



**IN THE COURT OF THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TUMAKURU.**

Present:

Sri. Mohamed Ashraf Aris, B.A., LL.M.,
I Addl. District & Sessions Judge,
Tumakuru.

Dated this the 29th day June, 2026

S.C.No.89/2020

Complainant:

State by Kyathasandra
Police Station, Tumakuru.

(By learned Public Prosecutor, Tumakuru)

-VS-

Accused :

1. Bharath M. S/o Late Mahadevaiah,
Aged about 24 years.
2. Kantharaju @ Kantha
S/o Late Mahadevaiah S.,
Aged about 25 years.

Both are r/o Maranayakanapalya village,
Kasaba hobli, Tumakuru Taluk.

(By Sri K.H.G. Advocate for A.1 and 2)

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| 1. Date of Commission of Offence | : | 29.01.2020 |
| 2. Date of Report of offence | : | 29.01.2020 |
| 3. Arrest of A.1 and 2 | : | 01.02.2020 |
| 4. Release of A. 2 | : | 21.10.2020 |
| 5. Name of the complainant | : | Manjula K.N. |



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| 6. Date of commencement of Evidence | : | 26.02.2024 |
| 7. Date of closing evidence | : | 27.02.2026 |
| 8. Offence complained of | : | Sec.302 of I.P.C. |
| 9. Opinion of the Judge | : | Accused Nos.1 and 2 are acquitted for the offence punishable U/sec.302 R/w. Sec.34 of IPC. |

J U D G M E N T

Kyathasandra police have filed this charge sheet against the accused No.1 and 2 for the offence punishable U/Sec.302 of IPC. The charge sheet was filed before the Prl. Civil Judge and J.M.F.C., Tumakuru and the case was numbered as C.C.1585/2020. The learned Prl. Civil Judge and JMFC, has taken cognizance of the offence against the accused No.1 and 2 and committed the case to this court for trial.

2. Case of the prosecution in brief is as follows:

The accused No.1 had availed loan of Rs.5,000/- from the deceased Palanethra. Thereafter, the deceased was insisting the accused No.1 again and again to return the money and was abusing the accused No.1 in filthy language and had also assaulted



the accused No.1. Therefore, the accused No.1 informed this matter to his elder brother the accused No.2. The accused No.2 told the accused No.1 that the deceased Palanethra is also not given any respect to him and told that he would take Palanethra along with him to smoke Cigarette and asked the accused No.1 to bring a chopper and come in an auto rickshaw to the place where Palanethra and accused No.2 would go and thereby planned to kill Palanethra. In furtherance of their intention to kill the deceased Palanethra, the accused No.2 purchased Cigarette from the petty shop of the witness Mahadevamurthy on 29.01.2020 at 10.20 p.m. and went along with Palanethra in a Bullet bike to a place near a bridge in front of the house of Premkumar at Maranayakanapalya, within the limits of Kyathasandra Police Station and when both the accused No.2 and Palanethra finished smoking cigarette at that place, the accused No.1 came in an Auto rickshaw bearing Reg.No.KA-06-D-5187 to that place and parked the auto facing towards Siddaganga cross and when Palanethra sat in the Bullet bike in order to go towards his house, the accused No.2 started talking to Palanethra and at that time, the accused No.1 came with the chopper from the auto and assaulted on the back side of



Palanethra with the chopper 3-4 times and when Palanethra fell down from the bike holding his head, the accused No.1 and 2 boarded the auto and the accused No.1 started the auto rickshaw and drove the auto rickshaw over the body of Palanethra and made the auto wheel to pass over the body of Palanethra and thereafter, on seeing that Palanethra is still alive, the accused No.1 alighted from the auto and again assaulted Palanethra with the chopper 2-3 times and killed Palanethra. Thereby, the accused Nos.1 and 2 are alleged to have committed the offence of murder punishable U/Sec.302 of IPC.

3. On the basis of the complaint given by the wife of the deceased, the Kyathasandra police registered the FIR on 29.01.2020 in Cr.No.28/2020 for the offence punishable U/Sec.302 and 201 of IPC. After completion of investigation, the police have filed the charge sheet against this accused No.1 and 2 for the offence punishable U/Sec.302 of IPC.

4. After committal of the case, the accused No.1 and 2 were produced before this court from judicial custody. Subsequently, the accused No.2 was granted bail by the Hon'ble High Court of Karnataka in CrI.P.No.4037/2020 dated:29.09.2020. Thereafter,



accused No.2 offered surety and was released on bail. Later on 15.04.2026, the accused No.2 remained absent and hence NBW was issued against him. Thereafter, he was arrested and produced before the court and he was taken to judicial custody.

5. This court had framed charges on 10.01.2023 for the offence punishable U/Sec.302 of IPC against the accused No.1 and 2. The accused are represented by their counsel. They pleaded not guilty to the charges framed against them. The charge was altered on 03.06.2026 by including Sec.34 of IPC and the altered charge was read over to the accused No.1 and 2. The accused No.1 and 2 pleaded not guilty.

6. The prosecution has examined 20 witnesses and got marked 36 documents as Ex.P1 to P36. Material objects No.1 to 14 are also marked on behalf of prosecution.

7. After completion of the prosecution evidence, the statement of the accused No.1 and 2 as required U/Sec.313 of Cr.P.C., were recorded, with reference to the incriminating evidence found against the accused. The accused No.1 and 2 have denied the incriminating evidence. They have not led any defence evidence.



8. The points that arise for determination are as follows:

1. Whether the prosecution proves beyond all reasonable doubt that on 29.01.2020 at about 10.20 p.m, the accused No.1 and 2 with a common intention to kill the deceased Palanethra took the deceased near a bridge in front of the house of Premkumar at Maranayakanapalya and in furtherance of the common intention the accused No.1 assaulted the deceased with a chopper and also drove the auto over the deceased and again assaulted the deceased with chopper, causing such bodily injuries resulting in the death of Palanethra and thereby, accused No.1 and 2 have committed an offence punishable U/Sec.302 R/w. Sec.34 of I.P.C.?

2. What order?

9. Heard arguments on both sides.

10. The answer to the aforesaid points are as follows:

Point No.1: In the **Negative**

Point No.2: As per final order, for the following:

REASONS

11. **Point No.1:** The Doctor who has conducted the post mortem of the body of the deceased has been examined as PW.12. He has stated that he conducted the post mortem examination on



30.01.2020 at Tumakuru District Hospital from morning 10 a.m, to 11 a.m. The post mortem report is marked as Ex.P19. He has submitted his final opinion which is marked as Ex.P21. He has stated that he is of the opinion that the death is due to Haemorrhage and shock as a result of multiple injuries sustained. Further, he has also observed that the deceased had consumed alcohol at the time of death.

12. The Doctor had found the following clothes over the body of the deceased.

1. Blood stained blue colour jeans pant
2. Blood stained full sleeve dark colour shirt
3. Blood stained green colour underwear
4. Black colour waist thread
5. Red colour sacred thread over right wrist

13. The Doctor has found the following external injuries on the body of the deceased.

1. Chop wound measuring 13 cm x 1 cm over the back side of the head with cut fracture on the bone.
2. Chop wound measuring 5x1, 4.5x1, 5x0.5 cms below the above injury No.1 with cut on the bone.
3. Two Chop wounds measuring 7x1 and 5x1 cm on the right side of the head and cut on the bone below the wound.



4. Chop wound measuring 6x1 cm on the front side of the head and on the right side of the head with fracture of bone.
5. Six contused abrasions measuring 3x0.5 cm to 7x0.5 cm over the abdomen and back side of the chest.
6. Four contused abrasions measuring 1x0.5 to 8x0.5 cm over the right thigh .
7. Contused abrasion measuring 4x0.2 cm over the right knee.
8. Punctured wound measuring 2x0.5 cm muscle deep over the right leg.
9. Punctured wound measuring 2x0.5 cm over the right palm
10. Punctured wound measuring 1.5x0.5 cm over the outer part of the right fore arm.

14. The Doctor has examined the article sent for opinion i.e., the iron chopper with plastic handle which is of 54 cms length with handle length of 20 cmx0.9 cm and blade measuring 34 cm in length and 4 cm in width with blunt edge of the weapon measuring 0.75 cm, the other edge was sharp with tapering to a point. The Doctor has opined that the external injuries No.1 to 10 and corresponding internal injuries could be caused by the type of iron chopper examined by him. He has given his opinion which is marked as Ex.P20.



15. The Doctor has stated that all injuries are antimortem and the age of the injuries as fresh at the time of death. He has stated that the time since the death cannot be opined as the body was refrigerated.

16. The FSL report regarding the blood is marked as Ex.P22 and 23. The extent of the stains, their size and location are noted in the FSL test report Ex.P23. The FSL report shows that the blood stains detected in items No.1 to 16 is that of human being.

17. In view of the evidence of the Doctor and the post mortem report it could be concluded that the death is a homicidal death.

18. It is the case of the prosecution that the accused No.1 and 2 with the common intention has caused the such bodily injuries and killed the deceased Palanethra. The burden is on the prosecution to connect the accused with the murder of the deceased.

19. The first information was given by PW.1 who is the wife of the deceased. It is marked as Ex.P1. On the basis of Ex.P1, FIR was registered on same day i.e., on 29.01.2020 at 23.45 hours. In her chief-examination, she has stated that her husband was working



as an Attender at B.P.Ed., College in Siddaganga Mutt. She has stated that, she was residing along with her husband and her in-laws in her husband's house at Maranayakanapalya. She has stated that her husband was using a Bullet bike bearing No.KA-06-HB-6365. She has stated that on 29.01.2020 at about 9.00 a.m., her husband had gone for work and came back in the afternoon at 1'O clock and again at 3.00 p.m. he went to work and returned at 5.00 p.m. Further, she has deposed that after coming from work in the evening, her husband again went out again and in the night at 10.40 p.m. a villager namely Shivakumar (CW.5-PW.7) called her father-in-law Shivakumar (CW.6-PW.5) through phone and told that there is some altercation and assault taking place near the bridge in front of Karagallamma Temple. CW.5-PW.7 has corroborated this fact in his evidence. PW.5 has also deposed about this fact. PW.1 has further stated that she alongwith her father-in-law and mother-in-law went to the spot and reached there at 10.45 p.m. She has stated that at the spot her husband had fallen down and the bike was also lying at that place. She has stated that there were chop wounds on the back side of the head of her husband and her husband was found dead and that there were blood stains



on the bike and on the ground where he had fallen. She has stated that, she immediately went to Kyathasandra Police Station and gave a complaint at 12.00 midnight. She has identified the complaint which is marked as Ex.P1 and her signature as Ex.P1(a). Further, she has deposed that after lodging of the complaint, the police came to the spot where the body was lying and took the blood which was on the Bullet bike and also on the ground with cotton swab and they also seized the pair of slippers of her husband which was at the spot. She has stated that at the time of mahazar she was present and that CW.17, CW.18 and the police were also present. She has stated that her husband had worn blue colour Jeans pant, brown colour full sleeve shirt and had red thread on the hand, bottle green colour drawer and black colour waist thread. She has stated that the police conducted the mahazar in the night from 12 midnight to 2 a.m. She has identified the mahazar which is marked as Ex.P2 and the sign as Ex.P2(a). The brown colour full sleeve shirt is marked as M.O.1, the blue colour Jeans pant is marked as M.O.2, the bottle green colour drawer is marked as M.O.3, black colour waist thread is marked as M.O.4, red colour hand thread is marked as M.O.5. These objects



were identified by PW.1. The bottles containing the blood stains which were taken from the spot and from the bike are marked as M.O.6 and 7. One pair of slipper is marked as M.O.8. Five photographs of the Bullet bike of the deceased are marked as Ex.P3 to P7.

20. The first information was received and registered by the PSI is examined as PW.18. The signature of PW.18 on the first information is marked as Ex.P1(b). The FIR is marked as Ex.P31. Further, investigation was continued by the Police Circle Inspector who is examined as PW.20. PW.20 has deposed that on 30.01.2020, he took over the investigation papers from PW.18 and on the same day went to the spot and conducted the mahazar Ex.P2 in the presence of CW.1, 17 and 18. He has stated about collecting blood stains from the ground and from the bike and taking possession of the slippers and two wheeler. He has identified his signature in Ex.P2, which is marked as Ex.P2(c).

21. An attesting witness to the spot Mahazar i.e., CW.17 has been examined as PW.8. The seized articles M.O.6 to 8 and Ex.P3 to 7 were listed in P.F. No.15/2020 and the blood stains were sent to FSL. PW.18 has stated about shifting of the body of the



deceased from the spot to District Government Hospital, Tumakuru along with H.C 357. He has stated about conducting the inquest mahazar which is marked as Ex.P10 in the presence of CW.29, 31, 10, 11 and 12. The injuries on the body of the deceased has been noted in Ex.P10. CW.10 who is one of the attesting witness to the inquest mahazar has been examined as PW.6. PW.6 has deposed that he has seen the dead body at District Hospital, Tumakuru and he found injuries on the head of the deceased. He has stated that CW.11, 12, doctors and the police were present at the time of his visit. He has stated about the police conducting the inquest mahazar, which is marked as Ex.P10. He has identified his signature as Ex.P10(a). The notice which was given to him by the police to attend the inquest is marked as Ex.P11. The photographs taken at the time of inquest which are at pages 1 to 4 in Ex.P10 are identified by this witness.

22. PW.13 who is a Head Constable assisting the investigating officer has stated about preparing the panchanama at the spot and taking of photographs in Sony Handy Camera. He has stated about typing the statements of the witnesses and taking printouts. He has given a 65(B) certificate which is marked as



Ex.P24. He has prepared the panchanamas Ex.P2, P10, P14 and P15. The seizure panchanama pertaining to seizure of the clothes of the deceased is identified and marked as Ex.P25.

23. The investigating officer PW.20 has also deposed about taking the statements of the relatives of the deceased who are CW.13 and 14 and also the witnesses CW.15 and 16 at the time of inquest. PW.20 has also deposed about the seizure of the clothes of the deceased as per Ex.P25 mahazar. Further, he states that he has enquired CW.17 to 20 and 29 and obtained the statements.

24. The accused were traced by the police on 01.02.2020. The ASI of the Kyathasandra Police Station i.e., CW.35 has been examined as PW.19. He has stated that on 01.02.2020, he and CW.26 and 27 were appointed for tracing the accused in this case and accordingly, on the same day in the morning at 6.15 a.m., on getting credible information about the movements of the accused in the vicinity of Madanayakanahalli, they went to Siddahosanahalli cross where they found two persons moving in a suspicious manner. He has stated that he and CW.26 and 27 went and caught hold of those two persons and they revealed their names as Bharath S/o Mahadevaiah and Kantharaju S/o Mahadevaiah and



when they were enquired they confessed about killing the deceased Palanethra and thereafter, those two persons were taken to custody and produced before the investigating officer CW.37 at 7.45 p.m., and he submitted a report which is marked as Ex.P32. He has identified his signature as Ex.P32(a). The investigating officer PW.20 has also stated these facts. He has stated that after the accused were produced before him, he followed the arrest procedure and arrested the accused and obtained their confession statements in the presence of CW.21 and 22. He has stated that the accused No.1 and 2 in their confession statement stated that they would show the place of committing the murder. The confession statement of the accused No.1 Bharath is marked as Ex.P33. The relevant portion is marked as Ex.P33(a). The signature of the accused is marked as Ex.P33(b) and the signature of the witness is marked as Ex.P33(c). Similarly, PW.20 has deposed about the obtaining the confession statement of accused No.2 as per Ex.P34. The relevant portion is marked as Ex.P34(a), the signature of accused No.2 is marked as Ex.P34(b) and the signature of witness is marked as Ex.P34(c).



25. According to the prosecution, CW.2 Sathishkumar who is examined as PW.3 is said to be an eye witness. It is the case of the prosecution that, CW.2 has given a statement before the police as per Ex.P8. According to the prosecution case on 29.01.2020, CW.2 who is a Forest Guard working at Devarayanadurga Forest Department, returned home at about 6.15 p.m., and he saw the deceased Palanethraiah coming in a bullet bike near the Brick shed of his house and that CW.2 called Palanethraiah to Nelamangala for a wedding of his relative, but Palanethraiah told that he is not able to come. Further, it is the case of the prosecution that CW.2 could not go to the wedding and when he was having dinner with his wife Suma, at about 10.00 p.m., Palanethraiah made a phone call from his mobile No.9538592311 to CW.2's mobile No.9886317939 and that CW.2 asked about the whereabouts and that Palanethraiah told that he is in Devarayapattana near a lake and that he has parked his bike near a Banyan tree and is standing there and that Palanethraiah asked CW.2 to come near Karugallamma Temple to have talks and that at about 10.25 p.m., CW.2 proceeded towards that place to meet Palanethraiah by walk and when he reached near the house of Premkumar near the



bridge, CW.2 saw Palanethraiah sitting in the bike in order to go towards his house and that accused Kantharaju was standing near Palanethraiah and was talking to Palanethraiah and that an Auto rickshaw was parked near them and that accused No.1-Bharath got down from the auto holding a chopper and while Kantharaju was talking to Palanethraiah, Bharath assaulted Palanethraiah 3 to 4 times on the head of Palanethraiah with the chopper and that Palanethraiah holding his head fell down along with the bike. Thereafter, Bharath and Kantharaju sat in the auto and started the auto and drove the auto over Palanethraiah who had fallen there. Thereafter Bharath got down from the auto and again assaulted Palanethraiah on his head with the chopper and thereafter, Bharath and his brother Kantharaju went in the auto towards their house. According to the prosecution, CW.2 witnessed this incident hiding at a place and that CW.2 saw Bharath and Kantharaju going from Karugallamma Temple towards their house after the incident and that CW.2 saw all this incident in the brightness of the street light and that CW.2 also noted the registration number of auto as KA-06-D-5187 and that CW.2 has seen the blood stains on the auto and on the ground and on the clothes of Palanethraiah and



thereafter, CW.2 went near Palanethraiah and found that he was dead. Thereafter, when the villagers gathered, CW.2 left from that place. The portion of the statement of CW.2 is marked as Ex.P8. However, CW.2 has denied having given any such statement to the police. In the chief-examination, PW.3 (CW.2) has stated that he does not know where this incident took place and denied about seeing any such incident. He has stated that Palanethraiah is his friend and from the same village. He has stated that, he came to know that Bharath and Kantharaju have killed Palanethraiah, but he says that he saw the dead body of Palanethraiah only in the District hospital, Tumkur. He has stated that he saw Palanethraiah for the last time only on the previous day of his death. Since, PW.3 denied witnessing the incident and turned hostile, he was treated as hostile witness and was cross-examined by learned PP. In the cross-examination also, he has denied about witnessing the incident. He has denied that Palanethraiah had called him through mobile phone or that he had gone to meet Palanethraiah on the night of 29.01.2020. He has denied that he had seen Palanethraiah near the lake at Devarayapattana near Banyan tree along with the bike. He has denied that he has seen accused No.1 and 2



assaulting Palanethraiah with the chopper. He also denied of giving any statement as per Ex.P8.

26. Since the only eye witness cited by the prosecution turned hostile, the prosecution heavily relies on the circumstantial evidence. The chain of circumstances which the prosecution relies are the following;

- 1) Last seen alive
- 2) Recovery of chopper and clothes at the instance of the accused No.1 and 2.
- 3) Blood stains found in the articles recovered
- 4) Motive.

The learned PP pointed out to the evidence of CW.4 i.e., PW.2 who has stated that about 04 years ago in the night, the second accused Kantharaju came to his petty shop and purchased gold pack cigarette and another pack cigarette and gave Rs.40/- and he returned Rs.4/- back to Kantharaju and that when he was going towards the filter water unit to bring filter water, he saw Palanethraiah in the bullet bike along with accused Kantharaju who was sitting on the back side of the said bike and that they were proceeding towards Siddaganga cross. PW.2 has further stated that after half an hour, he heard the shouting of the



villagers at a place 300 feet away from his house and when he went to that place, he saw Palanethraiah's wife and Palanethraiah's parents crying at the place and he saw the body of Palanethraiah fallen at the spot. He has stated that he saw the injuries on the back side of the head of Palanethraiah. On the basis of this evidence, the learned PP put forth the last seen theory and argued that the evidence of PW.2 is sufficient to show the presence of the deceased with accused No.2 just prior to the murder. It was argued that the time gap from the last seen alive time and the detection of crime is not long. The villager PW.7 had called the father of the deceased at 10.40 p.m.

27. The prosecution has to establish the last seen theory convincingly by showing that the accused and the deceased were seen last alive together and that the time gap between the point of time when the accused and deceased were seen last alive and the time when the deceased is found dead is a short time gap. In this regard, it is necessary to keep in mind the principles laid down by the Hon'ble Apex Court regarding last seen theory. In the case of State of **Uttar Pradesh V/s Sathish, reported in 2005(3) SCC 114**. The Hon'ble Apex court has held as follows;



“ The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last 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.”

28. In the case of **Chetan Vs State of Karnataka reported in 2025(9) SCC page 31**, the Hon'ble Apex court has held as follows;

“ The circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material



consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. If the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case." (Para 87)

It is further held at para 90 as follows:

" The forensic and ballistic opinion along with the subsequent recovery of the gun, pellets and wads and other object like gold chain from the appellant literally obliterates the doubtful element which can be attributed to the gap in time and space of the last seen together aspect of the circumstantial evidence. Had this scientific evidence and



subsequent recoveries not been available, certainly, the time lapse between the fact of last seen together and the time of death could have proved fatal to the Prosecution case in the present case. Thus, this submission of the appellant that there was a long time lapse, does not hold water.” (Para 90)

29. In the case on hand, the learned PP has pointed out to the evidence of PW.2 who has stated in his chief-examination that about 4 years ago in the night between 10 to 11 p.m., the second accused had come to his petty shop and purchased the cigarettes and that he saw the deceased Palanethraiah standing near his bullet bike and that Kantharaju was sitting behind in the bullet bike and they went towards Siddaganga cross. Further, he states after half an hour, he heard some shouting at about 300 feet away from his house and he went towards that place and saw Palanethraiah's wife and parents crying at that place and that Palanethraiah had fallen at that place. PW.1 who is the wife of the deceased Palanethraiah has stated in her evidence that on 29.01.2020 in the night at about 10.40 p.m., a villager namely Shivakumar (PW.7) told that some altercation is taking place near Karugallamma temple and thereafter, she, her father-in-law (PW.5) and mother-in-law



went to that place and reached that place at 10.45 p.m., and found the deceased fallen at that place with the chop wounds on the back side of the head of the deceased. On the same day at 23.45 p.m., she has given the complaint. The crime has been detected within a gap of around half an hour by PW.2 from the point of time he has alleged to have last seen the deceased with the accused No.2. Immediately when he went to the spot he saw PW.1, PW.5 and mother of the deceased at the spot. PW.7 an auto driver had seen the body at the spot even prior to that and it is he who had informed PW.5 about it. These evidence shows that the time gap from the time the PW.2 alleged to have seen the deceased and accused No.2 together and the detection of the body of the deceased at the spot, is not long.

30. The last seen theory is based only on the evidence of PW.2 (CW.4). Though in the chief-examination at page No.2, PW.2 has stated that he saw the deceased Palanethraiah standing in the bullet bike and accused No.2-Kantharaju sitting on the backside of the bike and went towards Siddaganga cross , in the first page of the chief-examination, he has stated that he does not know CW.1 or her deceased husband. A reasonable doubt arises as to how he



confirmed that the person who went with accused No.2 was Palanethraiah. Further, it is not clear where the water filter unit is situated and how far it is situated from his petty shop. He has stated that he saw them when he was proceeding towards filter unit. In the cross-examination also he denies that deceased was known to him. He has also stated that he does not remember which type of clothes and which colour dress the deceased was wearing when he saw them on that day. In the 161 statement of this witness recorded by the police, it is mentioned that the water filter unit is near his shop on the side of the road and that in front of Karagallamma temple he saw accused No.2 walking towards Palanethraiah, and that Palanethraiah asked accused No.2 to sit on the bike and both went towards Siddaganga cross. But, in the oral evidence PW.2 has not stated that he saw accused No.2 walking towards the bike; he has not stated that he saw them in front of Karagallamma temple. These discrepancies creates a doubt as to whether PW.2 has really seen the deceased at the place of occurrence or if at all he has seen another person with Kantharaju, whether that other person was infact Palanethraiah. These doubts arise especially when PW.2 has deposed that he does not know the



deceased. In addition to these discrepancies, the site sketch which is marked as Ex.P18 does not show the place where the water filter is or the place where the Karagallamma temple is situated. The spot mahazar which is marked as Ex.P2 also does not show those places. Under these circumstances, the evidence of PW.2 cannot be relied upon without corroboration, to base the last seen alive theory.

31. The next chain of circumstance which the prosecution relies is the recovery of the articles i.e., the blood stained articles and the chopper. According to the prosecution, after arrest of the accused No.1 and 2, they gave confession statements as per Ex.P33 and 34. As per the confession given by them, they recovered the articles as per panchanama which is marked as Ex.P15. PW.10 and 17 are the panch witnesses to the said panchanama. PW.10 has turned hostile, but PW.17 has supported the prosecution case. PW.17 in his evidence has stated that, he is working in the Fire services as a Fireman. He has stated that on 01.02.2020, he was requested to be a witness to the panch by the Circle Inspector and he was informed about the crime. He has stated that on that day at 10.15 a.m., he went to the office of the CPI and he agreed to be a



panch witness, he was served with a notice which was marked as Ex.P29. He has stated that the accused in this case, led the Circle Inspector and a panch witnesses to a place near the bridge at Maranayakanapalya and showed the place where they had killed the deceased. He has stated that the police prepared the panchanama from 7.45 a.m to 12.15 p.m, and that he has signed the panchanama Ex.P14. He has identified his signature as Ex.P14(c). Further, he has stated that the accused told that they would show the weapon used and the clothes which were worn at the time of crime and they led them to a place near the sports building and took them near a auto which was parked on the side of the road and told that it belongs to the accused No.1. He has stated that when the auto was inspected by the police, they found blood stains on the sides of the seat of the driver. He has stated that the police collected blood stains from that place and sealed it. Further, he has stated that from that place, the accused No.1 went near a drain and took T-shirt and Jeans pant from that place and told that it was worn by him at the time of incident. He has stated that those clothes also had blood stains and the police seized those clothes. Further, he has stated that the accused No.2 Kantharaju



took a Bermuda Nikkar and a shirt from the same place near the drain and told that it was worn by him at the time of incident. He has stated that those clothes also had blood stains. Further, he has stated that the accused Kantharaju took the chopper from that drain and told that he has used it for committing the crime. He has stated that the said chopper also had blood stains and that the police seized those articles and the auto and prepared a panchanama as per Ex.P15. He has identified his signature as Ex.P15(c). The photographs of the articles and auto are marked as Ex.P30. The chopper is identified by him and it is marked as M.O.9. T-shirt and Jeans pant seized belonging to accused Bharath are marked as M.Os.10 and 11. The T-shirt, Bermuda and Nikkar belonging to accused Kantharaju are marked as M.O.12 and 13. The box which contained the collection of blood stains are marked as M.O.14. The witness has also identified the accused No.1 and 2. The C.D which contains the video of the panchanama is marked as Ex.P16. The investigating officer have also spoken about these facts in his evidence.

32. The investigation officer who is examined as PW.20 has deposed about the accused No.1 and 2 leading the investigation



team to the place of incident and about the drawing of panchanama as per Ex.P14. Further, he has stated about the accused giving confession statement and leading the investigation team to the place where the clothes and chopper have been concealed. He has deposed that the accused led to a place near Kyathsandra Truck Terminal and showed an auto rickshaw in a road leading inside the said Truck Terminal. The auto rickshaw was bearing No.KA-06-D-5187 of Bajaj Company. He has deposed that blood stains were found on the left side of the body of the auto rickshaw and on the seat of the driver and over the gear and footrest of the auto rickshaw. He has stated that the blood stains were scraped and collected in a plastic box. Further, he has deposed that thereafter, the accused went to a place near the drain near the bridge and took out clothes and chopper from inside the drain. He has deposed that the accused Bharath confessed that the clothes worn by him and his brother at the time of the incident were hidden at that place. He has deposed about the seizing of those articles as per panchanama which is marked as Ex.P15. The articles are marked as M.O.9 to 14. He has stated about taking of photographs of the auto rickshaw which are



marked as Ex.P30. Further, he has deposed that on 16.02.2020 he sent the articles and the blood sample of the deceased collected at the time of post mortem report to FSL, Bangalore through CW.34. Ex.P23 is the acknowledgment of FSL. Further, he has deposed that on 23.05.2020, he has received FSL reports which are marked as Ex.P22 and 23. The Senior Scientific Officer of the FSL has given the test report Ex.P23. He has mentioned about 16 materials which are examined by him. They are (1) Blood stained swab (2) Blood stained swab (3) One left leg slipper (4) One right leg slipper (5) One shirt said to be of deceased Palanethraiah (6) One Jeans pant said to be of deceased Palanethraiah (7) One underwear said to be of deceased Palanethraiah (8) One waist thread said to be of deceased Palanethraiah (9) One wrist thread said to be of deceased Palanethraiah (10) One Machu (11) One T-Shirt (12) One Jeans pant (13) One T-Shirt (14) One Bermuda Nikkar (15) Blood scrapings (16) Blood stained swab. He has stated that scrapings from the suspected areas were tested for blood using presumptive tests namely, Benzidine test and the presence of blood stains was further confirmed by conducting Takayama test. The extent of the



stains, their size and location were also noted in page No.2 of Ex.P23.

Item No.	Bloodstained/ Not stained	Extent of stains	Size (approx)	Location
1	Stained	-	-	-
2	Stained	-	-	-
3	Stained	-	-	-
4	Stained	-	-	-
5	Stained	Extensive	Large	All over
6	Stained	Moderate	Large	Here and there
7	Stained	Few	0.1-5 cms	Here and there
8	Stained	-	-	-
9	Stained	-	-	-
10	Stained	Invisible	-	-
11	Stained	Invisible	-	-
12	Stained	Few	0.1-1 ms	Here and there
13	Stained	Very Few	0.1-0.5 cms	Here and there
14	Stained	-	-	-
15	Stained	-	-	-
16	Stained	-	-	-

33. Further, it is stated that the scrapings of the blood stained exhibits were subjected to serological analysis and the results of the serological examination is furnished in page No.3 of Ex.P23. Wherein it is stated that presence of blood stains were detected in item Nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and



16 and that the blood stains detected in item Nos. 1 to 16 are of human origin belongs to 'O' group.

34. The FSL report only shows that the blood stains detected in items No.1 to 16 are human blood of the group 'O'. There is no evidence that the blood found in the items is that of the deceased or that the blood stains detected in the clothes of the accused i.e., items No.11 to 14 is that of the deceased. The FSL report shows that there is no mention of the extent of stains or the size of stain or the location in items No.1 to 4, 8, 9, 14 to 16. The stain in the chopper i.e., item No.10 is shown as invisible. The FSL report by itself is not sufficient to link the accused No.1 and 2 to the crime.

35. Since, the entire case of the prosecution is based on the circumstantial evidence, the relevant facts should be proved from which the existence of a given fact in issue is inferred. Circumstantial evidence must always be direct i.e., the facts from which the existence of fact in issue is to be inferred must be proved by direct evidence. The totality of circumstances must be taken into consideration and find if the case is established, i.e., the facts established are inconsistent with the innocence of the accused and incapable of explanation of any reasonable



hypothesis other than of guilt. The chain of evidence must be so complete and it should not leave any reasonable ground for a conclusion consistent with the innocence of the accused and it should show that within all human probability the act must have been done by the accused. Circumstances alleged must be proved by satisfactory evidence. Onus is on the prosecution to prove that the chain is complete and false defence or plea cannot cure the infirmity or lacuna in the prosecution case. Motive may be of some importance in a case governed by circumstantial evidence. But if circumstantial evidence proves beyond doubt that it was the accused and none-else who killed the deceased, failure to prove motive is also of no consequence.

36. Confession made to a police officer cannot be proved or brought on record against the accused, except when it comes U/Sec.27 of the Indian Evidence Act. In order to apply the exception of Sec.27 there should be the following ingredients;

- (a) The accused is in custody
- (b) He provides information
- (c) A fact is depose to as discovered in consequence of such information;



Then so much of such information as relates distinctly to the fact thereby discovered may be proved, irrespective of whether such information amounts to confession or not. The fact discovered includes the place from where an incriminatory object is produced and accused having concealed or kept the object at the place or having knowledge as to the said object. When the place of recovery is open and accessible to all, then the test is whether the place was ordinarily visible to others. There can be concealment even in open place accessible to all. Sec.162 of the Criminal Procedure Code does not effect Sec.27 of the Evidence Act and it is made clear in Sec.162(2) of the Criminal Procedure Code. The conduct of the accused in leading the police and pointing out the place where incriminating article were hidden is also relevant U/Sec.8 of the Indian Evidence Act. The significance of the information lies in the authorship of concealment concealing by the accused or at any rate his knowledge of the fact and place of concealment.

37. PW.10 who is an independent attesting witness to the recovery mahazar has denied about the accused No.1 and 2 giving any confession statement. He has denied that pursuant to the confession statement the accused led the police to the place of



occurrence. He has denied that he put his signature at the spot. He has denied the suggestion that the accused showed the Auto and told that it was used for committing the crime. He has denied that the accused showed the blood stains on the Auto. He has denied that the police collected the blood stains by scrapping at that part of the Auto. He has also not identified the clothes.

38. PW.17 who is another independent attesting witness has deposed in his evidence that the accused No.2 Kantharaju took out the 'Chopper' from the drain. Whereas in the recovery mahazar Ex.P15, it is mentioned that the accused No.1-Bharath took out the chopper from the drain. This discrepancy is also material.

39. The defence of the accused as argued by the counsel is mainly based on the turning of hostile of the only eye witness and certain discrepancies in the evidence of the other witnesses. CW.2 who is the only eye witness examined as PW.3, has turned hostile and has not supported the prosecution case. The counsel for the accused argued by pointing out to certain discrepancies. One of them is the date and time of arresting the accused. He has pointed out to the evidence of CW.35 who is examined as PW.19, wherein PW.19 has deposed that on 01.02.2020, CW.26, 27 and himself



were appointed for tracing out the accused and on the same day at 7.45 a.m., the accused was taken to custody and produced before CW.37. Further, the counsel for the accused pointed out to the evidence of PW.1 at para No.6 of the cross-examination wherein she has stated that on 30.01.2020, the police informed her to come to mortuary at District hospital, Tumakuru and the body was handed over to her and that the last rites of the deceased was performed on that day. Further, she has stated that on that day she has seen the accused No.1 and 2 in the Police Station. He also pointed out to the evidence of PW.5 i.e., the father of the deceased who has deposed at para 4 that he has seen accused No.1-Bharath in the Police Station on the night on the day of incident. Therefore, the counsel for the accused contends that the prosecution case is not believable.

40. The counsel for the accused further pointed out to the discrepancy in the deposition of witnesses regarding the colour of the T-shirt. He has pointed out that in the PF, M.O.10 is shown as black colour, but the witness has stated that it is brown in colour.

41. The counsel for the accused has argued that the seizure panchanama cannot be relied upon, since the attesting witnesses



to the seizure have turned hostile. He has pointed out to the evidence of PW.3 and PW.4. PW.4 is the driver of the auto rickshaw bearing Reg.No.KA-07-D-5187. It is the case of the prosecution that the said auto was given to the accused No.1 on daily rent of Rs.200/-. But, the PW.4 is turned hostile and he has stated that he does not know the accused No.1 and 2. He has denied that he came to know that the accused No.1 and 2 have killed the deceased Palanethraiah.

42. The counsel for the accused argued that the police have not collected call records of the deceased and accused in order to show the location of their mobiles on the date of incident to prove that both were at the same location.

43. The counsel for the accused argued that there were no blood stains in the wheels of the auto and if at all the auto wheel had gone over the deceased there would have been blood stains on the wheels of the auto.

44. As already discussed earlier, the case of the prosecution rests on the circumstantial evidence, after the only eye witness turned hostile. The chain of circumstances which the prosecution relies must be complete without leading any reasonable ground



which would be consistent with the innocence of the accused. The circumstances in the chain must be proved by satisfactory evidence. In the case on hand, the evidence available in this case is not sufficient to hold that the circumstances are of a conclusive nature, so as to exclude any other hypothesis except the guilt of the accused. In the case on hand, the primary facts such as facts relied for establishing last seen alive and blood stains found in the clothes are not established convincingly. For overall consideration of the chain of circumstances the test of proof is the principle of proof beyond reasonable doubt. Applying the principle in testing the guilt of the accused, this court is of the opinion that it is not proved beyond reasonable doubt. At the first instance all the primary facts are not established. Secondly, the primary facts or circumstances do not inevitably and exclusively point to the guilt of the accused. On weighing the entire facts on the basis of the available evidence, this court is of the opinion that the prosecution has failed to establish the guilt of accused No.1 and 2 beyond all reasonable doubt. The benefit of doubt is given to the accused No.1 and 2. Hence, point No.1 is answered in the **Negative**.



45. **Point No.2:** Since the prosecution has failed to establish point No.1, the accused No.1 and 2 are entitled to be acquitted. Hence, the following order is passed;

ORDER

Acting under Sec.235(1) of Cr.P.C., accused No.1 and 2 are found not guilty and consequently, they are acquitted for the offence punishable U/Sec.302 R/w Sec.34 of IPC.

M.O.1 to 8 and 10 to 14 ordered to be destroyed after the period of appeal. M.O.9-Chopper is ordered to be confiscated to the stated after the period of appeal.

The accused No.1 and 2 who are in judicial custody shall be set at liberty forthwith, if they are not required in any other case.

CW.1 who is the wife of the deceased and a victim has been provided job on compassionate ground, as deposed by her in her evidence. Therefore, there is no need to recommend for further compensation.

(Dictated to the Stenographer after transcribed, typed and corrected and then pronounced by me in open Court on this the 29th day of June, 2026.)

(Mohamed Ashraf Aris)

I Addl. Dist. & Sessions Judge,
Tumakuru.

**ANNEXURE****Witnesses examined on behalf of prosecution:**

PW.1 :	Manjula
PW.2 :	Mahadevamurthy
PW.3 :	Sathishkumar M.B.
PW.4 :	Hemanth K.
PW.5 :	Shivakumar
PW.6 :	Balaradhya
PW.7 :	Shivakumar
PW.8 :	Krishnappa
PW.9 :	Abhilash
PW.10:	Jayanna
PW.11:	Shambhukumar
PW.12:	Dr.Rudramurthy
PW.13:	Santhosh D.R.
PW.14:	Ravi S.P.
PW.15:	Ramesh K.
PW.16:	Lakshmikantharaju
PW.17:	Venkatesh S.
PW.18:	Ramprasad
PW.19:	H.Krishnamurthy
PW.20:	Sridhar S.

Witnesses examined on behalf of defence:

- NIL -

Documents exhibited on behalf of prosecution:

Ex.P1	:	Complaint
Ex.P1(a)	:	Signature of PW.1
Ex.P1(b)	:	Signature of PW.18
Ex.P2	:	Spot mahazar.
Ex.P2(a)	:	Signature of PW.1
Ex.P2(b)	:	Signature of PW.8
Ex.P2(c)	:	Signature of PW.20
Ex.P3 to 7	:	Photographs of Bullet bike
Ex.P8	:	Statement of PW.3
Ex.P9	:	Statement of PW.4
Ex.P10	:	Inquest mahazar



Ex.P10(a)	:	Signature of PW.6
Ex.P10(b)	:	Signature of PW.20
Ex.P11	:	Notice to panchas
Ex.P11(a)	:	Signature of PW.6
Ex.P12	:	Notice issued to witnesses
Ex.P12(a)	:	Signature of PW.8
Ex.P13	:	Certificate issued by BESCOM
Ex.P13(a)	:	Signature of PW.9
Ex.P13(b)	:	Signature of PW.20
Ex.P14	:	Mahazar
Ex.P14(a)	:	Signature of PW.10
Ex.P14(b)	:	Signature of PW.15
Ex.P14(c)	:	Signature of PW.17
Ex.P14(d)	:	Signature of PW.20
Ex.P14(e &f)	:	Signature of accused persons
Ex.P15	:	Seizure mahazar
Ex.P15(a)	:	Signature of PW.10
Ex.P15(b)	:	Signature of PW.15
Ex.P15(c)	:	Signature of PW.17
Ex.P15(d)	:	Signature of PW.20
Ex.P15(e &f)	:	Signature of accused persons
Ex.P16	:	C.D.
Ex.P17	:	Letter issued to AEE to prepare spot sketch
Ex.P17(a)	:	Signature of PW.20
Ex.P18	:	Sketch
Ex.P18(a)	:	Signature of PW.23
Ex.P18(b)	:	Signature of PW.20
Ex.P19	:	Post mortem report
Ex.P19(a)	:	Signature of PW.12
Ex.P19(b)	:	Signature of PW.20
Ex.P20	:	Examination of article sent and furnishing opinion
Ex.P20(a)	:	Signature of PW.12
Ex.P20(b)	:	Signature of PW.20
Ex.P21	:	Final opinion of Doctor
Ex.P21(a)	:	Signature of PW.12
Ex.P21(b)	:	Signature of PW.20
Ex.P22 & 23	:	FSL reports



Ex.P23(a)	:	Signature of PW.20
Ex.P24	:	Certificate issued U/Sec.65(B) of Indian Evidence Act
Ex.P24(a)	:	Signature of PW.13
Ex.P24(b)	:	Signature of PW.20
Ex.P25	:	Seizure mahazar
Ex.P25(a)	:	Signature of PW.14
Ex.P25(b)	:	Signature of PW.20
Ex.P26	:	Certificate issued U/Sec.65(B) of Indian Evidence Act
Ex.P26(a)	:	Signature of PW.15
Ex.P26(b)	:	Signature of PW.20
Ex.P27	:	CD in respect of inquest mahazar
Ex.P28	:	Certificate issued U/Sec.65(B) of Indian Evidence Act
Ex.P28(a)	:	Signature of PW.16
Ex.P28(b)	:	Signature of PW.20
Ex.P29	:	Notice to panchas
Ex.P29(a)	:	Signature of PW.17
Ex.P30	:	Photographs of Auto rickshaw
Ex.P31	:	FIR
Ex.P31(a)	:	Signature of PW.18
Ex.P32	:	Report submitted by ASI
Ex.P32(a)	:	Signature of PW.19
Ex.P32(b)	:	Signature of PW.20
Ex.P33	:	Voluntary statement of accused No.1
Ex.P33(a)	:	Portion of statement
Ex.P33(b)	:	Signature of accused No.1
Ex.P33(c)	:	Signature of PW.20
Ex.P34	:	Voluntary statement of accused No.2
Ex.P34(a)	:	Portion of statement
Ex.P34(b)	:	Signature of accused No.2
Ex.P34(c)	:	Signature of PW.20
Ex.P35	:	Copy of RC of Auto rickshaw bearing No.KA-06-D-5187
Ex.P35(a)	:	Signature of PW.20
Ex.P36	:	Copy of RC of Bullet bike bearing No.KA-06-EP-6355
Ex.P36(a)	:	Signature of PW.20

**Documents exhibited on behalf of defence :**

- NIL -

Material objects exhibited on behalf of prosecution :

- M.O.1 : Brown colour full over shirt
- M.O.2 : Blue colour Jeans pant
- M.O.3 : Bottle green colour inner wear
- M.O.4 : Black colour thread
- M.O.5 : Red colour thread
- M.O.6 : Blood stained cotton ball
- M.O.7 : Blood stained cotton collected on the bike
- M.O.8 : One pair chappals
- M.O.9 : One chopper
- M.O.10 : T-shirt
- M.O.11 : Brown colour Jeans pant
- M.O.12 : T-shirt belongs to accused No.2
- M.O.13 : Bermuda belongs to accused No.2
- M.O.14 : Box contains cotton

I Addl. Dist. & Sessions Judge,
Tumakuru.