduct mahazar for seizure of mobile, he was called to police station. CW.18-Shareef was also present with him. The police showed two accused persons in the police station. The police told the said mobiles were used by the accused persons for commission of the offence. The police seized two mobiles in the police station. He identified the mobiles and accused Nos.1 and 3. Learned counsel for the accused cross-examined him. It was suggested to him no mahazar was conducted and nothing was seized from accused Nos.1 and 3 in his presence, he denies the same.

26. PW.8 is a witness to inquest mahazar and seizure of mobiles. He deposes on 08.02.2014, around 9.30 p.m. he came to know about murder of Sumathi Prabhu. He was present when the inquest mahazar was conducted in the house of Sumathi Prabhu. On seeing the dead body, they thought she was murdered. While conducting inquest, the police have seized one knife and bloodstains by using cotton swab. He noticed cut injury over neck and blood was coming out of the neck. A piece of ear bangle was entangled to the hairs. The police also

seized said piece of ear bangle. After 2-3 months, the police called him to the police station. The police also called PW.7 along with him. In the police station, three accused persons were present. They were Shivaram, Bahaddur Singh and Shanawaz. He does not remember what was seized by the police on that day. On that day his signature was taken in the police station. He identified accused No.1. He was treated as partly hostile by learned Public Prosecutor and cross-examined him. In the cross-examination, it was admitted by him on 20.04.2014, among 3 accused persons, Shivaram and Shanawaz produced two mobiles and the said mobiles were seized from them by the police. Learned counsel for the accused cross-examined the witness. It was suggested to him the police showed knife to him in Wenlock mortuary, he admits the same. It was suggested to him no inquest was conducted and no seizure mahazar was conducted, he denies the same.

27. PW.9 is a witness to recovery at the instance of accused No.2 at Rajasthan. He deposes in the year 2014, neighboring shop of Jagadish Prasad called him over phone and told police from Mangaluru came to the shop

of Jagadish Prasad, he went to the shop of Jagadish Prasad as he was his uncle and to know why police came to uncle's shop. Along with Mangaluru police, local police was also present. He made an enquiry with local police who was acquainted with him. He came to know murder of woman was committed in Mangaluru and after committing murder, stolen gold articles were brought to Rajasthan, through the relative said gold articles were sold in the shop of Jagadish Prasad. By the time he reached shop of Jagadish Prasad, the police had already completed their procedure. He was treated as partly hostile by learned Public Prosecutor and cross-examined him. In the cross-examination, it was admitted by him on 25.04.2014, he signed on the aforesaid document. It was suggested to him Mangaluru police brought along with them one Bahaddur Singh, the police explained them that the said Bahaddur Singh and others robbed gold articles by committing murder of a woman in Mangaluru, Bahaddur Singh came to Rajasthan and sold gold articles with Jagadish Prasad, on enquiry with Jagadish Prasad, Jagadish Prasad told one month ago the said Bahaddur Singh sold gold articles to him, accordingly, Jagadish

Prasad produced one gold chain measuring 6½ with 2 gold balls approximately measuring 3 grams, 6 gold balls approximately weighing 3.700 grams, one cut chain measuring 2 inches with 2 pieces of gold cover weighing approximately 10.900 and one gold solid weighing 18.300 were seized by preparing mahazar, he denies the same.

28. PW.10 is a jewelry shop owner of Rajasthan. He deposes about 10-11 years, Gulam Singh brought his relative along with one chain with 2 gold balls, 6 gold balls, in all weighing 8 grams and requested him to purchase the said articles for their family necessity. Since he knew Gulab Singh, he purchased the aforesaid articles for total sum of Rs.18,000/-. After 2 months, Mangaluru police came to his shop. The police told a murder had taken place in Mangaluru and in the said crime, gold articles were robbed and sold to him by the assailants. He showed the gold articles to the police and he handed over gold articles to the police. The police prepared a document and seized gold articles. Learned Public Prosecutor treated the witness as partly hostile and cross-examined him. It was suggested to him Mangaluru police brought along with them accused

Bahaddur Singh and showed to him, he denies the same. It was also suggested to him he purchased 30 gram gold articles, among them, some of them were converted into solid and remaining articles were with him, he produced one gold chain measuring 6½ with 2 gold balls approximately measuring 3 grams, 6 gold balls approximately weighing 3.700 grams, one cut chain measuring 2 inches with 2 pieces of gold cover weighing approximately 10.900 and one gold solid weighing 18.300, he denies the same.

29. PW.11 is a last seen theory witness. He deposes in the year 2014, he, CW.7, Amar Singh and another person had stayed in one room on rent. The said room belongs to Sumathi. There were 5 rooms in the said building. In another room his brother Naresh and others stayed. In one more room Tamil people had stayed. Two other rooms were vacant. His room number was 5 and his brother room number was 3. Sumathi was alone in the house. Behind the house of Sumathi, tenant rooms are situated. Sumathi used to go out in week days to temple and other places and used to stay in the house on Sundays and she always was wearing gold articles. On

08.02.2014, he and CW.7 were in the room as there was no work on that day. On that day at around 10.30 a.m. two persons came and made an enquiry with Sumathi about room for rent. Since they were speaking in Hindi, Sumathi asked him whether the said persons were known to him, in-turn he told he did not know them if she was interested, she can give room to them on rent. At 1.30 p.m., Shivaram came to his room. He knows him as Shivaram had stayed there prior to 5-6 years. Shivaram made an enquiry with him why he did not go to work, in-turn he told him he had no work, hence Shivaram took him and Jaalu on his motorcycle to Honnakatte, stopped motorcycle and went for some distance and spoke with some body, again came back and asked Jaalu to come by bus and took him to Thokkottu site wherein Shivaram was working there. Jaalu also came by bus to the said site. Shivaram left them there and went to bring machine from another site. Thereafter they called Shivaram, but Shivaram did not pickup his call. In the evening, he and Jaalu returned to room around 7.00 p.m. By the time they reached room, the police and people were gathered and he came to know Sumathi was murdered. They

suspected two persons who came asking for room on rent might have committed murder of Sumathi for gain. He identified accused No.1. After 2 months he came to know the police have arrested three persons and recovered gold articles from the said three persons, he went to the police station. Police showed Shivaram and two persons. He identified all the three persons as Shivaram and two others as them who came asking for room on rent. The police also showed gold articles. Among the said gold articles, some of them were cut into pieces. On 08.02.2014, Shivaram took them to Thokkottu by stating that he would give work to them. Learned counsel for the accused cross-examined the witness. It was suggested to him at what time, he returned to the house in the evening, he deposes at 7-7.30 p.m. he and Jaalu came back to house. It was suggested to him on 08.02.2014, at 10.00 a.m., two persons did not come and did not make enquiry with deceased for room, he denies the same. It was also suggested to him on that day, Shivaram did not come to his room and did not take them to work, he denies the same.

30. PW.12 is a witness to last seen theory. He deposes in the year 2014, he was staying in the house of Sumathi as a tenant. His room was behind the house of Sumathi in the same compound. He was staying in Room No.3. Rajesh, Jaalendar and other two persons stayed in Room No.5. On 08.02.2014, since he had work at Urwa Stores, at 7.30 a.m. he left room to go Urwa stores. He returned to room at 8.00 p.m. When he came to house, lights were not on in front of house, hence he called Sumathi as outside light switch was on the entrance of the house of Sumathi. Usually in the evening who first comes to the house used to switch on the said light. When the light was not on, he went from back door of the house of Sumathi, when he pushed the door, it was not locked and it was opened. He saw T.V. was on and with the T.V. light, he saw Sumathi was lying on the floor. He thought she was murdered and he came out of the house and he called police over phone. He had an acquaintance with Abdul Khadar neighbor of Sumathi. On the call made by him, the police came to spot. On seeing the police Abdul Khadar also came. When they were discussing, Abdul Khadar told around 4-4.30 p.m., two

persons came on the Discovery motorcycle and went. Sumathi was alone in the house and she used to wear gold articles always on the body. He knows Shivaram, as Shivaram is from his village. Shivaram had stayed in the room of his brother Rajesh 5-6 years earlier to 2014. The said room belongs to Sumathi. After two months the police called him to Surathkal Police station and told they had arrested three persons with respect to murder of Sumathi. In the police station, the police showed three persons. Among three persons he identified Shivaram and Bahaddur Singh. He did not identify another person as he had not seen another person. The police showed some gold articles in the police station. Again police called him to the police station one day and told police recovered other gold articles from the accused persons which were sold in Rajasthan. The police showed gold articles in the police station. He identified the gold articles. He was treated as partly hostile by learned Public Prosecutor and cross-examined him. It was admitted by him he came to know his brother Rajesh that on 08.02.2014, in the afternoon Shivaram came to Rajesh room and took his brother Rajesh and Jaalendar

in the motorcycle to Thokkottu site, left them there and returned from the said place. He came to know Bahaddur Singh and Shanawaz came to Sumathi and made an enquiry about room for rent. He came to know Shivaram hatched a plan and sent Bahaddur Singh and Shanawaz to the house of Sumathi to make an enquiry about room for rent. Learned counsel for the accused cross-examined him. He admits at 8.30 p.m. police met him and enquired. Family members of Sumathi also came at the same time. His brother Rajesh also came at that time. His brother Rajesh spoke with him. Rajesh told Shivaram took him and Jalendar to Thokkottu on that day. He admits he did not tell the above fact to the police on that day. It was further suggested to him he was not at all tenant in Room No.5 of house of Sumathi, he denies the same. It was also suggested to him on 08.02.2014, he did not come to house and did not see Sumathi dead body, he denies the same.

31. PW.13 is a Revenue Inspector, City Corporation, Mangaluru who furnished house details of deceased. He deposes on 01.07.2014, he received a requisition from Surathkal police to furnish property details of House

No.1-150/1 of Hosabettu Village. He verified records and found the said property stands in the name of Damodhara Prabhu and accordingly he furnished report.

32. PW.14 is a son-in-law of deceased and witness to inquest. He deposes on 08.02.2014, his wife received call that his mother-in-law was murdered. Immediately he and his wife left Kerala and came to Mangaluru. He saw dead body of his mother-in-law. His mother-in-law was murdered. Gold articles on the body were missing. An inquest mahazar was conducted by the police.

33. PW.15 is a neighbor of deceased. He deposes CW.3 Abdul Khadar is his grand-father. He is a neighbor of deceased Sumathi Prabhu. In the house of Sumathi Prabhu, she was alone used to be stayed as her husband died earlier and her sons were staying separately along with their spouses. Behind the house of Sumathi, she had given rooms on rent to the persons who speak with Hindi. The said persons were carrying out granite laying works. On 08.02.2014, around 8.00 p.m. one of the inmates of room raised hue and cry, his grand-father Abdul khadar rushed to the house of Sumathi, he called

PW.1 Gurudas Prabhu son of Sumathi Prabhu. PW.1 came to the house of Sumathi Prabhu, at the same time police also came. He too went to the house of Sumathi Prabhu. He noticed TV was on with a loud voice, Sumathi was lying inside the house in a pool of blood, a knife was also lying near by Sumathi, both ears were cut and ear bangles were missing and other gold articles of Sumathi was also missing as she used to wear gold articles regularly on her body, neck was cut, one cut piece of gold chain was still entangled to the back side of hairs. The police enquired him and others on the spot. He told police in the afternoon two persons came on a motorcycle and one person came by walk for enquiry of room for rent from the house of Sumathi. Among three persons he had seen one person by name Shivram as Shivaram was tenant of Sumathi Prabhu earlier. Shivram dropped another person in the house of Sumathi prabhu and went in the motorcycle. Since, regularly tenants used to come for enquiry of rooms, he did not give much concentration. On the next day, police enquired him in detail. He explained the above to the police. On 20.04.2014, the police called him to the police station.

The police held three persons. The police showed the said three person to them. The said three persons were Shivram, Shahnawaz and Bahaddur Singh. He identified Shivram who dropped Bahaddur Singh on that day, Shahnawaz was the person who came by walk on that day. The police also showed gold articles in transparent cover to them. The said gold articles were of Sumathi Prabhu as he had seen the said gold articles which were wearing by her. He came to know Shivaram hatched a plan, secured other 2 persons as Sumathi Prabhu was alone used to be in the house, came to her house on the pretext making enquiry of room and committed the offence. On 27.04.2014, the police called him to the police station. The police showed some gold articles, gold ingot, cloths of Shahnawaz which was wearing by him at the time of incident and black colour pulsar motorcycle bearing Reg No. KA-19-EE-6793. He came to know in the said motorcycle, Shivram and Bahaddur Singh came on that day. Learned counsel for the accused cross-examined him. It was suggested to him before the police he has not stated the name of Shivaram who came on 08.02.2014, he denies the same. It was also suggested to

him, he told before the police in the evening 3 persons came, he denies the same. It was also suggested to him, on 20.04.2014, he did not identify 3 persons in the police station and did not identify vehicle, he denies the same. It was suggested to him on 27.04.2014, he did not identify remaining gold articles, he denies the same. It was also suggested to him on 08.02.2014, he did not tell the name of Shivaram who came along with two persons, but he told he was earlier tenant of Sumathi, he admits the same.

34. PW.16 is a doctor who examined accused No.2 on 21.04.2014. She deposes on 21.04.2014 at 11.20 a.m. Bahadur, was brought by Surathkal Police for examination. She examined him and found teeth mark over right ring middle and index finger at sub angular space healed mark and age of injuries was 2-2½ months, accordingly she issued wound certificate. Learned counsel for the accused cross-examined her. It was suggested to her when the patient was bought OP slip was issued, she admits the same. It was admitted by her she has not mentioned age of injuries in OP slip. It was also admitted by her she has also not mentioned in OP

slip the said injury was fresh in nature. It was also admitted by her there is short gap in between line No.2 and 3 and it could be clearly seen one line was extra.

35. PW.17 is a Police Constable who brought clothes of deceased and produced before the Investigating officer. He deposes he was deputed to guard body in Wenlock hospital. After inquest, he took the body to postmortem examination and handed over the same to doctor. After postmortem examination, doctor handed over clothes of deceased. He brought the clothes and produced before the Investigating officer, the Investigating officer secured panchas and seized clothes.

36. PW.18 is the Investigating officer who registered case. He deposes on the intervening night of 08/09.02.2014, he was the SHO of Surathkal P.S. At 22:00 hours, CW.43 Janardhan Gowda came to police station and handed over written complaint. On verification of complaint, the same was lodged by Gurudas. The said complaint was received by CW.42 and sent the same through CW.43. After going through the complaint, he registered case in Crime No.44/2014 and

sent FIR and complaint to jurisdictional court. He sent copy of FIR and complaint to the Investigating officer through CW.43 to the spot. Learned counsel for the accused cross-examined him. It was suggested to him he did not receive complaint and a false complaint was registered, he denies the same.

37. PW.19 is a Scientific Officer. She deposes on 29.03.2014, her office received sealed articles from Surathkal police station for examination. On the same day her section received the articles. On opening of the packet for examination, she found one knife, blood swabs, one pair of chappal, two pieces of a saree, one blouse, two filter papers soaked with blood and air dried. She examined all the articles and furnished opinion. According to her opinion, the articles were stained with human blood and belongs to 'O' group, accordingly she furnished report. Again, on 02.06.2014, she received sealed articles for examination. The said articles were one jeans pant and one shirt. She examined the articles. As per examination, the stains on the clothes were human blood, but the group could not be determined, as

the results of the tests were inconclusive, accordingly she furnished report.

38. PW.20 is the doctor who conducted postmortem examination. He deposes on 09.02.2014, at 11.30 a.m. a dead body of Sumathi Prabhu was brought by Surathkal police along with a requisition for postmortem examination. He conducted postmortem examination on the dead body on the same day between 11.35 am and 1.00 pm. He noticed the injuries and noted down the same in the report. After examination, he furnished report. According to him, the cause of death was due to cut throat injury sustained as a result of sharp force trauma, accordingly he furnished report. On 17.06.2014, he received a requisition from Investigating officer seeking opinion over weapon. Along with requisition he received a sealed labeled packet said to contain a weapon. He examined the weapon and furnished opinion. According to him, injury over neck is possible by use of weapon which he examined, accordingly, he furnished report. Learned counsel for the accused cross-examined him. Various suggestions were made to him, he answered

accordingly. It was suggested to him, he did not conduct postmortem examination personally, he denies the same.

39. PW.21 is a witness from whom gold articles were recovered. He deposes in 2014, he was running Babulal Shanthi Prakash Gold shop at Bharathpur, Rajasthan. He was taking gold for purchase and pledge. In the year 2014, he does not remember date, the police from Mangaluru, Karnataka brought one person and told they came for recovery of gold as the said person had told he sold gold to him. He showed the police two hand bangles and told the police that one person had come to him and sold said hand bangles for total sum of Rs.34,000/- for marriage of his sister. While purchasing gold, he made a calculation of gold and consideration and kept the said document with him. The police prepared document, seized said hand bangles and took his signature on the document. Learned Public Prosecutor treated him as partly hostile and cross-examined. It was admitted by him the date on which the police came along with a person is on 24.04.2014. It was also admitted by him gold articles sold to him was on 08.04.2014. He further admits he came to know the person who sold gold to him

and the person who brought to his shop was one and the same and his name is Bahaddur Singh. He further admits he came to know the said person and others robbed gold from a woman by killing her in Mangaluru. Learned counsel for the accused cross-examined him. It was admitted by him the police have not collected from him, Trade License, VAT certificate and building ownership details. It was also admitted by him his shop name is Babulal Shanthi Prakash and he was the owner of shop. It was also admitted by him he does not have license for purchase of gold, to pledge gold and to finance loan for gold. He further deposes in Rajasthan there is no license to carryout aforesaid business. It was further admitted by him he does not know Kannada and he does not know the contents of mahazar.

40. PW.22 is the Investigating officer who apprehended the accused and recovered gold articles at the instance of accused No.2. He deposes on 10.02.2014, Investigating officer deputed him and his staffs for search of accused. They made enquiry with the people surrounding house of the deceased to get the clue of the accused. They also enquired tenants who were staying at

the time of incident and also tenants who had stayed in the house of deceased. Based on the information available, they visited U.P., Rajasthan and Delhi. There they got information that suspected persons were staying at Someshwara, Uchila in the rented room. On 19.04.2014, they returned to Mangaluru. On 20.04.2014, they went to the room of Shivaram. In the room Shivaram and Bahaddur Singh and Shahanavaz were present. They apprehended all the three persons, enquired them, they revealed about the commission of offence and they apprehended them at 8.00-8.30 a.m. brought them to police station and produced before Investigating officer along with report. During interrogation, accused Bahaddur Singh @ Bahaddur admitted commission of offence and volunteered he would show place wherein he sold the gold articles which came to his share in Rajasthan, Bharathpur District. Investigating officer deputed him and his staffs to recover gold articles to be shown by accused Bahaddur Singh. Accordingly, they left along with accused Bahaddur Singh on 23.04.2014 and reached Bharathpura on 24.04.2014. First they went to local police station Kothwali, gave information to the

police, in the vehicle of local police, accused Bahaddur Singh took them to the shop of Babulal Shanthi Prakash. The accused alighted from the vehicle, led them to Babulal Shanthi Prakash shop. The local police requested Manish and Hari Om to assist as panchaas who were present in the shop. The accused showed the person who was in shop and told he had sold a pair of hand bangles to the said person, on enquiry he told he was the owner of shop by name Kailash Chand. Kailash Chand identified Bahaddur Singh and told on 08.04.2014, Bahaddur Singh came to his shop and sold a pair of hand bangles and paid Rs.34,000/- to Bahaddur Singh. He showed a pair of hand bangles. He also showed receipt for having sold gold articles. On verification, hand bangles weighed 20.500 gms. A detail mahazar was prepared and seized pair of hand bangles. Since he knows Hindi very well, he explained mahazar contents to CW.40, he wrote mahazar in Kannada, explained the contents of mahazar to the owner of the shop and panchaas in Hindi language and took their signatures on the mahazar. On 25.04.2014, Bahaddur Singh took them to Mahabirji Village. First they went to

Mahabirji police station, explained about case and took their assistance. There they secured panchaas Mahendra Sony and Raj Kumar with the assistance of local police. Bahaddur Singh took them near Mahabir Temple, alighted from the Jeep and led them further into jewel shop and showed the person who was in shop and told he had sold pieces of gold chain and pieces of beet chain. On enquiry with said person he told his name as Jagadish Prasad and he identified Bahaddur Singh and told one month ago Bahaddur Singh came along with Gulam Singh and sold pieces of gold chain and pieces of beet chain. He further told out of the gold pieces he converted some of the pieces into ingot and kept other pieces intact and produced ingot and pieces. On verification of gold chain piece, it was 6.5 inch with two gold balls, they weighed 3gms. 6 gold balls weighed 3.700 grams, another 2 inch gold piece with two mushti, One Ashtapatti ball with two beet cover totally weighing 9.00gms, and one gold ingot measuring 18.00gms. He prepared mahazar and seized aforesaid gold articles. Since he knows Hindi very well, he explained mahzar contents to CW.40, he wrote mahazar in Kannada,

explained the contents of mahazar to the owner of the shop and panchaas in Hindi language and took their signatures. He identified the gold articles. He identified accused Nos.1 and 3. Learned counsel for the accused cross-examined him. Various suggestions were made with respect to visit of U.P., Rajasthan and Delhi, he answered accordingly. It was suggested to him Bahaddur Singh did not give voluntary statement, did not take them to Rajasthan and no gold articles were recovered at the instance of Bahaddur Singh, he denies the same.

41. PW.23 is Investigating officer Assistant. He deposes based on the voluntary statement given by accused Bahaddur Singh, Investigating officer deputed him, PW.22, CW.38 and CW.39 for recovery of gold articles at the instance of accused Bahaddur Singh. He deposed almost in the same line of PW.22.

42. PW.24 is another Investigating officer Assistant. He deposes on 08.02.2014, on the direction of Police Inspector, he went to the spot situate at Kulai. Police Inspector was also present on the spot. Police Inspector took complaint from Gurudas Prabhu, handed over to

him with a direction to hand over the same to the SHO, in-turn he went to police station, handed over the same to SHO and he returned to spot.

43. PW.25 is the Investigating officer. He deposes on 08.02.2014, when he was in police station, at 9:30 p.m. he received a call from Abdul Khadar who told an old age woman who was staying alone was killed in her house. Immediately along with staffs he went to spot. Spot is situated near Kordabbu Temple, Hosabettu Village, Kulai. The family members of the deceased and neighbors were present on the spot. He entered inside the house. A woman was lying dead in living hall with a pool of blood, T.V. was on, both ears were torn, front neck was cut, knife was lying nearby dead body, her saree was scattered. He came to know name of deceased as Sumathi Prabhu. PW.1-Gurudas Prabhu was present and lodged written complaint. He sent complaint through PW.24 to police station, a case was registered in Crime No.44/2014. He secured panchaas PW.14, PW.8 and CW.27. He inspected the entire spot and dead body and conducted Inquest mahazar between 10:25 p.m. on 08.02.2014 and 1:25 a.m. on 09.02.2014. He seized

piece of gold chain with gold balls and beets and also seized wooden handle knife with blood stains, pair of slipper and blood stained cotton swab. He returned to police station and included seized articles into PF, collected photographs of deceased who was wearing gold ornaments from the family members of deceased. He sent photographs of the deceased with details of case to other police stations. On the same day, he made a request to Commissioner of Police to secure CDR of suspected persons. On the same day, PW.17 submitted receipt for having handed over dead body to relatives of deceased after conducting postmortem examination. PW.17 also produced clothes of deceased. He secured CW.14 and PW.5 as panchaas and seized clothes by conducting mahazar. On 10.02.2014, he recorded further statement of PW.2, statement of CW.10 and CW.11. On 15.02.2014, he recorded statements of CW.4 and PW.4. On 10.03.2014, he recorded statement of PW.11 and CW.7. In their statements they have stated Shivaram visited house of deceased on the date of incident. On 11.03.2014, he received two blood soaked filter papers from PW.20, Medical Officer, Wenlock Hospital. On

18.03.2014, he sent a requisition to Commissioner of Police to secure CDR of suspected persons mobile numbers 7204796017 and 7259452019. Based on information given by PW.11 and CW.7, he sent a requisition to Commissioner of Police to secure CDR. On the same day he received CDR for the aforesaid mobile numbers. On 25.03.2014, he took permission from Commissioner of Police to send his staffs to out of State for search of accused. On 29.03.2014, he sent seized articles with blood soaked and hair dried filter papers to RFSL, Mangaluru for chemical examination. On 08.04.2014, he deputed PW.22, CW.37 and CW.38 for search of accused in Delhi, Rajasthan and Uttar Pradesh. On 18.04.2014, PW.22, CW.37 and CW.38 came and submitted report stating that accused persons returned back to Karnataka. On 20.04.2014, PW.22 and staffs apprehended Shivaram, Bahaddur and Shahanavaz near Ucchila and produced before him at 8:00 a.m. along with report. He interrogated accused persons. They admitted commission of offence. He followed formalities of arrest and arrested them. He recorded voluntary statement of accused. In the voluntary statement of accused

Shivaram, Shivaram volunteered he had sold some gold ornaments and utilized money received from said sale, he had kept remaining gold articles and blood stained clothes of Shahanavaz in his house at Uchila and he would produce said gold articles, clothes and motorcycle which was used for the commission of offence if he was taken to. Accused Bahaddur Singh in his voluntary statement volunteered he would produce remaining gold articles and blood stained clothes of Shahanavaz which were kept in the house of Shivaram and the jewelry shop wherein part of gold articles were sold if he was taken to. In the voluntary statement Shahanavaz volunteered, Shahanavaz told he would show his clothes which were wearing by him at the time of incident in the house of Shivaram if he was taken to. He secured PW.7 and PW.8 as panchaas and explained case details and he made physical check of Shivaram. Accused Shivaram was having mobile handset with two SIM cards and accused Shahanavaz was having one mobile with two SIM cards. He prepared mahazar and seized mobile of handset with two sim cards from Shivaram and one mobile with two sim cards from Shahanavaz. On the same day, he

secured CW.14 and PW.6 as panchaas, explained them about case details. He enquired accused persons in their presence, the accused persons repeated the same version before them. He secured gold appraiser to the police station. Accused persons took them to Uchila Village. Further the accused persons took them to rented house of Shivaram situate on Fisheries road. The house was in first floor. They reached the house around 2:30 p.m. Shahanavaz went further and took out one plastic cover which was kept in between house wall and compound wall and produced and told the said clothes were wearing by him at the time of incident. He verified clothes. They were one blue colour Levis Jeans pant stained with blood traces on the right leg and one full sleeves black white and ash colour with checks with blood stains. He packed and sealed the said articles. Further the accused persons took them first floor of the house. They took inside kitchen and took out plastic packet from rack and produced the same before him. Inside plastic packet there was another paper packet. On verification with the assistance of gold appraiser Surendra, it was found a pair of ear rings with stud and chain weighing 11.290gm,

11 inch gold cut piece with two gold balls and three beets weighing 55.300gm, gold box for beets, four small gold pieces weighing 12.250gm, two beets weighing 13.030gm, in all total value of Rs.1,50,000/-. He prepared detail mahazar and seized the clothes, gold articles. They returned to the police station. He secured PW.1, PW.2, CW.3, CW.4, PW.4 and showed gold articles to them. They identified gold articles and told the said gold articles belong to deceased Sumathi Prabhu. He recorded their further statements. He recorded further statement of PW.15, PW.11, CW.7, PW.12, CW.10. He recorded statement of CW.11, CW.14, PW.6. PW.8 and PW.7. He produced all the three accused before Magistrate along with remand application seeking for police custody of Shivaram and Bahaddur Shigh and took police custody of Shivaram and Bahaddur Singh. On 21.04.2014, accused Bahaddur Singh volunteered at the time of incident, deceased bit his index finger and middle finger. He sent all the three accused for through his staff to Wenlock hospital for examination. Medical Officer examined all the three accused persons in out patient division. On 22.04.2014, he deputed PW.22, CW.37,

CW.38 and CW.39 for recovery of gold articles as per the voluntary statement of accused Bahaddur Singh. He handed over custody of Bahaddur Singh to PW.22. On 23.04.2014, they left Mangaluru to Rajasthan. On 27.04.2014, PW.22 and his staffs returned along with accused Bahaddur Singh. PW.22 submitted report along with a requisition submitted to local police station, statement of Kailash Chand, calculation kept by Kailash Chand Ex.P36, mahazar Ex.P35, another mahazar Ex.P20 and gold articles viz., a pair of hand bangles weighing 20.500gm, 6 inch gold chain with two balls weighing 3.000gms, one ball chain with 6 balls weighing 3.700gms, 2 inch gold piece with two mushti, one ashtapatti with two beets cover weighing 10.900gms and gold ingot weighing 18.300gms. He included gold articles into PF. On the same day, based on the voluntary statement of Shivaram, he secured PW.5 and CW.19 as pahcnaas to the police station, explained them case details and made enquiry of accused in their presence. Accused Shivaram took them to his uncle's rented house situate at Preethinagara, Kulai and showed motorcycle and told the said motorcycle was used for commission of

offence. He prepared mahazar and seized motorcycle. He secured PW.1, PW.2, CW.3, PW.15, CW.4, PW.4, PW.11, CW.7, PW.12, CW.10 and CW.11. They identified gold articles and accused. He recorded their further statements. On the same day he recorded statement of PW.5 and CW.19. On 28.04.2014, he sent accused Shivaram and Bahaddur Singh along with remand application to Jurisdictional Court seeking for J.C. On the same day, he recorded statement of CW.28 with whom accused Shahanavaz was working in Saloon in the year 2013. CW.28 had maintained rough register to show he had paid salary to Shahanavaz and produced the same. He included the same into charge-sheet. CW.28 also told SIM card was taken in the name of Dhruva Kumar another employee and gave said SIM card number 7204796017 to Shahanavaz. He made a request to Commissioner of Police to obtain CAF of mobile numbers of Shivaram and Shahanavaz. On 29.04.2014, he received test report from RFSL, Mangaluru. On 02.06.2014, he sent clothes of Shahanavaz to RFSL, Mangaluru for examination. On 04.06.2014, he received serology report from RFSL, Mangaluru. On 17.06.2014,

he sent knife to PW.20 to furnish opinion over injuries on the body. On 01.07.2014, he received test report from RFSL, Mangaluru pertaining to clothes of Shahanavaz. On the same day he made a request to MCC to furnish documents pertaining to the house of Sumathi. On 10.07.2014, he received weapon opinion from PW.20. On the same day he made a request to furnish B-Extract Register of motorcycle and he received B-Extract register of motorcycle from RTO. On 14.07.2014, he received documents pertaining to the house as per Ex.P22. On the same day, PW.1 produced copy of the order for release of gold articles. Since investigation was completed and found sufficient materials against accused, he submitted charge sheet. He identified accused Nos.1 and 3. Learned counsel for the accused cross-examined the witness at length. So many suggestions were made, he answered accordingly. It was suggested to him, though sufficient materials were not found against the accused, he submitted false charge-sheet, he denies the same.

44. PW.26 is an employer of accused No.3. He deposes in 2013, he was having saloon shop at Alrabha complex, near State Bank. Saloon name was High Lights.

Owner of saloon was one Anwar. He has taken saloon from Anwar and running the same. Earlier to that he was working in saloon at Manipal. He knows Javeed, as Javed was working with him in Manipal saloon. He knows Shahanawaz who present before Court. He came an acquaintance with Shahanawaz through Javeed. In the year 2013, Shahanawaz came to his saloon shop through Javeed. Shahanawaz used to stay with him in his room. He knows Dhruva Takoor. Dhruva Takoor was working in another saloon at Manipal. Since Druva Kumar was his friend, Dhruva Takoor was also staying with him. Shahanawaz worked with him for about 3-4 months. Since Shahanawaz was not working properly, he asked him to leave the work, accordingly Shahanawaz left the work. Since Shahanawaz had no mobile with him, by using identity card of Dhruva Takoor, a SIM card was purchased in the name of Dhruva Takoor and given to Shahanawaz. He had spoken to Shahanawaz over phone to the SIM card of Dhruva Takoor. He does not remember complete SIM card number, but, last three digit is 617. On 30.04.2014, the police came to his shop and made an enquiry with him regarding Shahanawaz. He came to

know from police Shahanawaz involved in murder case. He gave details to the police about Shahanawaz. He also handed over work details of Shahanawaz to the police. Learned counsel for the accused cross-examined him. It was suggested to him Shahanawaz never worked under him, he denies the same. Some other suggestions were made to him, he answered accordingly.

45. Ex.P.1 is the complaint. Ex.P.2 and Ex.P.3 are the photos of deceased. Ex.P.4 to 7 are the gold ornaments of deceased. Ex.P.8 to 10 are the photos of dead body. Ex.P.11 to 14 are the photographs of house of deceased. Ex.P.15 is the seizure mahazar. Ex.P.16 is the seizure mahazar. Ex.P.17 is the seizure mahazar. Ex.P.18 is the seizure mahazar. Ex.P.19 is the inquest mahazar. Ex.P.19 (d) is the spot sketch. Ex.P.20 is the seizure mahazar. Ex.P.21 is the portion marked in the statement of PW.10. Ex.P.22 is the ownership certificate issued by PW.13. Ex.P.23 is the 2 photos of motorcycle. Ex.P.24 is the medical certificate. Ex.P.25 is the FIR. Ex.P.26 is the RFSL Test Report. Ex.P.27 is the sample seal. Ex.P.28 is the RFSL Test Report. Ex.P.29 is the RFSL Test report. Ex.P.30 is the sample seal. Ex.P.31 is the serology report.

Ex.P.32 is the P.M. Report. Ex.P.33 is the opinion on weapon. Ex.P.34 is the sample seal. Ex.P.35 is the seizure mahazar. Ex.P.36 is the calculation made by PW.21 on gold articles. Ex.P.37 is the report of PW.22. Ex.P.38 is the report of PW.22. Ex.P.39 is the certificate u/s.65B of Indian Evidence Ac. Ex.P.40 is the CDR of mobile No.7259452019. Ex.P.41 is the CDR of mobile No.7204796017. Ex.P.42 is the bill for valuation of gold articles. Ex.P.43 is the O.P. Book of accused No.1. Ex.P.44 is the O.P. Book of accused No.2. Ex.P.45 is the portion marked in the voluntary statement of accused No.1. Ex.P.46 is the portion marked in the voluntary statement of accused No.2. Ex.P.47 is the portion marked in the voluntary statement of accused No.3. Ex.P.48 is the rough register for payment of salary. Ex.P.49 is the CAF with voters ID. Ex.P.50 is the B extract. Ex.P.51 is the receipt. Ex.P.52 is the C.D.

46. Ex.D.1 is the portion marked in the statement of PW.15. Ex.D.2 is the portion marked in the further statement of PW.15.

47. MO.1 is the knife. MO.2 is one pair of chappal.

MO.3 is bloodstained cotton swab. MO.4 is the saree of deceased. MO.5 is blouse of deceased. MO.6 is the motorbike. MO.7 is the jeans pant of accused. MO.8 is the shirt of accused. MO.9 is the mobile phone with two sim cards. MO.9 (a) is the airtel sim card. MO.9 (b) is the vodafone sim card. MO.10 is the mobile phone. MO.10 (a) is the Idea sim card. MO.10 (b) is the Reliance sim card. MO.11 is the two bloodstained papers.

48. It is the case of prosecution that the deceased was alone used to be stayed in the house and having sufficient wealth, accused No.1 who was earlier tenant had hatched a plan along with accused Nos.2 and 3 to rob the deceased, accordingly, on 08.02.2014, accused No.1 sent accused Nos.2 and 3 to the house of deceased on the pretext of asking room, when other two tenants were in the room, accused No.1 came, took them on the pretext of giving work to them, then accused Nos.2 and 3 again came to the house of deceased, committed her murder and robbed gold articles. The prosecution in all examined 26 witnesses and produced documents at Ex.P.1 to Ex.P.52 and material objects at MO.1 to 11.

49. The case of the prosecution is based on circumstantial evidence as no one had seen the accused committing the murder of deceased. The law in the case of circumstantial evidence is well-settled. The Hon'ble Apex Court has set out golden principles in the case of **Rahul vs. STATE OF DELHI MINISTRY OF HOME AFFAIRS & ANR. (2023) 1 SCC 83** in para No.17. The Hon'ble Apex Court has held as under:

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

(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.”

Firstly, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly all the circumstances must be consistent pointing out only towards the guilt of the accused. Even if the one link is missing the prosecutions case fails.

50. The prosecution has relied upon three circumstance, viz. motive, last seen theory and recovery at the instance of accused persons. In the facts and circumstances of the case, the motive depends on the proof of last seen theory and recovery at the instance of accused persons by the prosecution. If the prosecution able to prove last seen theory and recovery at the instance of accused persons, it can be easily concluded the prosecution has proved the motive i.e. murder for

gain. Let us examine whether the prosecution has proved last seen theory and recovery at the instance of accused persons beyond reasonable doubt.

51. In so far as last seen theory is concerned, the prosecution has mainly relied upon Ex.P.1 complaint, oral testimonies of PW.4, PW.15, PW.11, PW.12 and PW.25. According to the prosecution, on 08.02.2014 in the morning around 10.30-11.00 a.m. accused No.1 sent accused Nos.2 and 3 to the house of deceased on the pretext of asking room for rent, when they noticed other two tenants in the room, they returned back and told the same to accused No.1, again accused No.1 came to the room of PW.11 and another, took them on the pretext of giving work to them, then sent accused Nos.2 and 3 to commit the offence, accordingly, accused Nos.2 and 3 went to the house of deceased when the deceased was inside the house, they killed her and robbed gold articles. The incident came to light at around 7.30-8.00 p.m. when PW.12 returned to room and when outside light was not on, he went from back door of the house and saw deceased was lying in a pool of blood. Immediately, an information was given to children of deceased and others

and also police. On coming to know about the incident, the children of deceased, neighbors and police came to the house, then son of deceased lodged the complaint. According to the prosecution PW.4 and PW.15 neighbors, PW.11 tenant and grand-father of PW.15 Abdul Khader had seen accused Nos.1 to 3 in the afternoon in the house of deceased. With respect to the last seen of the accused in the house of deceased, in the complaint it is stated as under:-

"ಈ ದಿನ ತಾರೀಖು 08.02.2014 ರಂದು ರಾತ್ರಿ ನಾನು ಕಾವಿನ ಕಲ್ಲಿನ ಮನೆಯಲ್ಲಿದ್ದಾಗ ನನ್ನ ತಾಯಿ ಇರುವ ಮನೆಯ ಬಳಿಯ ನೆರೆಮನೆ ನಿವಾಸಿ ಬಶೀರ್ ಎಂಬವರು ನನ್ನ ಮೊಬೈಲ್ ಫೋನಿಗೆ ಕರೆ ಮಾಡಿ ನನ್ನ ತಾಯಿಯನ್ನು ಯಾರೋ ಹೊಡೆದು ಹೋಗಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿದರು. ನಾನು ಕೂಡಲೇ ನನ್ನ ತಾಯಿ ಮನೆಗೆ ತಮ್ಮನ ಜೊತೆಯಲ್ಲಿ ಬಂದು ನೋಡಿದಾಗ ಮನೆಯ ಎದುರು ಬಾಗಿಲ ಬಳಿಗಿನ ಚಿಲಕ ಹಾಕಿದ್ದು ತೆಗೆಯಲಾಗಿಲ್ಲ ನಂತರ ಆ ಬಾಗಿಲ ಬಳಿ ಇರುವ ಇನ್ನೊಂದು ಬಾಗಿಲನ್ನು ತೆರೆದು ಒಳಗಡೆ ಹೋಗಿ ಟಿವಿ ಇರುವ ಕೋಣೆಯನ್ನು ನೋಡಲು ನನ್ನ ತಾಯಿ ಅಂಗಾತನೆ ಮಲಗಿದ ಸ್ಥಿತಿ ನೆಲದಲ್ಲಿ ಕಂಡು ಬಂದು ಅವರ ಎಡಕೈಯ ಮುಷ್ಟಿ ಹಿಡಿದಿದ್ದು ಅದರ ಅಡಿ ನೆಲದ ಮೇಲೆ ಒಂದು ಚೂರಿ ಇತ್ತು. ಅವರ ಕುತ್ತಿಗೆ ತುಂಬಾ ನೆಲದಲ್ಲಿ ರಕ್ತ ಹರಿದಿತ್ತು. ನೋಡಲಾಗಿ ಅವರು ಮೃತಪಟ್ಟಿರುತ್ತಾರೆ, ತಾಯಿಯ ಮೈಮೇಲಿದ್ದ ಸುಮಾರು 24 ಪವನ್ ಬಲತ್ಕಾರವಾಗಿ ದೋಚಿರುವುದು ಕಾಣುತ್ತದೆ. ನನ್ನ ನೆರೆಮನೆ ನಿವಾಸಿ ಅಬ್ದುಲ್ ಖಾದರ್ ಅವರು ಇಂದು ಸಂಜೆ

ಸುಮಾರು 4-4:30 ಸಮಯಕ್ಕೆ ಅವರ ಮನೆಯಿಂದ ಮಸೀದಿಗೆ ಹೋಗುವ ಸಮಯ ಯಾರೋ ಇಬ್ಬರು ಯುವಕರು ಡಿಸ್ಕವರಿ ರೆಡ್ ಕಲರ್ ಮೋಟಾರ್ ಸೈಕಲ್‌ನಲ್ಲಿ ನನ್ನ ತಾಯಿ ಮನೆಯ ಬಳಿ ರಸ್ತೆ ಬದಿ ನಿಲ್ಲಿಸಿ ಮನೆಯ ಎದುರು ಅಂಗಳಕ್ಕೆ ಹೋಗಿದ್ದನ್ನು ಕಂಡಿದ್ದಾಗಿ ಹೇಳಿದರು. ಅವರಲ್ಲಿ ಒಬ್ಬನು ಕಪ್ಪುಗಾಳಿ ಸಾಧಾರಣ ಮೈಕಟ್ಟು ಜೀನ್ಸ್ ಪ್ಯಾಂಟ್ ಮತ್ತು ಟೀ ಶರ್ಟ್ ಫ್ರಾಯ ಸುಮಾರು 25 ಆಗಿರಬಹುದು. ಮತ್ತೊಬ್ಬನು ಕೂಡ ಸುಮಾರು 25 ವರ್ಷ ಫ್ರಾಯವಾಗಿದ್ದು ಸಾಧಾರಣ ಎತ್ತರ ಸಪೂರ ಆಗಿದ್ದನು. ಈ ಮೇಲಿನ ಇಬ್ಬರು ಯುವಕರು ಯಾವುದೋ ದುರುದ್ದೇಶದಿಂದ ಒಬ್ಬಂಟಿಗಳಾದ ನನ್ನ ತಾಯಿಯ ಮನೆಯೊಳಗೆ ಬಂದು ಕೊಲೆ ಮಾಡಿರುತ್ತಾರೆ. ಈ ಘಟನೆ ಸಮಯ ಸುಮಾರು ಸಂಜೆ 4-8 ಗಂಟೆಯ ಒಳಗೆ ನಡೆದಿರುತ್ತದೆ.”

52. PW.4 who is a neighbor deposes in her deposition as under:-

“ On 08.02.2014, around 9.00 p.m. when the police came to the house of Sumathi, I came to know about murder of Sumathi. I had met Sumathi in the morning on that day while visiting shop. When I met Sumathi, she was holding water with a bucket to clean room, I enquired her whether any tenant was coming to the room. Around 12.00 noon two persons came and went to see room belongs to Sumathi for rent. I saw said two persons. Again at 1.30 p.m. the said two persons came to see room. I did not see how two persons went after that.

I had seen Shivaram who was tenant of Sumathi

prior to 6-7 years of the incident. I had seen Shivaram on the date of incident who visited to see the room. I can identify Shivaram if he is shown to me. One person is produced from JC through VC. The witness identifies him as Shivaram."

53. In the cross-examination, PW.4 deposes under:-

"In between house of Sumathi and our house, Kordabbu Temple is situated. At that time I and my daughter were staying in our house. On 08.02.2014, I saw persons who came for making enquiry of house on rent two times. The two persons came two times are one and the same. Among two persons, I had acquaintance with Shivaram. The said two persons came for enquiry of house in motorcycle. I did not speak with Shivaram on both the occasions. "

54. PW.15 is another neighbor deposes in his deposition as under:-

"The police enquired me and others on the spot. I told police in the afternoon two persons came on a motorcycle and one person came by walk for enquiry of room for rent from the house of Sumathi. Among three persons I had seen one person by name shivram as he was tenant of Sumathi Prabhu earlier. Shivram dropped another person in the house of Sumathi prabhu and went in the motorcycle. Since, regularly tenants used to come

for enquiry of rooms, I did not give much concentration.

55. In the cross-examination, PW.15 deposes under:-

I have stated before the police among 3 persons who came in the afternoon, one person name as Shivram. I have not stated before the police other 2 persons names. It is false to suggest that I have not stated the name of Shivram who came on motorcycle as a rider on that day. I have given statement before the police On 09.02.2014. I also stated before the police orally On 08.02.2014, on the spot. Only once one person came on the motorcycle along with another person and dropped the another person and went at 1-1.30 p.m. I told before the police 3 person came in the afternoon. I have not told before the police 3 person came in the evening. Portion of statement is read over to witness, he denies the same. Portion of the same statement is marked as Ex.D1.

Before the police On 08.02.2014, I did not tell name of Shivram who came along with 2 persons, but I told he was earlier tenant of Sumathi Prabhu. I told police make of company of motorcycle in which 2 persons came but did not state motorcycle Registration number. Now I do not remember upto what time I was present in the house Sumathi On 08.02.2014. I was present when the police inspected body of Sumathi. At that time also I told one of the earlier tenants came in the afternoon, but

I did not state his name.”

56. PW.11 is the tenant of the deceased and he deposes as under:-

“On 08.02.2014, I and CW.7 were in the room as there was no work on that day. On that day at around 10.30 a.m. 2 persons came and made an enquiry with Sumathi about room for rent. Since they were speaking in Hindi, Sumathi asked us whether the said persons were known to us, in-turn we told we did not know them if she interested, she can give room to them on rent.

At 1.30 p.m., Shivaram came to our room. I know him as he had stayed there prior to 5-6 years. Shivaram made an enquiry with me why I did not go to work, in-turn I told him I had no work, hence he took me and Jaalu on his motorcycle to Vannakatte, stopped motorcycle, he went for some distance and spoke with some body, again came back and asked Jaalu to come by bus and took me to Thokkottu site wherein he was working there. Jaalu also came by bus to the said site. He left us there and went to bring Machine from another site. Thereafter we called him, but he did not pickup his call. In the evening, I and Jaalu returned to room at around 7.00 p.m. By the time we reached room, the police and people were gathered and we came to know Sumathi was murdered. We suspected 2 persons who came asking for Room on rent might

have committed murder of Sumathi for gain. ”

57. From the averments made in the complaint and oral testimonies referred above, it is seen according to the complaint averments two persons came to the house of deceased at 4-4.30 p.m. and went out of the house, the same was told by grand-father of PW.15 to the complainant. PW.4 deposes in his deposition at 11.00 a.m. two persons came making an enquiry for room on rent from the deceased, left the house of deceased, again two persons came in the afternoon for making an enquiry of room and went from the house of deceased. She further deposes among the two persons, accused No.1 Shivaram was one. PW.15 deposes in his deposition in the afternoon, three persons came for enquiry of room from the deceased, among them accused No.1 was one. The other two persons came along with accused No.1. PW.15 deposes in his deposition three persons came on Pulsar motorcycle. In the complaint averments, it was stated two persons came at 4-4.30 p.m. in Discovery red colour vehicle. PW.11 tenant deposes at around 10.30-11.00 a.m. two persons came for making enquiry for room, made an enquiry with the deceased, since

deceased does not know Hindi, deceased enquired him whether he knows the said two persons, in turn, he told he does not know them, they left the place. He further deposes again at 1.30 p.m. accused No.1 came to his room and questioned why he had not gone to work, he and CW.7 told that they had no work on that day, hence accused No.1 took them to Thokkottu site area for work and left them there and went to bring machine, but thereafter accused No.1 did not receive their calls, they came back to the house at 7-7.30 p.m., they saw murder of deceased. From the above, it is not clear whether accused Nos.2 and 3 alone came to make enquiry of room or accused Nos.1 to 3 came to make enquiry or accused No.1 alone came and sent accused Nos.2 and 3 separately. The oral testimonies of PW.4, PW.15 and PW.11 and complaint averments contradictory to each other. The proximity of time of last seen is also not matching from the above evidence.

58. Another major trump-card evidence relied upon by the prosecution is last seen theory and call records of accused Nos.1 and 3. According to the prosecution, during investigation, Investigating officer has seized

mobiles of accused Nos.1 and 3, secured call details of accused Nos.1 and 3 and found the presence of accused Nos.1 and 3 at the spot between 10.30-11.00 a.m. and between 1.00-1.30 p.m., therefore, accused Nos.1 and 3 alone committed the offence. The incident took place on 08.02.2014. The accused Nos.1 to 3 were arrested on 20.04.2014 at Someshwara which is 40 km from the place of incident. The accused were arrested from the rented house of accused No.1. In the voluntary statement, accused Nos.1 to 3 have volunteered they had committed the offence and volunteered to produce gold articles, vehicle and mobile phones, accordingly, Investigating officer seized mobile of accused Nos.1 and 3 under Ex.P.18 mahazar. As per the mahazar, one mobile with two IMEI numbers with two sim cards from accused No.1, one mobile handset with two IMEI numbers with two sim cards from accused No.3 were recovered. The portion of mahazar reads thus:-

ಆರೋಪಿ ಶಿವರಾಮ್ ಈತನು ಹಾಜರು ಪಡಿಸಿದ ಮೊಬೈಲನ್ನು ಪರಿಶೀಲಿಸಿ ನೋಡಲಾಗಿ ಸಿಲ್ವರ್ ಬಣ್ಣದ KECHADDA ಕಂಪೆನಿಯ ಎರಡು ಸಿಮ್ ಇರುವ ಮೊಬೈಲ್ ಆಗಿದ್ದು ಇದರ IMEI 1)866588014402934, IMEI 2)866588014402942 ಆಗಿರುತ್ತದೆ. ಇದರಲ್ಲಿ AIRTEL ಮತ್ತು VODAFON ಕಂಪೆನಿಯ ಸಿಮ್ ಗಳಿದ್ದು AIRTEL ಮೊಬೈಲ್ ನಂಬರ್ 9845391227

ಆಗಿದ್ದು VODOFON ನಂಬ್ರ 7259452019 ಆಗಿರುತ್ತದೆ. ಸದ್ರಿ ಮೊಬೈಲನ್ನು ಮುಂದಿನ ಕ್ರಮದ ಬಗ್ಗೆ ಸಾಧ್ಯವಿರುವಂತೆ ಪಡೆದಿದೆ.

ಆರೋಪಿ ಶಹನವಾಜ್ ಈತನು ಹಾಜರು ಪಡಿಸಿದ ಮೊಬೈಲನ್ನು ಪರಿಶೀಲಿಸಿ ನೋಡಲಾಗಿ ಹಳದಿ, ಕೆಂಪು ಮತ್ತು ಸಿಲ್ವರ್ ಬಣ್ಣದ G'FIVE ಕಂಪೆನಿಯ ಎರಡು ಸಿಮ್ ಇರುವ ಮೊಬೈಲ್ ಫೋನ್ ಆಗಿದ್ದು ಇದರ IMEI 1) 867279010095257, IMEI 2) 867279010115451 ಆಗಿರುತ್ತದೆ. ಇದರಲ್ಲಿ Idea ಮತ್ತು Reliance ಕಂಪೆನಿಯ ಸಿಮ್ ಗಳಿದ್ದು Idea sim ನ ಮೊಬೈಲ್ ನಂಬ್ರ 7204796017 ಆಗಿರುತ್ತದೆ. Reliance ಸಿಮ್ ನ ಮೊಬೈಲ್ ನಂಬ್ರ 9555539556 ಆಗಿರುತ್ತದೆ. ಸದ್ರಿ ಮೊಬೈಲನ್ನು ಮುಂದಿನ ಕ್ರಮದ ಬಗ್ಗೆ ಸಾಧ್ಯವಿರುವಂತೆ ಪಡೆದಿದ್ದು ಎರಡು ಮೊಬೈಲ್ ನ ಅಂದಾಜು ಮೌಲ್ಯ ತಲಾ 5000 ರೂ. ಆಗಬಹುದು.

59. According to the prosecution, the Investigating officer collected CDR from the service providers which indicate the presence of accused Nos.1 and 3 at the spot on 08.02.2014 and the death took place in the afternoon. But as per the complaint averments, death took place between 4.00-8.00 p.m. Be that as it may, to rely upon the CDR, the prosecution has produced two CDR of accused Nos.1 and 3. Ex.P.40 is the CDR of accused No.1. Ex.P.41 is the CDR of accused No.3, according to the prosecution. Admittedly, Ex.P.40 and Ex.P.41 are the electronic documents. Section 65B reads thus:-

“Section 65B: Admissibility of electronic records.

(1) Notwithstanding anything contained in this Act,

any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the

electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, –

(a) identifying the electronic record containing the statement and describing the manner in which it

was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; –

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been

produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. -- For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]”

60. Recently, the Hon’ble Apex Court in the case of **Pooranmal vs. State of Rajasthan and another** reported in **2026 Supreme (SC) 238** after considering the judgment of **Anvar P.V. vs. P.K. Basheer** and **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal** has held as under;

“48. The last and final piece of circumstantial evidence relied upon by the prosecution to bring home the charges against the appellant-Pooranmal pertains to the call detail records.

49. Section 65-B of the Evidence Act [Section 63 of the BSA] mandates that electronic evidence in form of a computer output (call detail records) can only be admitted in evidence upon satisfaction of the mandatory conditions prescribed under Section 65-B (4) of the Evidence Act [Section 63(4) of the BSA], which reads as follows: -

“(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub- section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. (Emphasis supplied)

50. This position of law was cemented by this Court in the case of Anwar P.V. v. P.K. Basheer¹⁴, wherein it was held as follows: -

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in

accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the*

computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.” (Emphasis Supplied)

51. Subsequently, this Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹⁵, reaffirmed and clarified the position laid down in

Anvar P.V. (supra), observing that the requirement of a certificate under Section 65-B of the Evidence Act [Section 63 of the BSA] for admissibility of electronic evidence is mandatory and cannot be dispensed with, and held as follows:-

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], and incorrectly “clarified” in *Shafhi Mohammad* [*Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] .

Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor* [*Taylor v. Taylor*, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.”

52. Admittedly, in the present case, the certificate under Section 65-B of the Evidence Act [Section 63

of the BSA] was not proved by the prosecution. In the absence of the certificate, mandatorily required under Section 65-B of the Evidence Act [Section 63 of the BSA], the call detail records become inadmissible in evidence and cannot be relied upon to support the prosecution's case."

61. The prosecution has prove to the contents of electronic documents by complying the provisions of Section 65B of Indian Evidence Act. A bear perusal of Ex.P.40 and Ex.P.41 CDRs, the said documents can be relied upon as electronic evidence. Admittedly, Ex.P.40 and Ex.P.41 were issued by respective service providers of sim cards. The Investigating officer neither cited the service providers who issued Ex.P.40 and Ex.P.41 nor examined before the court during trial. The prosecution has examined PW.23 who took print out of Ex.P.40 and Ex.P.41 from computer. If the evidence of PW.23 is seen, his job is nothing but postman job. Based on the requisition received from Investigating officer, the requisition was sent to service provider to send the CDR and CAF, in turn, service provider sent CDR and CAF to them, in turn, he took printout of CDR and CAF and

handed over to the Investigating officer. He is not competent to issue 65B certificate to prove Ex.P.40 and Ex.P.41. The competent person to issue 65B certificate is the service provider who generated CDR. Further according to the prosecution, Ex.P.40 and Ex.P.41 are the call records of accused Nos.1 and 3. On the top of Ex.P.40 and Ex.P.41, the name of respective accused are written. In CDR, the name of sim card holder never appears. To know the name of sim card holder, the CAF is only an authentic document. In so far as, CAF is concerned, the prosecution has not produced CAF of accused No.1 sim card. The prosecution has not at all produced any document to show Ex.P.40 CDR belongs to accused No.1. Even according to Ex.P.18 mahazar for seizure of mobiles, accused No.1 was having two sim cards in his name. The prosecution has obtained only one sim card and the prosecution has not at all obtained another CDR. The prosecution has also not obtained CAF in respect of both the sim cards. When such being the evidence, can it be said Ex.P.40 CDR belongs to accused No.1 mobile sim card.

62. In so far as Accused No.3 is concerned, the prosecution has produced only copy of CAF pertains to accused No.3 sim card. The same was marked as Ex.P.49. A perusal of Ex.P.49, the said sim card stands in the name of one Dhruv Takur. According to the prosecution, accused No.3 was working under PW.26. While accused No.3 was working under PW.26, since accused No.3 had no mobile with him, PW.26 obtained sim card in the name of Dhruv Takur who was also working under him and handed over sim card to accused No.3. The said sim card is accused No.3 mobile No.7204796017. Ex.P.49 is the copy of CAF stands in the name of one Dhruv Takur. If Ex.P.49 CAF is seen, it was obtained by one Dhruv Takur by producing some documents. Dhruv Takur has furnished relative details and mobile number in the very same application, that shows he gave relative name as Shahanavaz i.e. accused No.3 and mobile number was also given. When Shahanavaz had already mobile number with him, the case of the prosecution since Shahanavaz had no mobile number, sim card was obtained in the name of Dhruv Takur and handed over to Shahanavaz, is unbelievable

version of the prosecution. As already held, the prosecution has not produced CAF of sim cards of accused No.3. Even Dhruv Takur was also not examined by the prosecution to show he obtained sim cards in his name and handed over sim cards to accused No.3 Shahanavaz. According to the prosecution, the mobile number of accused No.3 are 7204796017 and 9555539556. According to the prosecution, IMEI numbers of mobile of accused No.3 are 867279010095257 and 867279010115451. But a perusal of Ex.P.41 CDR IMEI number forthcoming in the CDR is 867279010095250. That indicates the mobile number used by accused No.3 was different. There is no explanation from the side of prosecution which was the mobile number using by the accused No.3 at that time. From the above, it is evident the prosecution has failed to prove the electronic evidence to support the last seen theory.

63. Recently, the Hon'ble Apex Court in the case of **Anand Jakkappa Pujari @ Gaddadar vs. State of Karnataka** reported in **2020 SCC OnLine SC 716** has held as under;

41. 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 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. Even in such a case, the courts should look for some corroboration.

42. In State of U.P. v. Satish reported in (2005) 3 SCC 114, this Court observed:-

“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)

43. By now, it is a well settled position of law that the circumstance of “last seen together” does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. The Courts should look for some corroboration.

44. For the present, we proceed on the footing that the accused persons were last seen along with the deceased as deposed by the PW-7. However, it would be too risky to reach the conclusion that the appellants before us are guilty of a serious crime like murder, in their capacity as accomplice, solely on this piece of circumstance of “last seen together”. We shall examine whether there is any other incriminating piece of circumstance to lend credence to the circumstance of last seen together.

64. From the discussions made above, it is clear the circumstance ‘last seen theory’ relied upon by the prosecution is not proved.

65. Now coming to discovery, according to prosecution, the Investigating officer recovered mobiles, gold articles, vehicle and clothes from accused Nos.1 to 3, the gold articles recovered from the accused persons belong to deceased.

66. The incident took place on 08.02.2014. Accused Nos.1 to 3 were arrested on 20.04.2014. If the entire investigation is seen, on 08.02.2014 and 09.02.2014, the statements of some witnesses were recorded by the Investigating officer, till 20.04.2015, there was no active investigation except search of the accused. According to the prosecution, PW.22 and his staffs visited various places including Madhya Pradesh, Rajasthan, Delhi etc. Ultimately they came to know accused Nos.1 to 3 were returned back to Mangaluru and on 20.04.2014, they went to the room of accused No.1 and apprehended accused Nos.1 to 3, brought them, questioned them, they admitted commission of offence, brought them and produced before the Investigating officer. The Investigating officer interrogated them, they admitted commission of offence and also gave voluntary statement and in the voluntary statement, they volunteered that they would produce mobile, gold articles, clothes and motorcycle. The Investigating officer first secured two panchas and seized two mobiles with two sim cards respectively from the accused Nos.1 and 3. In so far as recovery of mobiles are concerned, I have already

explained in detail above whether the prosecution has proved the call records of accused Nos.1 and 3. From the above findings, it is very clear the prosecution has failed to prove call records and CAF pertaining to accused Nos.1 and 3. Another recovery is clothes at the instance of accused No.2. According to the prosecution, on 20.04.2014, accused Nos.1 to 3 took the Investigating officer, panchas to the rented room of accused No.1 situated at Someshwara which is in distance of 40 km. from the police station, first accused No.3 produced his clothes and told said clothes were wearing by him at the time of offence, the said clothes were stained with blood. The Investigating officer seized the said clothes, then accused No.1 took them inside the kitchen and took out one packet and produced the said packet, in it some gold articles were found, the Investigating officer prepared mahazar and seized gold articles. Then, the Investigating officer deputed PW.22 and other staffs to recover gold articles at the instance of accused No.2, as accused No.2 volunteered he had sold some gold articles in Rajasthan. PW.22 and his staffs went to Rajasthan along with accused No.2. Accused No.2 initially took to the jewelry

shop of PW.9 and showed owner of the shop and told there he had sold some gold articles, on enquiry, PW.9 told gold articles were sold there by accused No.2 and gold articles were recovered. Then accused No.2 took them to jewelry shop of PW.10, there also PW.22 recovered some gold articles and ingot. PW.10 also identified accused No.2. On 27.04.2014, the Investigating officer recovered motorcycle at the instance of accused No.1. A perusal of recovery evidence, somehow prosecution made an attempt to prove the recovery at the instance of accused Nos.1 to 3. The incident took place on 08.02.2014. The gold articles were robbed in the incident. According to the Investigating officer, whereabouts of accused Nos.1 to 3 was not available, after making severe search they came to know accused Nos.1 to 3 returned to Mangaluru from Rajasthan and arrested them on 20.04.2014. Admittedly, the Investigating officer obtained CDR of accused Nos.1 and 3 and even according to the prosecution, even after the commission of offence, accused Nos.1 to 3 were using the very same sim cards, but the accused Nos.1 to 3 were arrested on 20.04.2014 after two months of the incident.

In so far as clothes recovered from the accused No.3 is concerned, the said clothes were sent to RFSL for examination, RFSL report indicates the blood stains on the clothes were insufficient to determine the blood group. The bloodstains on the deceased was 'O' group. Therefore whether the said clothes recovered from the accused No.3 were wearing by him at the time of commission of offence itself is not proved. In so far as recovery of gold articles from accused No.1, it is the case of prosecution the accused Nos.1 to 3 committed murder for gain. The incident took place on 08.02.2014. Till 20.04.2014, the accused No.1 has not at all sold said gold articles. When the crime itself is for gain, whether the accused keep the gold articles even after 2½ months is also a question to be considered. According to the prosecution, the gold articles were recovered from the accused No.1 from his room. The said gold articles were minimum. The witnesses examined have clearly deposed the gold articles recovered from the accused were kept in transparent cover and they were not packed. The mahazar indicates gold articles were seized and packed. All the witnesses have deposed gold articles were kept in

a plastic cover. Further, some of the witnesses have deposed all the gold articles of the deceased were shown to them on 20.04.2014. But even according to the prosecution, some of the gold articles were recovered from accused No.2 on 24.04.2014 at Rajasthan. When gold articles from accused No.2 were recovered on 24.04.2014, how all the gold articles were shown to the witnesses in the police station on 20.04.2014. Some of the witnesses have deposed some gold articles were shown to them on 27.04.2014, but some of the witnesses have deposed all the gold articles were shown to them on 20.04.2014. As per recovery, some of the gold articles were hand bangles. But the prosecution has not produced any evidence to show what were the gold articles of the deceased. The prosecution has produced some photographs to show the deceased used to wear gold articles. By looking into the photographs, only gold articles on the neck are seen. But other gold articles are concerned, absolutely there is no evidence. It is the specific case of the prosecution that ear bangle was cut and piece of ear bangle was entangled to the hairs of deceased and the same was seized while conducting

inquest and the said piece tallied with the piece of gold articles recovered from accused No.1 from his home. Except the comparison by the Investigating officer, there is no evidence to prove the said pieces were tallied with each other. Even according to the Investigating officer evidence, he secured gold appraiser while seizure of gold articles and he assessed the gold articles and even the Investigating officer has not taken opinion from the gold appraiser to tally with two pieces of gold articles. Another recovery is vehicle from accused No.1. Though accused Nos.1 to 3 were arrested on 20.04.2014, but the vehicle was seized on 27.04.2014 and the vehicle was not seized from accused house, it was seized from some other house. Even the delay in seizure of vehicle by the Investigating officer is not explained. In the complaint averments, it is stated two persons came in Discovery red colour vehicle, PW.15 says accused Nos.1 to 3 came in Pulsar motorcycle, other witnesses say two persons came in vehicle. With this evidence it cannot be said that said vehicle was used for commission of offence and the said vehicle was recovered. By looking into the entire recovery evidence, I am of the opinion the prosecution has failed

to prove recovery also. When the prosecution failed to prove recovery and last seen theory, the motive i.e. murder for gain is also not proved. The evidence adduced by the prosecution is not sufficient to hold the prosecution has proved the guilt of the accused beyond reasonable doubt. In view of lack of evidence, the accused Nos.1 and 3 are entitled benefit of doubt. It is settled principle of law that whatsoever circumstances and heinousness of the crime, the prosecution must prove the guilt of the accused beyond reasonable doubt. No doubt, murder of a lone woman was committed in a day light and robbed gold articles, but the evidence placed on record is not sufficient to hold to prove the guilt of the accused beyond reasonable doubt. With this evidence, it cannot be said the prosecution has proved the guilt of the accused Nos.1 and 3 beyond reasonable doubt. In view of the aforesaid discussions, I answer Point Nos.1 to 4 in the 'Negative'.

67. **Point No.5:** In view of aforesaid discussion, I proceed to pass the following:

ORDER

Acting under Section 235 (1) of Cr.P.C., the accused No.1 Shivaram in SC/80/2014 and accused No.3 Shahanavaz @ Shanu in SC/105/2024 are acquitted for the offence punishable under Sections 449, 392, 302 and 120B r/w Section 34 of I.P.C.

Accused Nos.1 and 3 are set at liberty. Issue intimation to the jail authority to release accused Nos.1 and 3 forthwith if they are not required in any other case.

Preserve the entire record till the disposal of split up case against accused No.2 in SC/71/2026.

Keep the original judgment in SC/80/2014 and copy thereof in SC/105/2024.

(Dictated to the SG-I, typed by her, corrected and then pronounced by me in the Open court, on this the **25th day of June 2026**)

(JAGADEESH V.N.)

II Addl. District & Sessions Judge
D.K., Mangaluru.

ANNEXURE**List of witnesses examined for the prosecution:**

<u>Nos.</u>	<u>Name of witnesses</u>	<u>Description</u>
PW.1	Gurudas Prabhu	Complainant and son of deceased.
PW.2	Ramdas Prabhu	Brother of PW.1.
PW.3	Ravindranatha Uchila	Relative of the owner of the house wherein accused No.1 was staying.
PW.4	Zeenath	Neighbor of deceased
PW.5	Prashanth S.	Witness to seizure of clothes of deceased and seizure of motorcycle from accused No.1.
PW.6	Abdul Hakim Sarfraj	Witness to recovery at the instance of accused Nos.1 and 3.
PW.7	Chandrasahsa Saliyan	Witness to seizure of mobiles of accused Nos.1 and 3.
PW.8	B.M. Shareef	Witness to inquest and seizure of mobiles.
PW.9	Rajkumar	Witness to recovery at the instance of accused No;.2 at Rajasthan.
PW.10	Jagadish Prasad	Jewelry shop owner at Rajasthan.
PW.11	Rajesh	Last seen theory witness.
PW.12	Naresh	Last seen theory witness.

PW.13	Praveen Chandra Karkera	Revenue Inspector of City Corporation who furnished house details of deceased.
PW.14	Ramachandra Prabhu	Witness to inquest and relative of deceased.
PW.15	Ameer Sohel	Neighbor and last seen theory witness.
PW.16	Dr. Nushrath Jabeena	Doctor who examined accused No.2
PW.17	Indhira	PC who brought clothes of deceased and produced before the Investigating officer.
PW.18	Shivaprakash	Investigating officer who registered the case.
PW.19	Dr. Geethalakshmi P.	Scientific officer.
PW.20	Dr. Pratheek Rastogi	Doctor who conducted postmortem examination.
PW.21	Kailashchand	Witness from whom gold articles were recovered at Rajasthan.
PW.22	Rajendra B.	Investigating officer who apprehended the accused.
PW.23	Girish Jogi	Investigating officer Assistant.

PW.24 Janardhana Investigating officer
Gowda Assistant.

PW.25 M.A.Nataraj Investigating officer.

PW.26 Shailesh Employer of accused No.3.

List of witnesses examined for the accused:

<u>Nos.</u>	<u>Name of witnesses</u>	<u>Description</u>
DW.1	Vinay	Nodal Officer Bharathi Airtel Ltd.

List of documents exhibited for the prosecution:

	<u>Description of the Exhibit</u>	<u>Proved by / Attested by</u>
Ex.P.1	Complaint	PW.1
Ex.P.1(a)	Signature of PW-1	PW.1
Ex.P.1(b)	Signature of PW-18	PW.18
Ex.P.2 & 3	Photos of deceased	PW.1
Ex.P. 4 to P.7	Gold ornaments of deceased	PW.1
Ex.P.8 to P.10	Photos of dead body	PW.1
Ex.P.11 to 14	Photos of house of deceased	PW.1
Ex.P.15	Seizure mahazar	PW.5
Ex.P.15(a)	Signature of PW-5	PW.5

Ex.P.15(b)	Signature of PW-17	PW.17
Ex.P.15(c)	Signature of PW-25	PW.25
Ex.P.16	Seizure mahazar	PW.5
Ex.P.16(a)	Signature of PW-5	PW.5
Ex.P.16(b)	Signature of PW-25	PW.25
Ex.P.17	Seizure mahazar	PW.6
Ex.P.17(a)	Signature of PW-6	PW.6
Ex.P.17(b)	Signature of PW-25	PW.25
Ex.P.18	Seizure mahazar	PW.7
Ex.P.18(a)	Signature of PW-7	PW.7
Ex.P.18(b)	Signature of PW-8	PW.8
Ex.P.18(c)	Signature of PW-25	PW.25
Ex.P.19	Inquest mahazar	PW.8
Ex.P.19(a)	Signature of PW-8	PW.8
Ex.P.19(b)	Signature of PW-14	PW.14
Ex.P.19(c)	Signature of PW-25	PW.25
Ex.P.19(d)	Spot sketch	PW.25
Ex.P.19(e)	Signature of PW-25	PW.25
Ex.P.20	Seizure mahazar	PW.9
Ex.P.20(a)	Signature of PW-9	PW.9
Ex.P.20(b)	Signature of PW-10	PW.10
Ex.P.20(c)	Signature of PW-22	PW.22
Ex.P.20(d)	Signature of PW-23	PW.23
Ex.P.21	Portion marked in the statement of PW.10	PW.10
Ex.P.22	Ownership certificate issued by PW.13	PW.13
Ex.P.22(a)	Signature of PW-13	PW.13

Ex.P.23	Photos of motorcycle (2 in nos.)	PW.15
Ex.P.24	Medical certificate	PW.16
Ex.P.24(a)	Signature of PW-16	PW.16
Ex.P.25	FIR	PW.18
Ex.P.25(a)	Signature of PW-18	PW.18
Ex.P.26	RFSL Test report	PW.19
Ex.P.26(a)	Signature of PW-19	PW.19
Ex.P.27	Sample seal	PW.19
Ex.P.27(a)	Signature of PW-19	PW.19
Ex.P.28	RFSL Test report	PW.19
Ex.P.28(a)	Signature of PW-19	PW.19
Ex.P.29	RFSL test report	PW.19
Ex.P.29(a)	Signature of PW-19	PW.19
Ex.P.30	Sample seal	PW.19
Ex.P.30(a)	Signature of PW-19	PW.19
Ex.P.31	Serology report	PW.19
Ex.P.31(a)	Signature of PW-19	PW.19
Ex.P.32	Postmortem examination report	PW.20
Ex.P.32(a)	Signature of PW-20	PW.20
Ex.P.33	Opinion on weapon	PW.20
Ex.P.33(a)	Signature of PW-20	PW.20
Ex.P.34	Sample seal	PW.20
Ex.P.34(a)	Signature of PW-20	PW.20
Ex.P.35	Seizure mahazar	PW.21
Ex.P.35(a)	Signature of PW-21	PW.21
Ex.P.35(b)	Signature of PW-22	PW.22
Ex.P.35(c)	Signature of PW-23	PW.23

Ex.P.36	Calculation made by PW.21 on gold articles	PW.21
Ex.P.37	Report of PW.22	PW.22
Ex.P.37(a)	Signature of PW-22	PW.22
Ex.P.38	Report of PW.22	PW.22
Ex.P.38(a)	Signature of PW-22	PW.22
Ex.P.39	Certificate u/s.65B of Indian Evidence Act.	PW.23
Ex.P.39(a)	Signature of PW-23	PW.23
Ex.P.40	CDR of mobile No.7259452019	PW.23
Ex.P.41	CDR of mobile No.7204796017	PW.23
Ex.P.42	Bill for valuation of gold articles	PW.25
Ex.P.42(a)	Signature of PW-25	PW.25
Ex.P.43	O.P. Book of accused No.1	PW.25
Ex.P.44	O.P. Book of accused No.2	PW.25
Ex.P.45	Portion marked in the voluntary statement of accused No.1	PW.25
Ex.P.45(a)	Signature of PW-25	PW.25
Ex.P.45(b)	Signature of accused No.1	PW.25
Ex.P.46	Portion marked in the voluntary statement of accused No.2	PW.25
Ex.P.46(a)	Signature of PW-25	PW.25
Ex.P.46(b)	Signature of accused No.2	PW.25
Ex.P.47	Portion marked in the voluntary statement of accused No.3	PW.25
Ex.P.47(a)	Signature of PW-25	PW.25
Ex.P.47(b)	Signature of accused No.3	PW.25
Ex.P.48	Rough register for payment of salary.	PW.25

Ex.P.49	CAF with voters ID	PW.25
Ex.P.50	B extract	PW.25
Ex.P.51	Receipt	PW.25
Ex.P.51(a)	Signature of PW-25	PW.25
Ex.P.52	C.D.	PW.25

List of documents exhibited for the accused:

<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by / Attested by</u>
Ex.D.1	Portion marked in the statement of PW.15	PW.15
Ex.D.2	Portion marked in the further statement of PW.15	PW.15

List of material objects marked for the prosecution:

<u>Material Object No.</u>	<u>Description of the Exhibit</u>	<u>Proved by / Attested by</u>
MO.1	Knife	PW.1
MO.2	One pair of chappal	PW.1
MO.3	Blood-stained cotton swab	PW.1
MO.4	Saree of deceased	PW.1
MO.5	Blouse of deceased	PW.1
MO.6	Motorbike	PW.5

MO.7	Jeans pant of accused	PW.6
MO.8	Shirt of accused	PW.6
MO.9	Mobile phone with two sim cards	PW.7
MO.9 (a)	Airtel sim card	PW.25
MO.9(b)	Vodafone sim card	PW.25
MO.10	Mobile phone	PW.7
MO.10 (a)	Idea sim card	PW.25
MO.10 (b)	Reliance sim card	PW.25
MO.11	Two blood-stained papers	PW.14

(JAGADEESH V.N.)

II Addl. District & Sessions Judge
D.K., Mangaluru