

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

PRESENT

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

AND

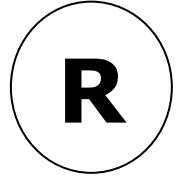
THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.751/2018

C/W.

CRIMINAL APPEAL NO.318/2018

CRIMINAL APPEAL NO.606/2018



IN CRIMINAL APPEAL NO.751/2018:

BETWEEN:

- 1 . H.V. PUTTARAJU @ PUTTI
S/O LATE VENKATESH,
AGED ABOUT 41 YEARS
DASA GOWDARA STREET, KOTE,
HOLENARASIPURA TOWN-573 211. ... APPELLANT

(BY SRI. C.H.HANUMANTHARAYA, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY HOLENARASIPURA TOWN POLICE
STATION, HOLENARASIPURA,
HASSAN DISTRICT
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU-560001. ... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT DATED 19.12.2017 PASSED BY II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN S.C.NO.49/2010 - CONVICTING THE APPELLANT/ACCUSED NO.6 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 144, 147, 148, 114, 504, 506, 302 R/W SECTION 149 OF IPC.

IN CRIMINAL APPEAL NO.318/2018:

BETWEEN:

- 1 . B. SATHISHA @ DADA
S/O LATE BYRAPPA,
AGED ABOUT 33 YEARS,
MADIVALA STREET, PETE
PRESENTLY RESIDING
NEAR GREEN WOOD CONVENT,
HOUSING BOARD COLONY,
HOLENARASIPURA TOWN.
- 2 . NAGARAJA @ KULLA
S/O SOMANNA,
AGED ABOUT 33 YEARS,
RESIDENT OF CHITTANAHALLI ROAD,
DASAGOWDARA STREET, KOTE,
HOLENARASIPURA TOWN.
- 3 . H.J. KUMARA @ OLE KUMARA
S/O JAVARAPPA @ JAVAREGOWDA,
AGED ABOUT 44 YEARS,
RESIDENT OF VAKKARANE BAVI STREET,
KOTE, HOLENARASIPURA TOWN.
- 4 . S. MANJUNATHA @ HOTTE MANJA
S/O SUBBEGOWDA,
AGED ABOUT 33 YEARS,
SLN TEMPLE ROAD,

DALAVAYI STREET,
HOLENARASIPURA TOWN.

... APPELLANTS

(BY SRI. M.N.MADHUSUDHAN, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY HOLENARASIPURA TOWN POLICE
STATION, HOLENARASIPURA,
HASSAN DISTRICT,
REPRESENTED BY SPP
HIGH COURT BUILDING,
BENGALURU-560001. ... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 19.12.2017 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN S.C.NO.49/2010 - CONVICTING THE APPELLANTS NO.1 TO 4/ACCUSED NO.2 TO 5 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 144, 147, 148, 114, 504, 506 AND 302 R/W SECTION 149 OF IPC.

IN CRIMINAL APPEAL NO.606/2018:

BETWEEN:

- 1 . SATHISHA @ ASPATRE SATHISHA
S/O LATE GOPALAKRISHNA
AGED ABOUT 33 YEARS
D-GROUP EMPLOYEE
GOVERNMENT HOSPITAL
DASAGOWDARA STREET,
HOLENARASIPURA TOWN-573211. ... APPELLANT

(BY SRI. C.H.HANUMANTHARAYA, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY HOLENARASIPURA TOWN POLICE
STATION, HOLENARASIPURA
HASSAN DISTRICT
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU-560001. ... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 19.12.2017 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN IN S.C.NO.49/2010 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 144, 147, 148, 114, 504, 506 AND 302 R/W SECTION 149 OF IPC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25.02.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

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

Heard learned counsels for the appellants and learned Additional Special Public Prosecutor for the respondent-State.

2. These appeals are filed against the judgment of conviction and sentence passed in S.C.No.49/2010 on the file of the II Additional District and Sessions Judge, Hassan dated 19.12.2017 convicting the accused persons for the offence punishable under Sections 143, 144, 147, 148, 114, 504, 506 and 302 read with Section 149 of IPC and imposing life imprisonment against accused Nos.1 to 6 and to pay fine of Rs.20,000/- each for the offence punishable under Section 302 read with Section 149 of IPC, imposing simple imprisonment for one year for the offence punishable under Sections 144 and 148 read with Section 149 of IPC with fine of Rs.500/- each, imposing simple imprisonment for six months for the offence punishable under Section 504 read with Section 149 of IPC with fine of Rs.500/- each and imposing simple imprisonment for three years with fine of Rs.1,000/- each for the offence

punishable under Section 506 read with Section 149 of IPC and the Trial Judge also ordered that the sentence shall run concurrently. Being aggrieved by the said judgment of conviction and sentence, these appeals are filed by the respective accused questioning the conviction and sentence and praying this Court to acquit all the accused/appellants.

3. The factual matrix of case of the prosecution is that the incident has taken place on 09.12.2009 in between 10.45 a.m. to 11.00 a.m. at Dodda Masjid Galli situated at Holenarasipura. The genesis of the crime is that there was animosity in between the accused No.1 and deceased Trineshkumar and a criminal case was also lodged against the accused No.1 because the accused No.1 assaulted the complainant. The deceased Trineshkumar did not come forward to settle the matter, hence, accused No.1 gave threat to deceased by the supporter i.e., accused No.6. With all these reasons, on that day, all the accused persons formed an unlawful assembly by possessing deadly weapons and picked up quarrel with deceased Trineshkumar, the accused No.2 assaulted with

repiece patti and the accused Nos.3, 4, 5 and 6 also assaulted the deceased Trineshkumar with Long and the same is with the instigation of accused No.1. In the result, the said Trineshkumar had sustained injury and he was shifted to different hospitals and ultimately, he succumbed to the injuries on 11.12.2009. Though, the case was registered at the first instance for the offence punishable under Section 307 of IPC, based on the complaint as per Ex.P4 and on account of death of Trineshkumar, other offences are invoked. The inquest mahazar was drawn in terms of Ex.P2, seizure mahazar in terms of Exs.P3, P7, P14 to P17, P19 to P21, spot mahazar in terms of Exs.P11 to P13 and Ex.P22 and thereafter, the Investigating Officer has obtained post mortem report as per Ex.P48 and so also the opinion of the Doctor as per Ex.P49. The Investigating Agency have also obtained FSL report as per Exs.P53 and P54 and having recorded statement of witnesses, on completion of investigation, charge-sheet was submitted to the Court. The accused persons were on bail and charges are framed and accused claims trial.

4. Hence, the prosecution relies upon the evidence of P.W.1 to P.W.56 and documents Exs.P1 to P64 and M.Os.1 to 22 are marked. On closure of the evidence of prosecution, accused persons were subjected to examination under Section 313 of Cr.P.C. and they have denied the incriminating evidence, but did not choose to lead any defence evidence, except marking of documents Exs.D1 to D4 through P.W.1, P.W.50 and P.W.55.

5. The Trial Court having considered both oral and documentary evidence, particularly the evidence of the Doctor, who has conducted the Post Mortem examination i.e., P.W.50 and having considered Ex.P48 report as well as Ex.P49-opinion comes to the conclusion that it is a case of homicidal. The Trial Court also having considered the evidence available on record comes to the conclusion that accused No.1 was arrested from Halli Mysore bus stand on 15.12.2009 and after the arrest of accused No.1, accused Nos.2 to 6 are also arrested from Channarayapatna on 23.12.2009. The accused No.1 cannot deny the said version, as the prosecution have collected the documents to the effect that he was absent for his duty from

02.12.2009 to 15.12.2009. For that certificate as well as attendance register extract are obtained and produced and they are marked as Ex.P58 and comes to the conclusion that non-identifying the accused persons by P.W.5 is not a ground to draw an adverse inference against the prosecution case.

6. The Court has taken note of the conduct of the accused and the same also plays a vital role and absconding is also one of the circumstance of guilt on the mind of the accused and unless the accused offers a reasonable explanation for his absence for several days at his normal place of residence or work or at places where he would normally expected to be and relies upon the judgment of the Apex Court in **KUNDULA BALA SUBRAMANYAM vs. STATE OF ANDHTA PRADESH** reported in **(1993) 2 SCC 684**.

7. The Trial Court mainly relies upon the evidence of P.W.55, who is the eye witness, who supported the case of the prosecution and other eyewitnesses have turned hostile, particularly, P.W.5 has turned hostile in part only with regard to the incident is concerned. But, he was there along with the

deceased, since the deceased used the car of P.W.5 car. The Trial judge also taken note of principles laid in the judgment in **BHADRI vs. STATE OF RAJASTHAN** reported in **AIR 1976 SC 560**, wherein an observation is made that there is no law to disbelieve the testimony of the single witness as a matter of prudence, that corroboration would be sought. A plea that in a murder case, the Court would insist upon the plurality of the witnesses cannot be accepted. If the Court is satisfied that the witness is speaking truth, the Court may act upon it. Circumstantial corroboration is sufficient and comes to the conclusion that P.W.5 was subjected to lengthy cross-examination and there is nothing elicited to disbelieve his testimony. Where the neighbourer refused to take the sides or give evidence, conviction can be based on the evidence of single eye witness, if it is wholly reliable. The Trial Court comes to the conclusion that, in order to commit crime, there was motive on the part of the accused persons and they conspired since 02.12.2009 and frequently, they made galata and the same is spoken by P.W.1 and P.W.4 i.e., the wife and brother of the deceased. The Court has taken note of the fact that there was

dispute between the accused No.6 and husband of P.W.1 with regard to organizing the bike race without including accused No.6 and so also accused No.1, who is the tenant of accused No.6 and he went and assaulted the complainant, who is the mother of the deceased and unfortunately, she passed away. In the evidence of P.W.1 and P.W.4, they deposed that accused No.1 openly expressed that as he has got support of accused No.6, nobody could do anything against him and accused No.6 encouraged the accused No.1 and when it reached to extreme level, the same resulted in committing the murder of Trineshkumar. The Trial Court also discussed in detail the evidence of P.W.1, P.W.4 and also the evidence of police witnesses' and considering the evidence of P.W.55, the sole eyewitness to the incident, comes to the conclusion that the accused persons have committed the murder of the deceased and convicted the accused.

8. The main contention of learned counsel for the appellant/accused No.6 in CrI.A.No.751/2018 is that Trial Court committed an error in relying upon the evidence of P.W.1, P.W.4

and P.W.55, who claim to be the relatives of the deceased and their evidence does not inspire the confidence of the Court and there is no corroborating evidence before the Court and the evidence of witness remains uncorroborated. The counsel would contend that the Trial Judge mainly relies upon the evidence of P.W.55, who is the sole eyewitness and his statement was recorded after 20 days after the date of the incident and he did not inform immediately after he witnessed the incident. Hence it creates doubt in the mind of the Court.

9. Learned counsel for the appellants-accused Nos.2 to 5 in CrI.A.318/2018 has also taken similar grounds and contend that the Trial Court erroneously accepted the evidence of P.W.55 and conviction is based only on surmises and conjunctures and not on the basis of any concrete proof and failed to take note of the fact that statement of P.W.55 was recorded belatedly and the same cannot be ignored as though it is a lapses on the part of the Investigating Officer and committed an error in relying upon the same.

10. Learned counsel for appellant-accused No.1 In Crl.A.No.606/2018 also reiterated the very same grounds as urged in Crl.A.No.751/2018 appeal.

11. Sri C.H. Hanumantharaya, learned counsel for appellants/accused Nos.1 and 6 in his argument would submit that he has been instructed to argue the matter in all the cases. The counsel would vehemently contend that according to the prosecution, the incident has taken place on 09.12.2009 at 10.45 a.m. to 11.00 a.m. The counsel also brought to notice of this Court charges framed by the Trial Court and contend that no proper charges are framed and there is no ingredients of Section 504 of IPC, but there was conviction for the offence punishable under Section 504 of IPC. The counsel also would submit that the case of the prosecution is that the accused assaulted with repiece patti and Long and injured was shifted to different hospitals i.e., Holenarasipura, Hassan and Nimhans and ultimately, he died at Nimhans on 11.02.2009. The counsel would vehemently contend that though prosecution relies upon the evidence of P.W.1 to P.W.56 and out of that, 39 witnesses

have turned hostile i.e., P.Ws.5 to 30 and 33 to 35, 36, 39, 40 and 45 to 48 and other 17 witnesses have supported the case of the prosecution. The counsel would vehemently contend that the motive for committing the murder is that there was difference between accused No.6 and deceased in connection with conducting state level two wheeler race and date was also fixed and it was earlier conducted on 27.01.2008 and also brought out pamphlet which is Ex.P1 and it was cancelled and to that effect, document Ex.D1 was also confronted and marked. The deceased pretended that because of accused No.6, the same was cancelled. Ex.D2 is very clear that on 01.12.2009 the accused was not in the house. The counsel would vehemently contend that even though P.W.1 supported the case of the prosecution, who is none other than the wife of the accused, she categorically admits that he was addicted to drug and having bad vices and deceased was very whimsical and quarreling with each other.

12. The counsel would vehemently contend that though P.W.5 claims to be an eye witness and so also P.W.55 and their evidence not inspires the confidence of the Court and P.W.5 only

deposes with regard to using his car. But, with regard to the incident is concerned, he did not support the case of the prosecution. The counsel also brought to notice of this Court that P.W.55 was belatedly examined before the Trial Court as an eyewitness and he was not examined at the earliest point in time when trial had commenced and ought to have examined all the eyewitnesses together, but the same has not been done. The counsel also brought to notice of this Court that it clearly discloses that the deceased was having bad vices, bad conduct and bad temperament and having enemies and he was also a rowdy sheeter. The counsel also brought to notice of this Court that MOB was also issued against the accused. The counsel also would submit that no MLC is produced before the Court when the injured was taken to different hospitals i.e., Holenarasipura and Hassan Hospital and Nimhans. The counsel would submit that in terms of Ex.D3, it is very clear that assault was made by unknown persons and records of Nimhans also does not disclose the same.

13. The counsel would vehemently contend that the complaint was given in terms of Ex.P4 i.e., at 14.00 hours and no explanation regarding delay is concerned and so also, it is contented that FIR was dispatched at 5.00 p.m. and the same is evident from the records. The counsel would vehemently contend that the prosecution witnesses deposes that on the same day at 4.30 a.m. also, accused persons went to the house of complainant and caused threat, but not given any complaint and counsel would submit that as per Ex.P37, a complaint was given against the deceased on the previous night at 1.30 a.m. P.W.53, who is a PSI, having all powers to register the case immediately on receipt of information, did not register the case and says that he arrested accused No.1 at Halli Mysore and the same is not found in the Station House Diary and there are contradictions in the evidence of prosecution witnesses. The counsel also brought to notice of this court that P.W.35 received FIR at 5.00 p.m., but P.W.53 says it was given at 3.00 p.m. and the evidence of P.W.53 and P.W.35 is contradictory to each other. But, P.W.53 says that complaint was lodged at 2.00 p.m. and there are no chances of lodging the complaint at 2.00 p.m.,

while P.W.35 says that he has received FIR at 5.00 p.m. Hence, it is clear that afterthought with due deliberation, case was registered. The counsel would vehemently contend that prosecution mainly relies upon the evidence of P.W.55 and his statement was recorded on 29.12.2025 and the incident has taken place on 09.12.2009 and the statement of P.W.55 was recorded after the arrest of all the accused persons. None of the accused, who made the voluntary statement disclose about the presence of P.W.55. This witness is a planted witness as an eye witness and other eyewitnesses have also not stated about the presence of P.W.55. P.W.1 is relative to this P.W.55 and answers elicited from the mouth of witness P.W.55 clearly shows that he was not present at the time of the incident.

14. The counsel also would submit that P.W.56, Investigating Officer also not stated anything and there was no reference of presence of P.W.55 and admittedly, he has not appeared for Test Identification Parade when the same was conducted and Ex.P32 evidence the same. The counsel also vehemently contend that with regard to the recoveries are

concerned, there are 14 mahazars and all the recovery witnesses 20 in number have turned hostile and nothing is proved with regard to recovery is concerned. The counsel also submit that FSL report is also not useful and the same is 'negative' and while submitting the seized articles, not obtained any permission from the Court and PF is also not marked and even though the same are not marked, the Court can take judicial note of the same. There is no call details or call records and the Trial Court has convicted the accused only based on evidence of P.W.55 and no other evidence on record.

15. The counsel in support of his argument relies upon the judgment in **ESAKKIMUTHU vs. STATE REPRESENTED BY THE INSPECTOR OF POLICE** reported in **2025 SCC ONLINE SC 1496** with regard to evidence of hostile eye witness and probabilizing the defence and brought to notice of this Court paragraph Nos.31 and 32, wherein the Apex Court discussed improbability gains even more prominence in light of the fact that no other alleged eyewitness has supported the prosecution's case. The fact that the deceased was a habitual drunkard and a

convicted criminal under the Goondas Act makes it highly probable that the deceased had enmities with multiple people who may have assaulted him and caused his death. The counsel also brought to notice of this Court admission on the part of P.W.1 that he is a drug addict. The counsel also brought to notice of this Court discussion made in paragraph No.32 that probable explanations for the crime are being listed to infer that these possibilities cannot be ruled out, and that the case at hand is certainly not the one where it has been proven beyond the shadow of doubt that in all human probability, the act must have been done by the accused only. On the contrary, there remains an impressionable question mark out about the presence of the accused persons at the spot of the crime itself.

16. The counsel also relies upon the judgment in **SURENDRA KOLI vs. STATE OF UTTAR PRADESH AND ANOTHER** reported in **2025 SCC ONLINE SC 2384** and brought to notice of this Court paragraph No.17, wherein, discussion was made to the effect that suspicion however grave, cannot replace proof beyond reasonable doubt. In paragraph

No.17, the discussion was made that it is a matter of deep regret that despite prolonged investigation, the identity of the actual perpetrator has not been established in a manner that meets the legal standards. Criminal law does not permit conviction on conjecture or on a hunch. Suspicion, however grave, cannot replace proof beyond reasonable doubt.

17. The counsel also relies upon the judgment in **VIJAY SINGH ALIAS VIJAY KR. SHARMA vs. STATE OF BIHAR** reported in **2024 SCC ONLINE SC 2623** and brought to notice of this Court paragraph Nos.34 and 35, wherein the Apex Court discussed regarding case of prosecution is full of glaring doubts as regards the offence of abduction. As regards motive, we may suffice to say that motive has a bearing only when the evidence on record is sufficient to prove the ingredients of the offences under consideration. Without the proof of fundamental facts, the case of the prosecution cannot succeed on the presence of motive alone.

18. The counsel also relied upon the judgment in **GOVIND MANDAVI vs. STATE OF CHATTISGARH** reported in

2025 SCC ONLINE SC 2731 and brought to notice of this court paragraph Nos.12, 13, 39, 46 and 47 with regard to inconclusive FSL report, Test Identification Parade and also with regard to the improvement and genesis of the case. The counsel also brought to notice of this Court with regard to Forensic Science Laboratory report and also with regard to analysis of these facts leads to the irrefutable conclusion that two star prosecution witnesses have attempted to modulate and improve their versions while deposing on oath and other incriminating circumstances is the purported recovery of the blood-stained articles said to have been effected pursuant to the disclosure/memorandum statement of the accused. As has been mentioned, none of the recovered articles tested positive for any particular blood group.

19. The counsel also relied upon the judgment in **RENUKA PRASAD vs. STATE REPRESENTED BY ASSISTANT SUPERINTENDENT OF POLICE** reported in **2025 SCC ONLINE SC 1074** and brought to notice of this Court discussion made in paragraph Nos.48 and 49 that if two views are possible, the benefit of doubt goes in favour of the accused. It is also

discussed with regard to the evidence of hostile witnesses and circumstantial evidence.

20. The counsel also relied upon the judgment in **RAJ KUMAR ALIAS BHEEMA vs. STATE OF NCT OF DELHI** reported in 2025 SCC ONLINE SC 2465 and brought to notice of this Court paragraph Nos.57 to 69 in respect of conducting of Test Identification Parade and also recoveries of articles and non-identification of articles. The counsel referring these judgments would vehemently contend that the prosecution has not proved the case and even though it was not proved, the Trial Court committed an error in relying upon the evidence of P.W.1 and P.W.4, who have partly turned hostile and witnesses P.W.5 and P.W.55 and police witnesses and the same not inspires the confidence of the Court. Hence, it is a case for acquittal.

21. Per contra, learned Additional Special Public Prosecutor for the respondent-state would submit that though P.W.5 has turned hostile, but his evidence is very clear with regard to the fact that deceased was along with him on the date of the incident and the deceased used the car which belongs to

him and he was working as a driver with his owner and the owner also has been examined before the Court as P.W.9 and he categorically says that he engaged the services of P.W.5 and when he called him, P.W.5 was scared and the said evidence clearly discloses that P.W.5 was scared when he was called. Hence, it is clear that he witnessed the incident of inflicting injuries by the assailants and Court can draw an inference. She would submit that P.W.1-wife in her evidence categorically deposed before the Court that there was previous ill-will between the accused No.1 and the mother of the deceased and incident has taken place on 02.12.2009 and complaint was lodged and though case was not registered, the same was compromised at the instance of his son P.W.4, who is the brother of the deceased and he also reiterated the same that there was ill-will between accused No.1, deceased as well as accused No.6 and all of them formed an unlawful assembly and inflicted injury with deadly weapons like a repiece and Long. She also would submit that the evidence of P.W.1 and P.W.4 is corroborated by the evidence of P.W.55, who is the eyewitness and P.W.55 narrated how an incident has taken place, since he witnessed the same. She

would submit that though this witness was cross-examined in length, nothing fruitful is found in the cross examination of P.W.55.

22. The learned counsel would further submit that though other witnesses have turned hostile and not supported the case of the prosecution, there is recovery at the spot by conducting mahazar in terms of Ex.P11 and found weapon which was used at the spot and blood stained and unstained mud was also collected. The learned counsel would contend that Ex.P12 is drawn in respect of seizure of the car from P.W.5, who was the driver and P.W.9 was the owner of the vehicle and the same is evident that in that car of P.W.5 victim came. Though, P.W.5 turned hostile, but he has narrated that deceased came in a vehicle and when he found the persons armed with weapons, he ran away from the spot, but not supported inflicting of injury. The evidence of P.W.55 is very clear that these accused persons only inflicted injury with deadly weapons. The learned counsel would further submit that the official witnesses, who have been examined before the Trial Court i.e., police about registration of

the case and conducting further investigation as well as recovery of vehicles and weapon is concerned and recovery is made at the instance of accused No.2 i.e., repiece patti and bike and though recovery witnesses have turned hostile, this Court can rely upon the evidence of official witnesses. The learned counsel would also submit that Exs.P15 and P16 disclose about recovery at the instance of the accused persons and so also in terms of Ex.P13, motorcycle as well as Innova car and also weapons are seized.

23. The learned counsel would submit that accused No.5 himself led panch witnesses and also the Investigating Officer and accused No.5 swam in the Hemavathi river, wherein he had thrown the weapon and the same was recovered at the instance of accused No.5 and accused Nos.5 and 6 disclosed the same and mahazar was drawn in terms of Ex.P16. The accused No.3 also categorically made the statement that he had thrown knife in the river, but recovery failed, since they did not find the weapon which was thrown by accused No.3. The learned counsel would also submit that accused No.1 instigated all the accused from the date of the incident which took place between the

mother of the deceased and himself on 02.12.2009 to commit the murder of the deceased and he was on leave and arrested on 15.12.2009 and Ex.P58 i.e., copy of attendance certificate is very clear that accused No.1 was absent. Hence, it is clear that he is the mastermind in eliminating the deceased. She would also submit that recovery at the instance of the accused is nothing but disclosure statement and none was aware of that weapon which was used for committing the offence was shown in the Hemavathi river and the same is recovered at the instance of accused No.5 and the same is nothing but a disclosure statement and the Court can take note of the same.

24. No doubt, joint recovery is made at the instance of accused Nos.5 and 6, but when there is a recovery at the instance of accused No.5 i.e., Iron Long, the same is admissible. She would submit that though P.W.5 denies about the case of the prosecution, but the evidence of P.W.8, father of P.W.5 is very clear that he took the deceased in his car and the same is reiterated by P.W.9 that P.W.5 was working under him and the same is also spoken by P.W.8 that his son was working under

P.W.9 and P.W.9 categorically says that P.W.5-driver was at Hassan and he was apprehended at Hassan, since he had communicated the same that he is in Hassan and thereafter, his statement was also recorded, since he is also an eyewitness to the incident. Though he turned hostile, the evidence of P.W.8, P.W.9 and P.W.5 has to be conjointly read to consider the case of the prosecution. She would further submit that the evidence of P.W.1 and P.W.4 is consistent with regard to previous ill-will and nothing is elicited with regard to witnesses have spoken about the previous ill-will and it is also very clear that in respect of the incident dated 02.12.2009, complaint was given and the same was not registered and it was compromised at the instance of son of the complainant, who also passed away subsequent to the incident and no fruitful evidence is found during the course of cross-examination of P.W.1 and P.W.4 and the fact that complaint was given and the same was compromised was not denied by the defence. Hence, it is clear that there was previous ill-will between them.

25. The learned counsel would further submit that FSL report also discloses that Iron Long which was found at the spot was stained with blood and the same is 'positive' and recovery of Iron Long at the instance of accused No.5 was not stained with mud, but there was no stains because the same was inside the river and the Court also cannot expect the same. The learned counsel also submit that the evidence of sole eyewitness is sufficient and the same is taken note of by the Trial Court while convicting the accused. The learned counsel would further submit that the Trial Court also considered the evidence of P.W.1, P.W.4 and P.W.5 and also the evidence of recovery official witnesses, who have consistently deposed before the Trial Court with regard to the incident is concerned. The evidence of P.W.55, who is an eyewitness is consistent and reliable and sole evidence of eyewitness is enough to convict the accused and the Trial Court rightly convicted and sentenced the accused and it does not require any interference of this Court.

26. Having heard learned counsels for the appellants and learned Additional Special Public Prosecutor for the respondent-

State and also considering the grounds which have been urged in all the appeals and also the principles laid down in the judgments, the points that would arise for consideration of this Court are:

- (i) Whether the Trial Court committed an error in accepting the case of prosecution in coming to the conclusion that accused Nos.1 to 6 only committed the murder of Trineshkumar and whether such finding requires interference of this Court by acquitting all the accused persons?
- (ii) What order?

Point No.(i):

27. Having heard respective counsels for the appellants and also learned Additional Special Public Prosecutor counsel for the respondent-State and also considering both oral and documentary evidence available on record, now, this Court has to consider the evidence available before the Court. No doubt, number of witnesses have turned hostile, nothing is elicited from the mouth of these witnesses, the only evidence available before the Court is P.W.1, P.W.4, P.W.5, P.W.8, P.W.9, P.W.50, P.W.53,

P.W.55 and P.W.56 and also the official witnesses and whether this Court has to examine the same and the evidence of these witnesses inspires the confidence of the Court. We have given our anxious consideration to the evidence available on record both in respect of evidence of eye witnesses' circumstantial witnesses and also recovery witnesses'. Though independent witnesses and recovery witnesses have turned hostile, this Court has to examine whether the evidence of official witnesses with regard to recovery is reliable and consistent. Hence the evidence of the official witnesses is necessary for consideration of case of the prosecution and also the grounds which have been urged in the appeals and also learned Senior counsel pointed out the grounds for disbelieving the case of prosecution and in the light of the said submission, this Court has to analyse the evidence.

28. It has to be noted that case was registered on 09.12.2009 and there was delay in registration of the case. The Court has to take note of the fact that statement of eye witnesses was recorded on the date of the incident itself i.e., P.W.6 and P.W.7, but both of them have turned hostile and they

did not mention the name of the accused. But, the fact is that statement of eye witnesses was recorded on the date of the incident and also it has to be noted that at the first instance, case was registered for the offence punishable under Section 307 of IPC and the same is converted for the for the offence punishable under Section 302 of IPC, consequent upon the death of the injured on 11.12.2009.

Whether case of Homicidal

29. The prosecution mainly relies upon the evidence of P.W.1, P.W.4, P.W.5. According to the prosecution, P.W.5 is an eyewitness and he was treated hostile in part and other eyewitness is P.W.55, who is the sole eyewitness to the incident, who has supported the case of the prosecution. The Court has to take note of evidence of police witnesses and mahazar witnesses have not supported the case of prosecution. Before considering the oral and documentary evidence available on record, this Court would like to consider the material with regard to whether the death of Trineshkumar is on account of homicidal and this Court has to rely upon the evidence of P.W.50-Dr.Lakshmi

Rajyam, who conducted the Post Mortem examination. Having perused the evidence of P.W.50 and Ex.P48-PM report, it is clear that injured had sustained 13 external injuries and the said injuries are grievous in nature. The Doctor also given further opinion in terms of Ex.P49 that these external and internal injuries could be caused using Long and also repiece patti.

30. This witness was subjected to cross-examination. In the cross-examination, she admits that the Doctor who has first examined the injured has put the stitches and she came to know that it was an assault and x-ray was not taken and incised wound could be caused if the injured comes in contact with hard objects. She admits that she has given Ex.P49-opinion based on Ex.P48-PM report and suggestion was made that opinion is given in terms of Ex.P49 as per the request of the police and the same was denied. Having considered the evidence of P.W.50, it is very clear that there were 13 external injuries and 6 internal injuries and there was swelling in the brain bone and there was also fracture in the head. Having taken note of nature of injuries and also the evidence of the Doctor, it is a clear case of homicidal

and Trial Court also taking note of material on record, particularly appreciating the evidence of P.W.50 and the documents of Ex.P48-PM report and Ex.P49-opinion of the Doctor comes to the right conclusion that it is a case of homicidal.

Analysis of evidence of both eyewitnesses and circumstantial evidence

31. Now, this Court has to consider the evidence of eye-witnesses as well as circumstantial evidence in keeping the principles laid down in the judgments referred supra by the counsel appearing for the appellants and also have to consider the motive for committing the murder so also the recovery at the instance of the accused persons in the light of Section 27 of the Evidence Act and also have to consider that when the panch witnesses have turned hostile with regard to the recovery, whether this Court can rely upon the evidence of police witnesses if it is consistent and reliable and whether any inconsistency in the evidence of prosecution witnesses.

32. This Court in the light of the judgments of the Apex Court in a case of **NARSINBHAI HARIBHAI PRAJAPATI ETC. v. CHHATRASINH AND OTHERS** reported in **AIR 1977 SC 1753**; **MEHARAJ SINGH v. STATE OF U.P.** reported in **(1994) 5 SCC 188**; **KANSA BEHERA v. STATE OF ORISSA** reported in **(1987) 3 SCC 480**; **BABUDAS v. STATE OF M.P.** reported in **(2003) 9 SCC 86** would like to rely upon both oral and documentary evidence placed on record.

33. In this regard, this Court would like to rely upon the judgment of the Hon'ble Apex Court in the case of **LEELA RAM (DEAD) THROUGH DULI CHAND v. STATE OF HARYANA AND ANOTHER** reported in **(1999) 9 SCC 525**, wherein it is held that evidence should be considered from the point of view of trustworthiness. In criminal cases corroboration with mathematical niceties should not be expected. With regard to related witnesses, testimony of evidentiary value particularly in murder case, if the evidence testifies the act of the accused and in absence of some other factor to discredit the said witnesses, the Apex Court held that, the evidence of related witnesses could

not be rejected merely on the ground that they were interested witnesses.

34. The Hon'ble Apex Court in its judgment in the case of **LALTU GHOSH v. STATE OF WEST BENGAL** reported in **AIR 2019 SC 1058**, in the case of **MD. ROJALI ALI v. STATE OF ASSAM** reported in **AIR 2019 SC 1128** and in the case of **STATE OF M.P. v. CHHAAKKI LAL** reported in **AIR 2019 SC 381** with regard to the related witnesses and interested witnesses held that, the testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim of the offence. In such a case, the Court has to adopt a careful approach in analyzing the evidence of such witnesses and if the testimony of the related witness is otherwise found credible, accused can be convicted on the basis of testimony of such related witnesses. The same cannot be a ground to discard the evidence of interested witnesses.

35. The three Judge Bench of the Apex Court in the case of **MUKESH v. STATE OF NCT OF DELHI AND OTHERS** reported in **AIR 2017 SC 2161**, held that if anything or

weapons etc. are recovered at the instance of the accused under Section 27 of the Evidence Act, only in the presence of police party and there is no public witness to such recovery or recovery memo, the testimony of the police personnel proving the recovery and the recovery memo cannot be disbelieved merely because there was no witness to the recovery proceedings or recovery memo from the public particularly when no witness from public could be found by the police party despite their efforts at the time of recovery. But in the case on hand, not only the police witness who has recorded the voluntary statement of the accused has spoken about the recovery, but panch witnesses turned hostile and hence considered the reliability of police witnesses.

36. The Apex Court in its judgment in the case of **BODH RAJ v. STATE OF JAMMU AND KASHMIR** reported in **AIR 2002 SC 3164**, held that the object of the provisions of Section 27 of the Evidence Act was to provide for the admission of evidence which but for the existence of the section could not in consequences of the preceding sections, be admitted in

evidence. Under Section 27, as it stands, in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. In the case on hand, on arrest of the accused, disclosure statement was made under Section 27 of the Evidence Act.

37. In keeping the principles laid down in the judgments referred supra, this Court has to analyze both oral and documentary evidence placed on record. It is the fact that the incident was taken place in between 10.45 a.m. to 11.00 a.m. on 09.12.2009 and there is no dispute to that effect. It is emerged during the course of evidence that immediately, the information was given to the police by the public over phone. It has to be noted that injured was immediately shifted to the Holenarasipura Hospital then, he was taken to the Hassan Hospital and also to NIMHANS. But injured was not in a position to make the statement as he had sustained severe injuries. The complaint was given by the mother of the deceased in terms of Ex.P4 and PW4 claims that he only written the complaint as per the details given by deceased mother and P.W.4 came from

Mysore. Having perused Ex.P4, it is very clear that accused No.1 quarreled with the mother of the deceased on 02.12.2009 and assaulted. Though, it is mentioned that, the case was registered against him but only complaint was given, but not placed any document on record to show that the case was registered.

38. It is specific case of the complainant that accused No.6 who is the member of the Municipal Council insisted to take back the case causing life threat. But the deceased informed that let the case be decided in the Court. On the same day, in the early morning at 04.30, accused persons came with Machete and Long and caused life threat and insisted to take back the complaint and since the deceased was not at the house, threatened the mother of the deceased. At that time, Satisha, Manja @ Hotte Manja, accused No.6 and other persons were also there and mother of the deceased identified those persons who caused threat stating that they are going to eliminate her son and abused and left the place. But on the very same day, the mother of the deceased came to know about the incident that accused persons have caused injury to her son and she went to

the spot and saw her son who has sustained the injury on his neck, head and other parts of the body. In the complaint, it is specifically mentioned that accused No.6, Satisha, Manja @ Hotte Manja are responsible for the same along with others. As the deceased was not in a position to speak, immediately, he was taken to the hospital and the same was informed to the family members and there was a delay in lodging the complaint. This complaint was given at 14.00 hours and registered the case in Crime No.243/2009. Having perused this complaint, it shows that a reference was made with regard to the previous incident dated 02.12.2009 and on the date of the incident, at about 04.30 a.m., accused persons came and searched the deceased and threatened the life of him in front of the mother. Based on this complaint, FIR was registered and the same is sent to the Magistrate and Magistrate has received the same at 05.45 p.m. and the same was dispatched at 05.00 p.m. No doubt, there is a gap between 02.00 p.m. to 05.00 p.m. and to that effect also, witness was examined i.e., P.W.35.

39. Now, the main contention of the counsel appearing for the defence is that Ex.D3 is very clear that on 11.12.2009, the intimation was given by the NIMHANS Hospital with the history of assault by unknown person. But the fact is that in terms of the complaint as per Ex.P4, the role of three of the accused persons on 09.12.2019 is mentioned. Hence, the document of Ex.D3 will not come to the aid of defence since the persons who took the injured to the NIMHANS Hospital on the very same day at night were not aware of the fact that who had inflicted the injury to the deceased. But the fact is that FIR was registered on the very same day and some of the accused name is mentioned. Hence, the contention of the defence cannot be accepted.

40. Now, this Court has to take note of the contents of Ex.P4. This Court pointed out that earlier, an incident was taken place on 02.12.2009 and also on the very day of the incident, accused persons went to the house of the deceased. This Court also would like to take note of the complaint given by accused No.6 as per Ex.P37. Having considered Ex.P37, it discloses that

the same corroborates with the contents of Ex.P4 that there was a galata between accused No.1 and mother of the deceased on 02.12.2009 and accused No.6 categorically says in Ex.P.37 that a case was registered in this regard and on the intervention of himself, his lawyer-Sridhar and Valekumara spoken with the brother of the deceased Gururaj-PW4 and they have advised in the panchayat. Hence, it corroborates the contents of Ex.P4. Accused No.6 categorically admits that he has let out the premises to accused No.1-Sathisha i.e., his house. Though denied the same in the cross-examination, but his admission in Ex.P.37 takes away the defence. Accused No.6 categorically says that the deceased came at around 11^o clock on 08.12.2009 and insisted him to get vacate accused No.1 from his house and he came along with 3 persons and also abused him stating that he is supporting accused No.1 and the deceased came with Machete and the same is evident in the mahazar drawn that they found one Machete in the car which was seized at the spot on the very same day of incident. Accused No.6 also categorically says that deceased came and caused the life threat in the night. The same was witnessed by the employees of accused No.6 and they came

and pacified the galata. The deceased slapped one of them and left the place. It is important to note that accused No.6 categorically says that the deceased came in white Maruthi Van. Hence, it is clear that PW5 who was the driver of the said car went along with the deceased on the date of incident to the house of accused No.6 but not deposed the same.

41. It is important to note that the document of Ex.P37 corroborates the case of prosecution with regard to the earlier incident dated 02.12.2009 and also 4.30 a.m. visit by accused persons and also the life threat caused by the deceased to accused No.6. It has to take note that this complaint was given in the midnight on the very same day of incident i.e., at around 01.30 a.m. by accused No.6 and the case was registered for the offences punishable Sections 323, 504, 506, read with Section 34 of IPC and FIR is also registered as per Ex.P38 and dispatched at 02.30 a.m. It has to be noted that Ex.P4 discloses that accused went to the house of deceased in search of him at 04.30 a.m. and the same is evident in the document of Ex.P4 and the defense cannot deny the contents of Ex.P37 and P38

since the same is given by accused No.6 and the same substantiate the case of the prosecution.

42. Having considered these documentary evidence, this Court has to rely upon the oral evidence. PW1 – wife as well as PW4 - brother of the deceased who stated all these things in their evidence i.e., with regard to the previous galata between the mother of the deceased and also accused No.1 and they also spoken about that at the instance of accused No.6, the bike race which was organized by the deceased was cancelled and the same was not disputed and the cancellation of bike race was noticed at the instance of the defence itself. Hence, there was an ill-will between the deceased and accused No.6. But, the deceased has not given any complaint in this regard. PW1 also deposes with regard to vacating the house by accused No.6 which was let out to accused No.1 by accused No.6 and she also deposed about the incident of 02.12.2009. Accused No.1 claims that he is having the support of accused No.6 and given the complaint by her mother-in-law and compromised the said issue since they sought apology. The mother of the deceased had

informed that on the particular date, accused persons came and searched the deceased in the early morning and this fact is also found in Ex.P4.

43. PW4 also reiterates the said fact. No doubt, in the cross examination of PW1, it is elicited that the deceased was drug addicted person and the same is admitted by PW1, the wife of the deceased. PW4 categorically says that at his intervention, the complaint given in respect of the incident dated 02.12.2009 was got compromised and defence also elicited the same and not denied the same. Even if it is denied also Ex.P37 is very clear in this regard. The evidence of PW1 and PW4 is very clear with regard to the advice made; enmity and differences between the deceased and accused Nos.1 and 6. Though counsel appearing for the appellants would submit that there are omissions and commissions in the evidence of PW1 and PW4, the document of Ex.P4 as well as Ex.P37 will not take away the case of the prosecution even if there are some omissions. The counsel brought to notice of this Court that having received the information from the mother, PW4, on the next day, did not rush

to the village. No doubt, it is emerged that having received the information of inflicting the injury, PW4 rushed to the village and given the complaint by taking his mother to the police station in terms of Ex.P4. It is the contention of the counsel appearing for the appellants that there was an improvement in the evidence of the prosecution but we did not find the same in view of the contents of Ex.P37 as well as Ex.P4 and Court also cannot expect each and every incident narration either in the FIR or in the complaint which was lodged at the first instance since family members will be under grief in view of the said incident and P.W.4 also on information came from Mysore and there was a delay in giving the complaint.

44. Now, this Court has to consider the evidence of eye witnesses. According to the prosecution, PW5, PW6, PW7, PW26, PW27 and PW55 are eye witnesses. But PW6, PW7, PW26 and PW27 have completely turned hostile to the case of prosecution. Even they have treated as hostile, they subjected to cross-examination and in the cross-examination also nothing is elicited from them. Now, the only eyewitness remains is PW5 and PW55.

It has to be noted that PW5 is the driver of the car in which the deceased had travelled. But it is the case of the prosecution that PW55 also travelled along with them. But PW5 says that PW55 has not travelled, only deceased has travelled in his car. But in the evidence of PW5, he made an attempt to say that the deceased was having several enemies. Though, PW5 did not support the case of prosecution, his evidence is very clear with regard to the fact that there was a quarrel between the deceased and some persons. He says that after coming to Holenarasipura, went to bar and there were three persons along with the deceased and deceased came out alone and deceased quarreled in the bar also and thereafter, he quarreled with other persons also and the deceased came out and sat in his car. Thereafter they went near the Muslim area of Holenarasipura, there, the deceased found some persons and quarreled with them also. When the people came to assault the deceased, again he came and boarded the car and left that place and also went near the Kalyana Mantapa, wherein also the deceased quarreled with some persons. Then, the deceased asked him to sleep in the car and the deceased also slept in the car. But this Court has to take

note of the fact that this witness did not speak anything about the fact that deceased went near the house of accused No.6 and he only speaks that the deceased quarreled with several persons at different places. But the fact is that accused No.6 himself admits that the deceased came in a white Maruthi Van which belongs to PW5. Hence, it is clear that PW5 was won over by the defence. However, he categorically says that he had witnessed the several persons coming with Long and Machete and being afraid of himself, he left the car at the spot and boarded the lorry and went to the Hassan. Hence, it is clear that only in respect of the incident is concerned, PW5 turned hostile. No doubt, nothing is elicited in his cross-examination. But the fact is that he was there at the time of the incident.

45. In order to consider the evidence of PW5, this Court has to consider the evidence of PW8 who is none other than the father of PW5. PW8 categorically admits that PW5 was working with PW9 and also admits that he himself and also the owner of the vehicle went in search of his son to Hassan. Police Sub-Inspector was also along with PW5 who had found him near the

Hassan dairy. Thereafter, all of them came to the police station and police enquired PW5 but PW8 did not enquire PW5. Hence, it is clear that the evidence of PW5 corroborated with the evidence of PW8 that PW5 was in Hassan as deposed by PW5-eyewitness.

46. Now, this Court has to consider the evidence of PW9 who is the owner of the car in which PW5 taken the deceased to the Holenarasipura. PW9 categorically says that he came to know that his car was seized in connection with the murder and they were in search of his driver. He categorically says that within 2 or 3 days, PW5 called him and informed that he lost the mobile. He also categorically says that he was near Hassan dairy and he was scared and not taken the food from last two days and PW9 informed the same to the Circle Inspector who visited the house of PW9. Thereafter, he himself and the father of PW5 went to Holenarasipura and when he called Circle Inspector, Circle Inspector informed him that PW5 is at Hassan only. Hence, both of them were accompanied by A.S.I. – Shivakumar and searched PW5 at Hassan and found him there. Thereafter, all of them came to the police station and police enquired PW5

not by themselves. Hence, it is very clear that PW5 was scared by witnessing the incident. PW5 evidence is also very clear that having left the car at the spot, he boarded the lorry and went to Hassan. The evidence of PW9 is very clear that when he spoke to PW5, he was scared and also he has not taken the food from last two days. If he has not witnessed the incident, what made him to board the lorry and travel to Hassan immediately and what made him for being scared and not taking of food for two days. Hence, it is clear that he being the eye-witness, he was won over by the defence and this evidence also corroborates the case of prosecution. Though in the climax, PW5 turned hostile saying that he did not witness the incident. But the fact is that he was scared by witnessing the persons who were having Long and Machete in their hands.

47. Now, this Court has to consider the other witness-PW55, who is an eye-witness according to the prosecution. The main contention of the appellants that his statement was recorded on 29.12.2009 i.e., after lapse of 20 days. No doubt, it is not in dispute that his statement was recorded on 29.12.2009.

To this fact is concerned, this Court has to examine whether there is an explanation. In this regard, this Court has to consider the evidence of PW53 - IO who recorded the statement of PW55. In the cross-examination, he gave an explanation that he was not aware of witnessing the incident by PW55. The explanation is given that later, he came to know about the same and hence, he did not inform the same in Court that there are eye-witnesses. When such explanation is given that later he came to know about PW55 who was also witnessed the incident, the same cannot be found fault with.

48. In this regard, this Court would like to rely upon the judgment reported in **2025 SCC ONLINE SC 627** in the case of **FIROZ KHAN AKBARKHAN vs STATE OF MAHARASHTRA**. The Apex Court in this judgment in paragraph 21 held with regard to the delay is concerned referring several judgments that no doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in **Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371**.

Further observation is made however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. In **Jagjit Singh v. State of Punjab, (2005) 3 SCC 689** and **State of A.P. v. S Swarnalatha, (2009) 8 SCC 383**, the Court held in favour of the convict/accused, as the inordinate delay therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in **Lal Bahadur v. State (NCT of Delhi), (2013) 4 SCC 557**. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in **Baldev Singh v. State of Punjab, (2014) 12 SCC 473**. Delay in recording witness statements was held not fatal per se in **Sunil Kumar v. State of Rajasthan, (2005) 9 SCC 283** and **V K Mishra v. State of Uttarakhand, (2015) 9 SCC 588**. The sum and substance is that delay in recording statements of witnesses was held to have cast serious

doubts on the prosecution version in **Shahid Khan v. State of Rajasthan, (2016) 4 SCC 96.**

49. Having taken note of the principles laid down in the judgments referred supra, delay of 3 days to 2 years was taken note of by the Apex Court in several judgments and held that the same is not fatal. But it is very clear that thus, *stricto sensu*, delay in recording witness statements, more so when the said delay is explained, will not aid an accused. Of course, no hard-and-fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it.

50. Having considered the principles laid down in the judgment referred supra, no doubt, in the case on hand, there was a delay of 20 days in recording the evidence of PW55. It has to be noted that this witness is not the only an eye-witness and there were several eye-witnesses, particularly PW5. This Court in detail discussed that PW5 was won over by the defence and only in respect of the climax is concerned, he has turned hostile. But

PW6, PW7 and PW26 and PW27 have completely turned hostile and their statement also recorded in between these 20 days. But the fact is that PW6 and PW7 evidence was recorded on the very day of the incident and other witnesses statements were recorded in between that 20 days. But the IO has given his explanation that he was not aware of the fact that PW55 also witnessed the incident and only during the course of investigation, he came to know about the same, that is why, the same is not found entry in the CD as well as in the remand application. When such explanation is given, the delay of 20 days in recording the statement of PW55 cannot be a fatal to the case of prosecution.

51. Now, this Court has to consider the evidence of PW55 to know that whether his evidence is consistent or not. Having perused his evidence, it is very clear that PW55 went to his sister's house at Balur on 07.12.2009 and on the next day, deceased Trineshkumar along with his wife and child came to Balur and he met the deceased and deceased asked him to go to K.R.Nagar and then to Holenarsipura and he accompanied the

deceased in a car belongs to PW5 since he was known to PW5 who is a driver of the said car as the deceased took the services of the car of PW5 only. This witness also reiterates that when they came near the petrol bunk at Holenarsipura, there was a galata among the friends of deceased. The deceased went and spoke to them and came back. Though, all the three were sitting in the car, deceased went and brought the Machete from his house and thereafter, they went to Dabha to have the food and deceased went to the house which is located in the garden and called the person by name Putti and words were exchanged between Putti and deceased about 20 minutes, at that time PW55 was also there along with the deceased as deposed. Putti agreed to get the house vacated within 2 to 3 days and they came back. While coming back, deceased saw some persons and assaulted one of them and Putti came to the spot where galata was taking place and deceased asked Putti that whether those people are more than him. This witness identifies each of the accused persons before the Court including the photographer with whom the deceased was speaking. PW55 further deposed that when they were proceeding, accused No.6 was following

them and when they went near the Dodda Masjid, driver could not able to move from the spot since there was a electric pole and sand. At that time, the deceased was surrounded by the persons who came in a motorcycle and accused No.6 was speaking with the deceased and immediately, the persons who came in the motorcycle with Machete, repiece patti and Long, started to assault the deceased and one among them took the repiece patti from the petty shop and assaulted the deceased and the same was witnessed by PW55 and overt act is also narrated in his evidence. PW55 further deposed that apart from deadly weapons, even assaulted the injured with their hands. Car driver and himself were watching the said incident. PW5 having witnessed the incident, ran away from the spot being scared and accused persons were also searching them and PW55 came to Mysuru and stayed in his friend's room. Later, he came to know about the death of the injured.

52. PW55 was also subjected to cross examination. In the cross examination, he says that the distance between his village and Balur is 70 k.m., and the distance between K.R.Nagar

and Balur is 13 to 15 k.m. There was no special day at Balur on 08.12.2009. A question was put to this witness that why he did not give intimation to the police, for that, he says that being scared of the said incident, he went and stayed in his friend's room at Mysore and he was not aware of the death of the injured and subsequently, he came to know about the same. When police called him visiting his village, he gave the statement before the police and police have put certain questions to him and he did not make the statement before the police. But he categorically says that with regard to the incident at petrol bunk, he made the statement with the police and he did not made any attempt to inform the police till he was called.

53 He also admits that the police have not shown all the accused. It is suggested that on that day he did not accompany the deceased to Holenarasipura and the same was denied. He admits that he gave the statement before the police that he spoke to P.W.5 when car was required for hire purpose. This admission takes away the case of the defence that P.W.5 did not take P.W.55 along with him when the car was taken for hire

purpose. He also claims that he made the statement before the police that the deceased went and brought the machete. But though not stated before the police that he went and brought, but categorically says that he made the statement before the police that he brought the machete. He also says that the deceased went near the wine store, which is located near the circle. But he cannot tell the circle name. He categorically deposes that the deceased went to wine store and came back within 10 minutes. It is suggested that he did not make the statement before the police that he went to the farm house and called him as Putti and the same was denied. Though such suggestion was made, it is very clear that Putti alias Puttaraj himself admitted the same in the document of Ex.P.37 complaint. It is suggested that M.O.10 and M.O.11 will be available in any farmers house and the same was denied. It is suggested that this type of weapons will be available in scrap market and he says that he does not know. He admits that he does not know any specific identification mark of the weapon. It is suggested that he is deposing before the Court falsely that he was very much present and the same was denied.

54. Having re-assessed the evidence available on record, P.W.55 categorically deposed before the Court that the deceased called him to go to K.R. Nagara and in K.R. Nagara took the vehicle of P.W.5 and he was known to P.W.5. He only called him and engaged the car and also narrated having come to Holenarasipura, he went and brought the machete and also went to the wine store and dhabha and also to the house of accused No.6. There was a galata between accused No.6 and his men and accused No.6 followed him and when the driver was unable to move, at that time, all of them gathered and inflicted injury and all of them came in the motorcycle. He identifies the weapon as well as the accused persons before the Court and categorically deposed that P.W.15 ran away from the spot having witnessed the incident. In the cross-examination, though certain omissions are elicited from the mouth of this witness, but he withstood the cross-examination that he did not make the statement before the police immediately, since the police had not called him. The evidence of police is also very clear that when they came to know about he was also present, then only they recorded the statement of P.W.55 and explanation is given

and also even narrated that he met the photographer and also quarreled with him and there was a quarrel near the wine shop. He categorically deposes before the Court that he made the statement before the police for having went and met accused No.6 and he has narrated what had happened on the previous day. Even gone to the house of accused No.6 and having met accused No.6, accused No.6 also lodged a complaint with the police in terms of Ex.P.37. The other witnesses have turned hostile. Though P.W.5 denies that P.W.55 did not accompany him, but whatever P.W.5 spoken before the Court is also reiterated by this witness and Ex.P.37 substantiate the same. The complaint Ex.P.37 is very clear that the deceased came along with three persons. Hence, it is clear that the driver, deceased and one more person was there when they visited the house of accused No.6 at 11.00 p.m. on 08.12.2009. The documentary evidence also substantiate the presence of another person. P.W.55 categorically narrated that they went to the house of accused No.6 in the night and even he came down from first floor to ground floor when the deceased slapped the persons of accused No.6. Ex.P.4 is very clear that all of them went near

the house of the deceased in the early morning at 4.30 a.m. P.W.4 also categorically deposes that his mother had called and informed about the same and in the very document of Ex.P.4, it is mentioned with regard to the incident of 02.12.2009 as well as 4.30 a.m. on the very next. Even though other eyewitnesses have turned hostile, considering the evidence of P.W.1, P.W.4, P.W.5 and this eyewitness P.W.55, the same substantiate the charges levelled against the accused persons.

55. The other contention of the learned counsel appearing for the appellants is that test identification parade was not conducted. The test identification parade is necessary only if the witnesses are not having any acquaintance with the accused persons or otherwise not necessary. No doubt, admittedly this witness did not participate in the test identification parade and other test identification parade witness participated and did not identify the accused, but the same will not take away the case of the prosecution. The very document of Ex.P.4 given by the mother of the deceased specifies the role of the accused persons i.e., Puttaraju, Sathisha and Hotte Manja and also mentioned

that others came to the house in the early morning. All these materials disclose connecting of the accused persons in eliminating the deceased and hence, the judgment which has been relied upon by the learned counsel for the appellants with regard to test identification parade is concerned, will not come to the aid of the defence.

56. We have perused the material available on record with regard to the recoveries is concerned and no doubt, all the witnesses with regard to the recovery is concerned, turned hostile in respect of 14 mahazars and 20 witnesses, except the official witnesses. It has to be noted that the mahazars at Exs.P.11 and 12 are in respect of conducting the mahazar at the spot and seizure of one weapon i.e., iron long at the spot. The same was sent to FSL and FSL report Ex.P.53 is positive that human blood found on the weapon as well as on the cloth of the deceased are one and the same. It is important to note that immediately after the arrest of accused No.1 and also the other accused persons, voluntary statements were recorded. In terms of the voluntary statement, recovery was made at the instance

of accused No.2 as per Ex.P.16 i.e., repiece patti and no doubt, the same is not stained with blood. Accused No.2 bike was seized and in respect of accused No.1 is concerned, Ex.P.13 is drawn and bike was seized for having used the bike arriving to the incident spot. The accused No.3 also gave the voluntary statement that if he is taken near Hemavathi river, he is going to produce the knife, which was thrown in the river. But the recovery was failed, since the same was not found. The accused No.5 went and searched the long in the Hemavathi river and produced the same before the Investigating Officer and mahazar was drawn in terms of Ex.P.16. In order to connect accused No.1 is concerned, it is very clear that from the date of incident of 02.12.2009, he did not attend the duty and he being a 'D' group employee in the hospital, till the date of his arrest at Halli Mysore on 15.12.2009, he did not attend the duty and the Court has to take note of the conduct that from the day one of the incident taken place near the house of the deceased since he assaulted the mother of the deceased, he was not attending duty and he was taking the assistance of accused No.6 and the deceased went near the house of accused No.6 in the previous

night and complaint was given in terms of Ex.P.37 by accused No.6 against the deceased and all these material connect that the accused persons only inflicted the injury.

57. No doubt, it is the disclosure statement by accused No.5 under Section 27 of the Evidence Act that, since the long was inside the river, he only searched and recovered and handed over the same and there was a recovery. But the Court has to take note of the evidence of official witness i.e., police with regard to the recovery, since other recovery witnesses have turned hostile. The Investigating Officer seized the iron long at the instance of accused No.5 and seized the vehicle from the accused persons i.e., motorcycle in which they went and participated in the crime. P.W.56 in detail spoken that accused No.1 was arrested on 15.12.2009 and his voluntary statement was recorded as per Ex.P.56 and bike was seized. On 16.12.2009, a mahazar was drawn for seizure as per Ex.P.13. Ex.P.1 pamphlet clearly discloses that bike race pamphlet was seized. The accused Nos.2 to 6 were arrested at Channnarayapatna on 23.12.2009 and produced before him and

thereafter, the voluntary statement of accused Nos.4 and 5 was recorded and seized the mobile from them and mahazar was drawn in terms of Ex.P.14(c). The voluntary statement of accused No.2 was recorded and seized ripiece patti by drawing the mahazar in terms of Ex.P.15. The voluntary statement of accused Nos.5 and 6 was recorded as per Exs.P.61 and 62 and seized iron long produced by accused No.5 and mahazar was drawn in terms of Ex.P.16 between 2.45 p.m. to 4.00 p.m.

58. No doubt, in the absence of independent panch witnesses, credibility cannot be given to official witnesses. But if it inspires the confidence of the Court and the evidence is consistent, the police official witnesses cannot be discarded. In the cross-examination of P.W.56, except making a suggestion that no such voluntary statements are given, nothing is elicited. In the cross-examination of P.W.56 regarding recovery from accused No.5 i.e., iron long, is not denied. Except making the suggestion that mobile is not recovered i.e., M.O.18 in terms of Ex.P.14, nothing is elicited. Except this suggestion, no denial of

recovery of iron long from accused No.5 and hence, the evidence of P.W.56 is very clear.

59. With regard to non-conducting of test identification parade, it is admitted by P.W.56 that he did not conduct the test identification parade and also did not mention the car number. The very suggestion made to P.W.56 is that he was having acquaintance with the driver Mohan and this admission takes away the case of disputing the evidence of P.W.55 eye witness. It is also important to note that a suggestion was made that P.W.55 has not given the statement that they went to the farm land and called Putti. But the same is not disputed, since accused No.6 himself has given the complaint that deceased went to his house along with three persons and he himself has given the complaint and this omission will not take away the case of the prosecution and he has given the complaint in terms of Ex.P.37 in the midnight at 1.30 a.m. The evidence of the official witness i.e., P.W.56 regarding arrest of the accused and recovery is consistent. This Court can rely upon the evidence of the police witness, if it is trustworthy.

60. This Court would like to rely upon the judgment of the Apex Court in the case of **PRAMOD KUMAR v. STATE (GNCT) OF DELHI**, reported in **AIR 2013 SC 3344**, wherein the Apex Court held that there is no principle of law that without corroboration by independent witnesses, the testimony of police personnel cannot be relied on. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good reasons. In the case on hand, we do not find such circumstances to distrust the evidence of the police. As a rule it cannot be stated that Police Officer can or cannot be sole eye witness in criminal case. Statement of Police Officer can be relied upon and even form basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record. The same is also held in the judgment of the Apex Court in the case of **GOVINDARAJU ALIAS GOVINDA v. STATE OF SHRI RAMAPURAM P.S. & ANOTHER** reported in **AIR 2012 SC 1292**.

61. This Court would like to rely upon the judgment of the Apex Court in the case of **RENUKA PRASAD v. STATE REP. BY ASSISTANT SUPERINTENDENT OF POLICE** reported in **2025 SCC ONLINE SC 1074**, wherein the Apex Court in paragraph No.13 held as under:

"13. State of H.P. v. Pardeep Kumar reported in (2018) 13 SCC 808 again was a case in which there were no independent witnesses to attest the recovery of the contraband, since none were available due to the severe cold on that day. The conviction was based on the testimony of seizure of contraband from the accused, as testified by the Police Officers. We cannot digress from the above proposition as laid-down by this Court but only raise a caution, insofar the recovery made under Section 27, in the context of the findings of the High Court, in the instant case, having to be necessarily connected to the crime and the accused, failing which the recovery is of no consequence. We also have to observe that the confession can only be with respect to the discovery of a fact leading to the recovery of a material object and cannot be with respect to any confession as to the actual crime as

*has been held in **Pulukuri Kottaya v. Emperor** reported in **AIR 1947 PC 67.**"*

62. The Apex Court in the judgment in the case of **KARAMJIT SINGH v. STATE (DELHI ADMINISTRATION)** reported in **(2003) 5 SCC 291** has held that the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.

63. The Apex Court in the case of **RIZWAN KHAN v. STATE OF CHHATTISGARH** reported in **(2020) 9 SCC 627**, in paragraph No.10.2 held that independent witnesses (panchnama witnesses) have turned hostile, that does not adversely affect the case of the prosecution. It is submitted that the prosecution has been successful in proving the case against the accused by examining the reliable witnesses i.e., P.W.3 to 5, 7 and 8.

64. In **STATE, GOVT. OF NCT OF DELHI vs. SUNIL AND ANOTHER** reported in **(2001) 1 SCC 652**, the Apex Court held that we feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. The Apex Court also observed that at any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable.

65. In **MOHD. ASLAM vs. STATE OF MAHARASHTRA** reported in **(2001) 9 SCC 362**, the Apex Court discussed Section 27 of the Evidence Act, 1872 with regard to Evidence of police officer effecting recovery and held that the evidence could not stand vitiated by reason of panch witnesses supporting the

evidence turning hostile and also discussed Terrorist and Disruptive Activities (Prevention) Act, 1987 and Section 5 of Arms Act, 1959, so also Section 25(1-A) and 25(1-B)(a).

66. Having considered both oral and documentary evidence available on record and also on re-appreciation, particularly taking into note of contents of Ex.P.4 complaint given by the mother of the deceased, no doubt, she is no more. But the contents of Ex.P.4 was reiterated by P.W.4 claiming that he only wrote the said complaint on the instructions of the mother and in the said complaint regarding enmity is concerned, mentioned the incident dated 02.12.2009 as well as on the particular date of incident at 4.30 a.m. all the accused persons went to the house of the complainant's mother and caused the threat and they were searching the deceased and even mentioned the name of three of the accused persons and also other persons. Apart from that, Ex.P.37 is very clear that the deceased went to the house of accused No.6 and made galata and to that effect, accused No.6 himself lodged the complaint in the midnight at 1.30 a.m. and after lodging the complaint, went

to the house of the deceased in search of him and he was not found and though not given the complaint, the learned counsel would contend that no such complaint was given to the incident at 4.30 a.m.. But the fact is that the deceased was not in the house on that day. The complainant narrated the same at the first instance while lodging the complaint in Ex.P.4. Apart from that, P.W.1 and P.W.4 narrated the same and P.W.5 was with the deceased on the date of incident and he turned hostile only to the climax with regard to inflicting of injury. But the evidence of P.W.9 is very clear that P.W.5 called him and he was scared at that time and even mentioned that he did not take food for a period of two days and he was at Hassan. The statement of P.W.5 is also very clear that after this incident, he boarded the lorry and he went to Hassan and he was brought to the police station along with P.W.8 and P.W.9 and his statement was recorded on the same day. The accused eliminated the deceased on the very same day of early morning incident of 4.30 a.m. between 10.45 a.m. to 11.00 a.m. There is a proximity to the incident which has taken place in the midnight at 1.30 a.m. in the house of accused No.6 as well as in the house of the

deceased when the mother was present at 4.30 a.m. On the same day at around 10.45 a.m. to 11.00 a.m. this incident has taken place and all these materials clearly connect the accused persons that accused persons only committed the crime, particularly at the instance of accused No.1, since there was an incident between accused No.1 and mother of the deceased on 02.12.2009 and from that date, he did not attend the duty as per Exs.P.58 and 59 from 02.12.2009 to 15.12.2009, till the date of his arrest, which clearly discloses that all the accused persons joined together with an intention to eliminate the deceased and also in the night near the house of accused No.6 the deceased slapped the employee of accused No.6 and the same is also spoken by P.W.55 eyewitness as well as found in the complaint Ex.P.37. The contents of Ex.P.37 is very clear and the said complaint is given by accused No.6 himself and both oral and documentary evidence available before the Court point out the role of each of the accused persons in eliminating the deceased. Hence, the material available on record is sufficient to convict the accused and the Trial Court in detail though not discussed as discussed by this Court, but all these factors taken

into consideration and by taking note of evidence of P.W.1, P.W.4, P.W.5, P.W.8, P.W.9, P.W.5 and P.W.55 and official witnesses P.W.53 and P.W.56, has passed a cryptic order coming to a wrong conclusion. But this Court dealt with each and every circumstances, which point out the role of the accused persons.

67. The Trial Court committed a mistake in convicting the accused for the offences punishable under Sections 504 as well as 506 of IPC. Having perused the charge, no charge is framed for the offence under Section 504 of IPC and though it is mentioned as Section 504 of IPC in 6th charge, the same would be in respect of Section 506 of IPC. It is to be noted that the Trial Court while convicting the accused for the offences punishable under Sections 504 and 506 of IPC, not discussed the same in detail. It is very clear that threat was caused by the accused when they visited the house of the deceased at 4.30 a.m. and the deceased was not present and only mother of the deceased was present and to that effect, there is no charge and also allegation is made for abusing the mother of the complainant. In the present incident, it is very specific that all of

them surrounded when the deceased was talking to the accused and no material before the Court with regard to causing any insult and abusing in filthy language in order to attract Section 504 of IPC and so also to invoke Section 506 of IPC, there is no any material and none of the witnesses speaks about the same. When such being the case, the Trial Court ought not to have convicted the accused for the offences punishable under Sections 504 and 506 of IPC and the Trial Judge committed an error. Hence, we answer point No.(i) accordingly.

Point No.(ii):

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

ORDER

- (i) The criminal appeals are allowed in part by setting aside the conviction and sentence for the offences punishable under Sections 504 and 506 of IPC. In respect of other offences, conviction and sentence is confirmed.
- (ii) If any bail bond is executed by the accused, the same stands cancelled.

(iii) The fine amount deposited for the offences punishable under Sections 504 and 506 of IPC is ordered to be refunded to the accused, on proper identification.

(iv) The accused persons are directed to surrender before the Trial Court on **13.03.2026** and if the accused fail to surrender, the Trial Court is directed to issue NBW and secure them and send them to the prison along with conviction warrant.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

ST/SN/MD