

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.2119/2018

BETWEEN:

NAGARAJA REDDY,
S/O LATE MUNI REDDY,
AGED ABOUT 32 YEARS,
R/O MUDENAHALLY VILLAGE,
HAROHALLI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT-562117.

... APPELLANT

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR
SRI. KARIAPPA N.A., ADVOCATE)

AND:

STATE OF KARNATAKA,
BY HAROHALLY POLICE STATION,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT-562117,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDINGS,
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 AND ORDER OF CONVICTION AND SENTENCE DATED 04.10.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA TO SIT AT KANAKAPURA IN S.C.NO.39/2012 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.02.2026 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)

This appeal is filed questioning the judgment of conviction and sentence dated 04.10.2018 passed by the Trial Court in S.C.No.39/2012, on the file of the II Additional District and Sessions Judge, Ramanagar sitting at Kanakapura and praying this Court to acquit the accused for the offence punishable under Section 302 of IPC.

2. The factual matrix of the case of the prosecution is that there was quarrel between the deceased and the accused in respect of taking of excess land in ancestral property by the deceased Kunna Reddy and the same was questioned by the accused. That on 22.11.2011, in connection with cutting of Bage tree, there was a quarrel and when the same was questioned by the said Kunna Reddy, the accused having ill-will, with a motive to commit the murder, at 6.40 p.m. when the deceased was coming in his bullock cart near the land of Mariyappa situated at Mudenahalli, inflicted injury with the machete on his head, nose, left thigh, left ear, left elbow, right hand fingers. As a result, he died at the spot and case has been registered on the complaint of P.W.1 and registered Crime No.414/2011. Thereafter, the accused was arrested and spot mahazar was conducted and recovery was made at the instance of the accused i.e., bloodstained chopper and also recovered the cloth in the presence of the panch witnesses. The body was subjected to inquest and post mortem and then recorded the statement of the witnesses and having completed the investigation, filed the charge-sheet.

3. The Trial Judge having received the charge-sheet, took the cognizance and thereafter, secured the accused and framed the charges. The accused did not plead guilty and claimed trial and hence, the prosecution relied upon the evidence of P.W.1 to P.W.16 to substantiate their case and also relied upon the documents at Exs.P.1 to 17 and M.O.1 to M.O.12. On the closure of the evidence of the prosecution, the accused was subjected to 313 statement and the accused did not choose to lead any defence evidence. The Trial Judge having considered both oral and documentary evidence placed on record, comes to the conclusion that the accused only committed the murder and convicted the accused for the offence punishable under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- and in default of payment of fine amount, to further undergo rigorous imprisonment for a period of one year. The Trial Judge also gave the benefit under Section 428 of Cr.P.C. for the days undergone by him in judicial custody in this case.

4. Being aggrieved by the judgment of conviction and sentence, the present appeal is filed before this Court.

5. The main contention urged in the appeal memo is that though P.W.1 is examined as an eyewitness, she is not an eyewitness to the incident of murder. In the complaint it is stated that her husband was murdered under suspicious circumstances. It is specifically mentioned that she has suspected, but not witnessed the incident of murder and hence, she cannot be termed as an eyewitness to the incident. It is also contended by the learned counsel for the appellant that it is evident that the deceased Kunna Reddy had fallen from the running bullock cart and sustained injuries. But the same has not been considered by the Trial Court though the evidence of P.W.4 doctor supports the defence of the accused. A careful reading of the post mortem report Ex.P.5 and also the evidence of P.W.4 doctor shows the death of Kunna Reddy not being homicidal death. The motive alleged is too innocuous and it is the case of the prosecution that quarrels were taking place between the deceased and the accused in respect of the

ancestral property and hence, there was a motive. The Trial Court committed an error in coming to the conclusion that there was a motive for committing the murder. The learned counsel would submit that P.W.1 categorically admits in her cross-examination that Ramesh Reddy had taken her to the place of occurrence and the dead body of her husband had fallen down on the ridge gourd plants and there was bullock cart and bullocks and the same has not received due attention of the Trial Court. The Trial Judge gravely erred in placing reliance upon Ex.P.9. In this case of circumstantial evidence, conviction is based on the point of motive. The Trial Court has thought that proof of motive would be enough for conviction. The Hon'ble Apex Court has over and again laid down that motive is double edged weapon and proof of motive is not sufficient to convict a person for murder.

6. The learned counsel in his arguments would vehemently contend that though P.W.2 was examined, his evidence was not completed and hence, it cannot be relied upon. P.W.3 is only a hearsay witness. P.W.5 is the Village Accountant

and P.W.6 is the Engineer, who prepared the sketch. P.W.7 is the PSI, who received the complaint as per Ex.P.1. P.W.8 is the inquest witness and witness for seizure of the cloth of the deceased. P.W.9 and P.W.10 are the spot mahazar witness and seizure mahazar witness at the instance of the accused and recovery of machete and cloth of the accused and these two witnesses' evidence is not tenable and both of them are relatives of P.W.1. P.W.11 is the neighbour and his evidence is not material. P.W.12 is the FSL Officer in respect of Ex.P.11. P.W.13 is the Head Constable, who carried the FIR. P.W.14 is the Head Constable, who carried the seized articles to the FSL. P.W.15 and P.W.16 are the Investigating Officers, who conducted the further investigation in the matter and speaks about drawing of mahazar in terms of Ex.P.10 i.e., seizure of cloth and weapon and also recording of voluntary statement of accused in terms of Ex.P.14. The learned counsel would vehemently contend that the admission on the part of P.W.1 takes away the case of the prosecution that she was not an eyewitness to the incident. The recovery witnesses P.W.9 and P.W.10 though supported the case of the prosecution, their

evidence cannot be believed. Though FSL report supports the case of the prosecution with regard to the machete was stained with blood, but clothes were not stained with blood and the report is also negative. The learned counsel submits that FIR reached the Court at 10.45 a.m. and there was no any explanation for delay and with due deliberation fixed the accused. The very foundation itself is very weak. The evidence of P.W.1 is contrary to Ex.P.1 and the recovery is also not a substantive piece of evidence.

7. The learned counsel for the appellant in support of his arguments relied upon the judgment of the Hon'ble Apex Court in the case of **NARSINBHAI HARIBHAI PRAJAPATI ETC. v. CHHATRASINH AND OTHERS** reported in **AIR 1977 SC 1753** and brought to the notice of this Court paragraph No.2 of the judgment, wherein it is discussed with regard to the bloodstained shirt and dhoti were seized from the person of respondent No.1 and dharias were seized from the house of respondent Nos.1 and 3. But those circumstances are in our

opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused.

8. The learned counsel also relies upon the judgment of the Honb'le Apex Court in the case of **MEHARAJ SINGH v. STATE OF U.P.** reported in **(1994) 5 SCC 188** and brought to the notice of this Court the discussion made in paragraph No.12 with regard to the FIR is concerned and the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed.

9. The learned counsel also relies upon the judgment of the Honb'le Apex Court in the case of **KANSA BEHERA v. STATE OF ORISSA** reported in **(1987) 3 SCC 480** and brought to the notice of this Court paragraph Nos.12 and 13, wherein discussion was made that the evidence about the blood group is only conclusive to connect the bloodstains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn. It is a settled rule of

circumstantial evidence that each one of the circumstances have to be established beyond doubt and all the circumstances put together must lead to only one inference and that is of the guilt of the accused. No such circumstances is warranted in the case on hand.

10. The learned counsel also relies upon the judgment of the Hon'ble Apex Court in the case of **BABUDAS v. STATE OF M.P.** reported in **(2003) 9 SCC 86** and brought to the notice of this Court the discussion made in paragraph No.4, wherein it is held that the manner in which the alleged recovery is made also creates a lot of doubt in our mind. It is seen from the evidence led by the prosecution that at every place where the accused took the panchayatdars and the police, according to the prosecution witnesses themselves, there were thousands of people present witnessing the recovery. The learned counsel referring this judgment would vehemently contend that P.W.9 and P.W.10 are the relative witnesses of P.W.1 and hence, recovery will not come to the aid of the prosecution.

11. Per contra, the learned Additional SPP appearing for the respondent/State would vehemently contend that the prosecution mainly relies upon the evidence of P.W.1, P.W.9, P.W.10, P.W.12 and so also the medical evidence of doctor P.W.4. The doctor categorically says that the chopper was used to commit the crime and the nature of injuries mentioned in Ex.P.5 post mortem report is very clear that there were 13 chop wound injuries. The recovery is made in the presence of P.W.9 and P.W.10 and though they are the relatives of P.W.1, the same cannot be a ground to disbelieve their evidence and the Court has to take note of whether the evidence of these two witnesses are consistent or not. The Investigating Officer, who conducted the recovery also clearly deposes before the Court that it is based on the voluntary statement of the accused in terms of Ex.P.14. The panch witnesses P.W.9 and P.W.10 were secured and the accused only led them to the spot and produced the machete and bloodstained cloth from the bush. No doubt, FSL report is negative in respect of shirt and pant since, immediately after the incident he washed his cloth and kept the bloodstained machete and the said cloth concealing the same in

a bush and hence, the Court cannot expect the FSL report to be positive in respect of shirt and pant.

12. The learned Additional SPP would vehemently contend that the motive for committing the murder is that there was a dispute in respect of unequal partition in respect of the ancestral properties and defence was taken that the deceased fell down from the running bullock cart, but the injuries are chop wound injuries. The doctor's evidence is very clear that the injuries found in the post mortem report could be caused by using the said machete. The learned counsel also contend that the FSL report supports the case of the prosecution that weapon which was used to commit the murder was stained with blood. The evidence of the Investigating Officer P.W.16 also corroborates the evidence of P.W.9 and P.W.10. The learned counsel would contend that there was no any delay in sending the FIR and FIR was given to P.W.13 on the night itself. But he carried the FIR in the morning, since there was no any mode of transport in the night and the same has been explained by examining P.W.13. Though P.W.3 is a hearsay witness, but his

evidence is very clear that on coming to know about the incident, he rushed to the spot and came to know that the accused only committed the murder. P.W.1 identifies her signature in Ex.P.1, photographs Exs.P.2 and 3 and Ex.P.4 spot mahazar and M.O.1 to M.O.6 are marked through this witness. The evidence available before the Court completely points out the role of the accused and the same is considered by the Trial Court. M.O.8 machete was seized and mahazar was drawn in terms of Ex.P.10 and M.O.8 was stained with blood and no explanation is given by the accused in his 313 statement and hence, the judgment of conviction and sentence does not require any interference.

13. Having heard the learned counsel for the appellant and the learned Additional SPP appearing for the respondent/State and also considering both oral and documentary evidence placed on record, the points that would arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 302 of IPC and

sentencing him for rigorous imprisonment and whether it requires interference of this Court?

(ii) What order?

Point No.(i):

14. We have perused both oral and documentary evidence available on record. The law is set in motion based on the complaint Ex.P.1, which was given by the wife of the deceased. In the complaint, she categorically stated that there was a dispute between the deceased and the accused regarding the property and that they were frequently quarreling with each other. That on 22.11.2011, in the morning the galata was taken place between them. On the very same day, when her husband was proceeding in the bullock cart, the accused committed his murder. No doubt, on perusal of this complaint, a suspicion was raised and in the complaint it is pointed out that there was ill-will between both of them. Based on this complaint, case was registered by P.W.7 and he categorically says that he has received the complaint in terms of Ex.P.1 and sent the FIR as per Ex.P.8. The law was set in motion by registering the case by P.W.7 and he conducted spot panchanama in terms of Ex.P.4

and photos were taken. No doubt, in the cross-examination, it is elicited that complaint was given on suspicion, but it is specifically mentioned that the accused only committed the murder with regard to the dispute between them in respect of ancestral property.

15. Now this Court has to take note of the evidence of P.W.13, who carried the FIR to the Court. His evidence is very clear that he received the FIR at 11.50 p.m. and it was late night and hence, he could not proceed in the night itself and next morning at 10.00 a.m., he went and gave the same to the Magistrate. When this witness was subjected to cross-examination, he categorically says that the distance between Harohalli Police Station and Court is 16 to 17 kms. He categorically deposes that there was no bus convenience after 11 o'clock in the night. He is staying in Harohalli quarters. If he had vehicle, he could reach the Court within 15 minutes. The very contention of the learned counsel for the appellant that the delay was not explained, cannot be accepted. No doubt, the FIR reached the Police Station on the next day at 10.45 a.m. and the

same is explained that he was not having any mode of transport in the late night. On perusal of Ex.P.8, it is very clear that the incident was taken place at 6.40 p.m. and complaint was given in the late night and the same was registered and dispatched at 11.50 p.m. The evidence of P.W.13 is very clear and column No.13 of Ex.P.8 also shows that it was dispatched in the midnight through PC-185. The very contention that there was a delay in handing over the FIR and due deliberation, cannot be accepted and even the accused details are also given in column No.6.

16. Having perused Ex.P.1, it is very clear that there was an incident on the very same day prior to this incident. The same has been mentioned in the complaint itself and complaint was given at 11.50 p.m. Insofar as the genesis of crime is concerned, the incident was taken place at 6.40 p.m. and thereafter, the relatives gathered and then the body was shifted to the house. Later went to the police station and gave the complaint at around 11.50 p.m. and FIR was dispatched at 12.30 a.m. and the same was midnight and there was no any mode of

transport. Hence, P.W.13 went and gave the same on the next day at 10.45 a.m. and distance between the Court and Harohalli Police Station is about 16 to 17 kms. and when such delay is explained, this Court cannot find fault with the same.

17. Now this Court has to examine the evidence of P.W.1, who claims to be an eyewitness to the incident. Having perused Ex.P.1 complaint, which was given at 11.50 p.m., it was only a suspicion against the accused. But there was a reference in the complaint itself that on the very same day there was a galata between the deceased and the accused in connection with cutting of the tree. Though P.W.1 claims that she is an eyewitness to the incident, her evidence cannot be accepted as an eyewitness. In the cross-examination, it is categorically elicited that she went to the spot with Ramesh Reddy, who is the brother of her husband. She says that he came and informed about the incident at around 6.30 p.m. to 6.40 p.m. and the said Ramesh Reddy only took her to the spot. Though she claims that she witnessed the incident having heard the hue and cry sound, but the evidence of P.W.1 as an eyewitness cannot be accepted.

However, her evidence can be considered only in respect of dispute between her husband and the accused in connection with ancestral property. In the chief evidence, she categorically says that on the same day afternoon, there was a quarrel between the accused and the deceased. No doubt, in the cross-examination, it is suggested that no such incident was taken place. But she categorically deposes that there was a galata and at that time, herself, her son, her husband and the accused were there. She categorically says that no complaint was given in respect of that incident. When a suggestion was made that with regard to that incident, nothing is mentioned in Ex.P.1 and the witness says that whether she has mentioned or not, she cannot tell as the same was written by her son-in-law i.e., P.W.3. She says that she was in grief and hence, she cannot tell what has been stated. On perusal of Ex.P.1, there is a reference of an incident prior to the committal of murder and also it is very clear that there was a dispute between the deceased and the accused in connection with the ancestral property. The evidence of P.W.1 only with regard to the motive and previous incident could be considered and not as an eyewitness.

18. The other witness P.W.3 is the son-in-law of P.W.1. He deposes before the Court that there was a galata between the accused and the deceased in connection with cutting of tree on 22.11.2011. But this witness is a hearsay witness and deposes before the Court that the same was revealed by P.W.1. The fact that there was a galata on that day was spoken by P.W.1. The evidence of P.W.3 could be considered only to the extent that there was a galata prior to the incident. P.W.3 evidence will not come to the aid of the prosecution other than this evidence.

19. The other witness is P.W.4 doctor, who conducted the post mortem. P.W.4 deposes before the Court that he conducted the post mortem and gave the post mortem report in terms of Ex.P.5 and clothes were seized and given to the police and he identifies M.O.1 to M.O.4. In the cross-examination, it is elicited that if a person falls from the bullock cart on a sharp edge of a stone, injury No.10 mentioned in the post mortem report could be caused and the other injuries mentioned in the post mortem report could not be caused. He says that the police

have not given any weapon for taking his opinion. He categorically deposes that if a person is inflicted injury with a heavy and sharp-edged weapon, these types of injury could be caused and the same may be a long, machete, axe or sword. Having considered this evidence, it is very clear that it is a case of homicide and not accidental injuries. The doctor's evidence is also very clear that only injured No.10 could be caused, but not other injuries and all the injuries are chop wound injuries. Having considered the post mortem report, which is marked as Ex.P.5, it is very clear that there were 13 chop wound injuries. Almost all are chop wound injuries and in injury No.10 only 2 abrasions were found. The evidence of the doctor is also very clear that this injury could be caused only if a person falls on the sharp edged stone, but not other injuries and each and every injuries are sharp wound injuries including bone deep sharp wound. Hence, it is clear that these injuries are chop wound injuries and machete M.O.8 is chopper. Hence, it is a case of homicide.

20. Having considered Ex.P.1, it is categorically stated with regard to the previous incident on the very same day and the evidence of P.W.1 is very clear with regard to the motive is concerned, that there was a ill-will between the deceased and the accused in connection with property dispute. Having considered the evidence of P.W.1, though she claimed to be an eyewitness to the incident, but this Court accepted her evidence only in respect of motive is concerned and that there was a ill-will between the deceased and the accused.

21. Now this Court has to consider the other circumstances available before the Court, since eyewitness evidence is ruled out and she only speaks about the previous incident on the very same day and this Court has considered the same. Now with regard to recovery is concerned, this Court has to consider the evidence of P.W.16 Investigating Officer. P.W.16 in his evidence categorically says that they conducted the inquest as per Ex.P.13 and so also recorded the voluntary statement of the accused in terms of Ex.P.14. The accused made the statement that if he is taken to the spot where he committed

the murder, he will produce the weapon and also the bloodstained clothes. Having recorded the voluntary statement, the accused led him and the panch witnesses to the spot and produced M.O.1, M.O.2 and M.O.8 i.e., shirt, lungi and the weapon. He says that all of them were stained with blood. He speaks about other procedures that he conducted. In the cross-examination, a suggestion was made that the accused did not give any voluntary statement that he will lead to the spot as well as produce the weapons, but the same was denied. Nothing is elicited with regard to the non-conducting of the mahazar at the spot.

22. Now this Court has to consider the evidence of P.W.9, who is the panch witness to spot mahazar Ex.P.10. He categorically says that mahazar was conducted in terms of Ex.P.9 at the spot. His evidence is clear that the accused led all of them and so also led himself and P.W.10 to the spot where the accused had concealed the weapon, shirt and lungi and the same were there in the bush and the same were not visible. But he put his hand and took out the same and the same were

seized. He identifies M.O.1, M.O.2 and M.O.8. This witness was subjected to cross-examination. In the cross-examination, it is elicited that P.W.1 is his sister and P.W.3 is his brother. Hence, it is clear that P.W.9 is the relative of P.W.1. When a suggestion was made that no such mahazar was conducted at the spot and also recovery, the same was denied. It is suggested that both the mahazars were drawn before going to the spot and the same was categorically denied saying that after they went to the spot only prepared the same. A suggestion was made that the police only showed M.O.1, M.O.2 and M.O.8 in the police station and the same was denied. The witness voluntarily says that the accused only showed the same at the spot where the same was seized i.e., M.O.1, M.O.2 and M.O.8. Having considered this evidence, his evidence is consistent with regard to the accused leading the police as well as the other panch witnesses to the spot. A suggestion was made that the accused did not produce M.O.1, M.O.2 and M.O.8 from the bush and the same is denied. The evidence of P.W.9 is credible and reliable and nothing is elicited in the cross-examination. When a suggestion was made that mahazar was not drawn at the spot, the witness specifically

deposed that it was drawn at the spot only. No doubt, P.W.9 may be a distant relative of P.W.1, but the same cannot be a ground to discard the evidence of P.W.9 and his evidence is consistent and reliable.

23. Now this Court has to consider the evidence of P.W.10 and P.W.10 reiterates the evidence of P.W.9 that spot mahazar was conducted at 5.30 p.m. He says that he was asked to come on the next day and accordingly on the next day he went to the police station at 7.00 a.m. and thereafter, the accused led them near Mudenahalli tank and there was a bush and the accused put his hand and removed the shirt, lungi and machete and the same were bloodstained. He identifies his signature in Ex.P.10 and also identifies M.O.1, M.O.2 and M.O.8. This witness was subjected to cross-examination. In the cross-examination, it is elicited that P.W.1 is her father's sister. A suggestion was made that in his presence, M.O.1, M.O.2 and M.O.8 were not seized and the same was denied. He categorically says that no notice was given and that at the time of seizure, another person was present and the same was seized

near Mudenahalli tank and that tank is near the pipeline. He says that he cannot tell the description of the said place. A suggestion was made that in his presence mahazar was not conducted and also suggestion was made that he was not taken to the spot while drawing the mahazar in terms of Ex.P.10 and the accused not led the police or anybody to the spot and the same were denied. A suggestion was made that the accused did not show the spot and the same was denied. Nothing is elicited from the mouth of this witness to disbelieve the case of the prosecution with regard to the recovery is concerned.

24. The main contention of the learned counsel appearing for the appellant is that P.W.9 and P.W.10 are relative witnesses. Merely because these two are relative witnesses, their evidence cannot be discarded when their evidence is consistent and reliable. Nothing is elicited in the cross-examination of these two witnesses that they were not present at the time of drawing the mahazar Ex.P.10 and nothing is elicited that the accused did not lead the police as well as P.W.9 and P.W.10 to the spot and their evidence is consistent.

25. 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.

26. 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 learned counsel for the appellant mainly contend that the panch witnesses P.W.9 and P.W.10 are the interested witnesses. The same cannot be a ground to discard the evidence of interested witnesses.

27. Now this Court has to consider the evidence of P.W.12, who is FSL Officer. P.W.12 categorically deposes that except item Nos.2, 4, 6 and 7, others were bloodstained. Insofar as machete M.O.8 is concerned, the same is stained with blood and gave the report in terms of Ex.P.11 and the same is marked and the signature is also identified. In the cross-examination of this witness, nothing is elicited that he did not conduct the examination of the articles and only answer is elicited that in Ex.P.11, not mentioned the measurement of the machete and

also the shape of M.O.8. Ex.P.11 FSL report discloses that the machete which was seized in the presence of P.W.9 and P.W.10 was stained with blood group of 'O' and both in the cloth of deceased and machete, 'O' group blood was found and no explanation was given by the accused during the cross-examination. It is also very clear that in M.O.6 and M.O.7 no stains were found and hence, the question of positive does not arise.

28. In the voluntary statement of the accused as per Ex.P.14, he categorically stated that he is going to produce the machete and machete is seized at the instance of the accused. The evidence of P.W.9 and P.W.10 is consistent and the same points out the role of the accused and other circumstances goes against the accused. It is also to be noted that in the voluntary statement of the accused, he categorically says that he washed off his pant and shirt before keeping the machete in a bush. It is evident that the same were kept inside the bush and were not visible to anybody else and the same is not in open space. When such being the case, the case of the prosecution is proved

regarding the recovery is concerned. The evidence of P.W.14 is very clear that he went and handed over the seized articles to the FSL department. P.W.12 in his evidence categorically says that he has given the report in terms of Ex.P.11. In the cross-examination of P.W.12, nothing is elicited with regard to the machete is concerned, but the same was stained with blood and it is elicited that he did not mention the length and width of M.O.8. Hence, the case of the prosecution is proved regarding recovery at the instance of the accused i.e., M.O.8.

29. 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 the evidence of the witnesses P.W.9 and P.W.10 is also in corroboration of the evidence of police witness, who has been examined as P.W.16. The evidence of P.W.9 and P.W.10 supports the case of the prosecution for recovery of machete at the instance of the accused.

30. 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.

31. The learned counsel for the appellant relied upon the judgment of the Apex Court in the case of **Narsinbhai Haribhai Prajapati** (supra), wherein the Apex Court discussed with regard to the motive for committing the crime as well as recovery. But those circumstances are in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused. But in the case on hand, motive is proved and also recovery is proved. The evidence of P.W.9, P.W.10 and also the police inspector, who recovered the same in the presence of panch witnesses is consistent and reliable. Hence, the said judgment will not come to the aid of the appellant.

32. The learned counsel also relied upon the judgment of the Apex Court in the case of **Meharaj Singh** (supra) and brought to the notice of this Court paragraph No.12, wherein it is held that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of

appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed. The said judgment also will not come to the aid of the defence, since immediately after lodging the complaint, case was registered and FIR was registered at 11.50 p.m. and there was no any transportation mode and hence, FIR was carried to the Court on the next morning. Ex.P.1 complaint discloses that there was a galata between the accused and the deceased prior to his incident and hence, the genesis of the crime is also found and this judgment will not come to the aid of the accused.

33. The learned counsel also relied upon the judgment of the Apex Court in the case of **Kansa Behera** (supra) and brought to the notice of this Court paragraph Nos.12 and 13, wherein it is held that the evidence about the blood group is only conclusive to connect the bloodstains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn. But this judgment also will not come

to the aid of the defence, since in all the materials i.e., clothes of the deceased 'O' group blood was found and also in the machete, which was seized at the instance of the accused, 'O' group blood was found. It is not the case of the defence that the blood does not belong to the deceased and no effective cross-examination to that effect. Hence, the said judgment also will not come to the aid of the accused.

34. The learned counsel also relied upon the judgment of the Apex Court in the case of **Babudas** (supra) and brought to the notice of this Court paragraph No.4, wherein it is held that the manner in which the alleged recovery is made also creates a lot of doubt in our mind. It is seen from the evidence led by the prosecution that at every place where the accused took the panchayatdars and the police, according to the prosecution witnesses themselves, there were thousands of people present witnessing the recovery. The learned counsel for the appellant mainly contend that both the witnesses P.W.9 and P.W.10 are the relatives of P.W.1. Merely because they are relatives, the same cannot take away the case of the prosecution and their

evidence is consistent and reliable. Except eliciting that they are the relatives of P.W.1, nothing is elicited and even not suggested that they are having enmity against the accused to falsely implicate the accused. All the materials goes against the accused pointing out the role of the accused only.

35. Though this Court not accepted the evidence of P.W.1 as eye-witness, but taken note of the evidence of P.W.1 with regard to the motive as well as galata was taken place on the very same day prior to this incident and there was an enmity between the accused and the deceased with regard to the property issue. The recovery is made and the same is proved and the evidence of the Investigating Officer as well as the evidence of the recovery witnesses P.W.9 and P.W.10 is consistent and all the circumstances goes to show that the accused only committed the murder. Hence, we do not find any ground to come to a other conclusion that the Trial Court has committed an error in relying upon the evidence. Though it is contended that there was a delay, but the incident was taken place at 6.40 p.m. and thereafter, the body was taken to the

house and then they went and lodged the complaint. The Court has to take note of the distance between the place of incident as well as police Station and there was a distance of 16 to 17 kms. and FIR was handed over to the PC in the odd hour and he went and gave the FIR in the early morning at 10.45 a.m. by travelling 16 to 17 kms. and there is no such delay and the same is also explained. Thereafter, the accused was arrested and recovery was made. The FSL report goes against the accused and bloodstains were found in the machete, which was produced at the instance of the accused and report is also positive in terms of Ex.P.11. Though in respect of article Nos.6 and 7 shirt and lungi, not found any bloodstains and no positive report, the same cannot take away the case of the prosecution. There was no any explanation on the part of the accused with regard to the blood group 'O' was found in the machete, which was used by the accused for inflicting the injury and recovery is made at his instance. The medical evidence of the doctor also points out that the injuries are chop wound injuries. Though the weapon was not sent to the doctor, but evidence is very clear that if chopper having heavy weight is used for inflicting the injury,

those type of injuries could be caused. All these materials, including the medical evidence goes against the accused and hence, we have no ground to interfere with the findings of the Trial Court. Hence, we answer the point accordingly.

Point No.(ii):

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

ORDER

The criminal appeal is dismissed.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MD