

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.838 OF 2016 (C)
CONNECTED WITH
CRIMINAL APPEAL NO.947 OF 2017**

IN CRL.A. NO.838/2016:

BETWEEN:

MR. DEVESH KUMAR SINGH
S/O. VIDYA SINGH
AGED ABOUT 25 YEARS
RESIDING AT NO.1033, ROOM NO.3
10TH CROSS, NEAR LAKSHMI HOSTEL
AGB LAYOUT, BENGALURU-560 090.

PERMANENT RESIDENT
THALIMAPUR VILLAGE
VISHNUPURA POST, SHIVAN DISTRICT
BIHAR.

...APPELLANT

(BY MS. VISMAYA D.A., ADVOCATE, FOR SRI P. N. HEGDE)

AND:

STATE BY SOLADEVANAHALLI POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU.

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDITIONAL S.P.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 16-4-2016 PASSED BY THE VII ADDITIONAL DISTRICT ANDS SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, IN SESSIONS CASE NO.227 OF 2013, CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 448 AND 392 OF IPC AND UNDER SECTIONS 25(1)(a), 27(1) OF ARMS ACT.

IN CRL.A. NO.947/2017:

BETWEEN:

STATE BY
SOLADEVANAHALLI POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDITIONAL S.P.P.)

AND:

1. DEVESH KUMAR SINGH
S/O. VIDYA SINGH
AGED ABOUT 26 YEARS
RESIDING AT NO.1033, ROOM NO.3
10TH CROSS, NEAR LAKSHMI HOSTEL
AGB LAYOUT
BENGALURU-90.

PERMANENT RESIDENT OF
THALIMAPUR VILLAGE
VISHNUPURA POST
SHIVAN DISTRICT, BIHAR.

2. VIKAS KUMAR GUPTA
S/O. PANALA PRASAD
AGED ABOUT 23 YEARS
RESIDING AT ACHARYA COLLEGE
GANAPATHINAGAR
BENGALURU-90.

PERMANENT RESIDENT OF LALGAD
(VILLAGE AND POST), WEST CHAMPARAN
BETTIYA DISTRICT
BIHAR.

3. PREMKUMAR SAHU
S/O. LALITH SAHU
AGED ABOUT 23 YEARS
RESIDING AT ACHARYA COLLEGE ROAD
GANAPATHINAGAR
BENGALURU-90.

PERMANENT RESIDENT OF
KOHAKA BHILAI, DURGA DISTRICT
CHATTISGAD.

4. IMRAN ALI
S/O. ALI AKBAR
AGED ABOUT 24 YEARS
RESIDING AT NO.1033, ROOM NO.3
10TH CROSS, NEAR LAKSHMI HOSTEL
AGB LAYOUT
BENGALURU-90.

PERMANENT RESIDENT OF LAKSHMIPURA
SHIVAAN POST AND DISTRICT, BIHAR.

...RESPONDENTS

(BY MS. VISMAYA D.A., ADVOCATE, FOR
SRI PARAMESHWARA N. HEGDE FOR R-1,
SRI GANGADHAR K., ADVOCATE, FOR R-2 & R-3, AND
SRI KARIAPPA N.A., ADVOCATE, FOR R-4)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 16-4-2016 PASSED IN SESSIONS CASE NO.227 OF 2013 BY VII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, TO THE EXTENT OF ACQUITTING ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 396 AND 120B OF IPC AND UNDER SECTION 29(a) and (b) OF ARMS ACT, 1959 AND ACCUSED NOS.2 TO 4 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120B, 448, 392, 302 AND 396 OF IPC AND UNDER SECTIONS 25(1)(A), 27(1) AND 29(a) and (b) OF ARMS ACT, BY ALLOWING THIS CRIMINAL APPEAL, AND ETC.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED 05-02-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

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

Criminal Appeal No.838 of 2016 is filed by accused No.1 to set aside the judgment of conviction dated 16-4-2016 and order on sentence dated 25-4-2016 passed by the VII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru, in Sessions Case No.227 of 2013 for the offences punishable under Sections 448 and 392 of the Indian Penal Code, 1860 (for short, 'IPC') and under Sections 25(1)(a) and 27(1) of the Arms Act, 1959 (for short, 'Arms Act'), whereas, Criminal Appeal No.947 of 2017 is filed by the State to convict accused No.1 for the offences punishable under Sections 302, 396 and 120B of IPC and under Sections 29(a) and (b) of Arms Act and to convict accused Nos.2 to 4 for the offences punishable under Sections 120B, 448, 392, 302 and 396 of IPC and under Sections 25(1)(a), 27(1) and 29(a) and (b) of Arms Act.

2. For the sake of convenience, the parties herein are referred to as per their ranks before the trial Court. The appellant is the complainant-State and respondent Nos.1 to 4 are accused Nos.1 to 4 in Criminal Appeal No.947 of 2017.

3. The brief facts of the case of the prosecution are that PW.1-R. Suresh Babu, Branch Manager, Corporation Bank, Chikkabanavara Branch, lodged a complaint-Ex.P1 alleging that on 19-11-2012 at about 4:00 p.m., a person (accused No.1) armed with pistol entered the Bank premises by wearing cap. The said person had a haversack bag around his back. The armed person demanded him to come out of the Manager's cabin and ordered him and other four to five customers to move over to one side of the branch and most of them, obeyed the armed person, because he threatened them with dire consequences, but one Muralidhar (hereinafter referred to as 'deceased') was little hesitant/slow to obey and hence, being annoyed by the same, the armed person shot at the deceased and caused bleeding injuries to his upper right shoulder, consequent to which, the deceased collapsed on the ground. Hence, to save others from getting injured, he asked the Cashier to handover the cash to the said robber. Hence, the

Cashier handed over the cash to the tune of Rs.15.23 lakh to the robber, who filled it in his haversack and ran away after taking the mobile phone of the Cashier (PW.2-Dasappa). It is further alleged that the robber was around 5 feet 6 inches tall wearing a white cap, checked shirt of white background with green and pink stripes. Said person was speaking in English saying 'come out of the cabin', 'where is the cashier', 'I will shoot him', etc. He has further alleged that the robber was speaking in Hindi by saying 'udhar javoo', 'iss taraf javoo', etc. Immediately, after his leaving, they activated the fire alarm and also called for help. Someone broke the front glass window to draw attention of public and called for help. They also called Police over phone. In the meanwhile, some customers took the injured to the nearest NRR Hospital and later, he came to know that injured, Muralidhar, succumbed to the injuries. He has further alleged that before entering the branch premises and during the offence, his movement in the branch has been recorded in the CCTV footages available in the ATM and also branch premises.

4. On the basis of complaint-Ex.P1, the Station House Officer of the respondent-Police registered a case. The matter

was investigated by the Investigating Officer. During the course of investigation, i.e. on the same day, accused No.1 was traced in Sanman Lodge, Bengaluru, recovered cash of Rs.7.00 lakh, a pistol and interrogated him. He disclosed the names of accused Nos.2 to 4. The remaining amount was recovered from accused Nos.2 to 4. The Investigating Officer recorded the statements of witnesses and after completion of investigation, filed the charge-sheet and accused Nos.5 and 6 were shown as absconding. The matter was committed to the Court of Sessions for trial. The Sessions Judge framed the charges against the accused for the offences punishable under Sections 120B, 302, 448, 392 and 397 of IPC and under Sections 25(1)(a), 27(1) and 29(a) and (b) of Arms Act. The accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined forty-two witnesses as PWs.1 to 42, got marked sixty-seven documents as per Exs.P1 to P67 and MOs.1 to 40. After completion of the evidence, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.'). The case of the accused was of total denial and the accused did not adduce any defence evidence.

6. Based on the above evidence, the trial Court convicted accused No.1 and held that the prosecution proved the case beyond reasonable doubt that on 19.11.2012 at 4:04 p.m., accused No.1 entered the Bank, robbed cash of Rs.15.23 lakh and committed murder of Muralidhar and accordingly, accused No.1 was sentenced for the offences mentioned above. Being aggrieved by the conviction order, accused No.1 preferred Criminal Appeal No.838 of 2016 and the State preferred Criminal Appeal No.947 of 2017 to convict accused No.1 for the offences punishable under Sections 302, 396 and 120B of IPC and under Sections 29(a) and (b) of Arms Act and to convict accused Nos.2 to 4 for the offences punishable under Sections 120B, 448, 392, 302 and 396 of IPC and under Sections 25(1)(a), 27(1) and 29(a) and (b) of Arms Act.

7. We have heard Ms. Vismaya D.A., learned counsel appearing for Sri P.N. Hegde, learned counsel for accused No.1, Sri Gangadhar K., learned counsel for accused Nos.2 and 3, and Sri Kariappa, learned counsel for accused No.4, Smt. Rashmi Jadhav, Additional State Public Prosecutor for the State, and perused the material on record.

8. Learned counsel for the appellant-accused No.1 has vehemently contended that the trial Court grossly erred in appreciating the law regarding the test identification. The Karnataka Police Manual and various judicial pronouncement of the Court as well the Hon'ble Apex Court have categorically stated the manner as to how the test identification has to be carried out and also the effect of defective test identification. In the instant case, none of the norms contemplated under the Karnataka Police Manual have been followed and the dictum of this Court as well as the Hon'ble Apex Court have been conveniently deviated. Hence, there was no reason for the trial Court to hold that accused No.1 is the same person, who committed the offences as alleged in the complaint. Appreciation of the evidence by the trial Court is not only flawed, but also alien to the Indian Evidence Act, 1872 (for short, 'Evidence Act'). In a case, where the culprit is unknown and his identification was well concealed, strict rule of identification is required to avoid the possibility of innocent being targeted. In the instant case, it is not the case of the prosecution that any of the witnesses have seen the face of accused No.1 and hence, there was no possibility of them identifying a particular person as culprit, that too, identification

parade was conducted in a different attire and open face. He has further contended that insofar as recovery is concerned, there is no reason as to why seizure mahazar was not conducted at the Reception of the Lodge, where accused No.1 was first noticed in the said Lodge. Conducting seizure mahazar on the public road under the street light just outside the Lodge is not only unnatural, but also indicates the effort made by the Police to avoid the CCTV installed in the Lodge capturing the process of mahazar and even the evidence of the Police witnesses and hotel employees are distinct and consistent about the place of drawing the mahazar. When the identity of the person has not been proved beyond reasonable doubt and the recovery is very shaky, the trial Court could have extended the benefit of doubt to accused No.1. The manner in which the Police created the so-called finger prints for the purpose of expert opinion reveals the manner in which the Police travelled to fix accused No.1 in a false case. The finger prints obtained in a different case in connection with different offences has been clandestinely used in the instant case. It is further contended that the ballistic report, recovery, CCTV footage and identification are conveniently created by the Investigating Officer. Though several eyewitnesses have described accused

Nos.1 to 4, but identification was not conducted properly. The evidence of fingerprint expert does not indicate that on the glass door of the Cashier, there was fingerprint impression and the mahazar drawn at the spot does not speak about collection of fingerprint. No mahazar was drawn while taking the fingerprint of accused No.1. Further, the blood collected by the Investigating Officer was not sent to the Forensic Science Laboratory for chemical examination.

9. Learned counsel further contended that if the Court comes to the alternative conclusion that accused No.1 has committed the offences, under such circumstances, the Court may scale down the offence under Section 302 IPC to Section 304 II of IPC as it was not a murder, but culpable homicide not amounting to murder, as there was no intention on the part of accused No.1 to commit the murder of the deceased with gunshot injury. Hence, he prays to allow the appeal.

10. Learned counsel for accused Nos.2 to 4 vehemently contended that PWs.1 to 7 and 15 are the alleged eyewitnesses to the incident. However, these eyewitnesses have deposed about accused No.1 and not stated anything against accused Nos.2 to 4. Hence, the role of accused Nos.2 to 4 is not

attributed by the alleged eyewitnesses. PW.12 alone has stated that accused Nos.2 to 4 were standing in front of the Bank, however, PW.12 was not called upon by the Investigating Officer or the Tahsildar while conducting the test identification parade in the Prison. Further, PW.12 has clearly stated that the Police informed him regarding the involvement of accused Nos.2 to 4 and hence, he identified them in the Police Station. Therefore, the identification and involvement of accused Nos.2 to 4 is not at all established by legal evidence. Hence, the trial Court has rightly acquitted accused Nos.2 to 4 and such well-reasoned judgment may not be interfered with by this Court. Thus, the learned counsel prays to dismiss the appeal filed by the State insofar as accused Nos.2 to 4 are concerned.

11. *Per-contra*, the learned Additional State Public Prosecutor for the State has taken up the contention that PWs.1 to 7 and PW.15, being the eyewitnesses to the incident, have categorically stated that on 19.11.2012 at 4.00 p.m., accused No.1 entered the Corporation Bank, Chikkabanavara Branch, Bengaluru, committed murder of Muralidhar, robbed cash of Rs.15.23 lakh and fled away with the mobile phone of the Cashier. PW.1 also stated about lodging of Ex.P1-complaint,

seizure of one fire cartridge, bag, cash, three CDs and hard disk, which contained CCTV clippings under the seizure mahazar and conduct of test identification parade in the Prison, where he identified accused No.1 and that again on 7.2.2013, he and other witnesses were called by the Tahsildar to identify the pistol, checked shirt and blue jeans pant and accordingly, they identified the said articles and mahazar was drawn in their presence. She further contended that, PW.8, owner of the Petrol Bunk, has stated about seizure of cash of Rs.1.30 lakh from accused No.2 and Rs.1,29,500/- from accused No.3 under the mahazar. PW.11, witness to seizure mahazar-Ex.P15, has clearly stated that the Police conducted seizure mahazar at Sanman Lodge on 19.11.2012 at 9.20 p.m. and seized cash of Rs.7,98,000/-, Pistol-MO.10, shirt-MO.11, and MO.12-pant. PW.12, who is running a footwear showroom in the ground floor of the same building of the Corporation Bank, Chikkabanavara Branch, has clearly stated that soon after the incident, he heard a siren from the Bank and he also saw accused Nos.2 to 4 standing in front of the Bank on the date of the incident. PW.14 has stated about seizure of Rs.1.00 lakh from the possession of accused No.4. PW.15, Assistant Manager of the Corporation Bank, is also another eyewitness to the incident. He has

reiterated the oral testimonies of PW.1 to PW.7 and corroborated their evidence. The Forensic Science Laboratory report, test identification parade and seizure of amount at the instance of accused Nos.1 to 4, clearly demonstrate that accused Nos.1 to 4 are involved in the crime and hence, she prayed to convict accused Nos.1 to 4.

12. After hearing the learned counsel appearing for the respective parties and on examining the material on record, the following point would arise for our consideration:

"Whether the judgment and order of conviction and sentence passed against accused No.1 and order of acquittal passed against accused Nos.2 to 4 requires interference at the hands of this Court?"

13. Before proceeding further in analysing the evidence led in the matter, it is to be borne in mind that Criminal Appeal No.947 of 2017 filed by the State is against the judgment of acquittal of accused Nos.2 to 4 for the offences punishable under Sections 120B, 448, 392, 302 and 396 of IPC and under Sections 25(1)(a), 27(1), 29(a) and (b) of Arms Act. Therefore, accused Nos.2 to 4 have primarily the double benefit. Firstly, the presumption under law is that, unless his

guilt is proved, the accused has to be treated as an innocent person in the alleged crime. Secondly, the accused has already been enjoying the benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

(a) Our Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -v- State of Karnataka*** reported in ***(2007) 4 SCC 415***, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph Nos.42(4) and 42(5) as below:

"42(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

(b) In the case of ***Sudershan Kumar -v- State of Himachal Pradesh*** reported in ***(2014) 15 SCC 666***, while

referring to Chandrappa's case (supra), the Hon'ble Apex Court at paragraph No.31 of its judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of **Jafarudheen and others -v- State of Kerala** reported in **(2022) 8 SCC 440**, at paragraph No.25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

The above principle laid down by it in its previous case was reaffirmed by the Hon'ble Apex Court in the case of **Ravi Sharma -v- State (Government of NCT of Delhi) and another** reported in **(2022) 8 SCC 536** and also in the case of

Roopwanti -v- State of Haryana and others reported in
2023 SCC OnLine SC 179.

14. It is keeping in mind the above principles laid down by the Hon'ble Apex Court, we proceed to analyse the evidence placed by the prosecution in these matters:

PW.1-Suresh Babu, Senior Manager, Corporation Bank, Chikkabanavara, is the complainant. He has stated that on 19.11.2012 at 4.00 p.m., when he was in his cabin, a person came to his cabin with a pistol in his left hand and his face was partly covered by a kerchief. The person armed with pistol told him and the customers, i.e. Siddaiah and Hanumantharaju, who were sitting in his cabin to come out and further, the stranger told the staff of the Bank and others customers to go to a corner and drop their mobiles. Further, he has stated that one customer, Muralidhar, hesitated to drop the mobile, at that time, the said person shot at Muralidhar on his right shoulder. Thereafter, that person enquired about the Cashier. Therefore, he called Cashier-Dasappa (PW.2) and when Cashier entered, he took the mobile phone of the Cashier and asked him to handover the cash in the cash cabin to his bag and accordingly, the Cashier handed over the cash to his bag and the stranger

left the Bank. Immediately, he telephoned the Police and his Superior Officers. In addition to that, he made a siren and injured, Muralidhar, was shifted to NRR Hospital. His Superior Officers and the Police came to the Bank and made enquiry. At that time, they wrote and tallied cash roll and C.R.S. and came to know that the said person had taken away amount of Rs.15,23,927/- and he gave complaint in the Bank itself, which is marked as Ex.P1. Further, he has stated that after complaint was given, the Police enquired and seized MOs.1 to 4, i.e. bloodstained paper, bloodstained cotton pieces (2 Nos.) and one cartridge, respectively, and they drew mahazar in the spot and the said mahazar is marked as Ex.P2. Further, he has stated that on 28.11.2012, he had given further statement. At that time, the Police showed the seized bag and money. Said bag has been marked as MO.5. He had given CDs and hard disk, which contains CCTV clippings. On 9.1.2013 at 3.00 p.m., the Police drew the mahazar as per Ex.P5 and seized three CDs and hard disk, in which CCTV clippings were there and the same are marked as MOs.6 to 9. He has stated that on 8.1.2013, in the Central Jail, he identified accused No.1 before the Tahsildar. On 7.2.2013, the Tahsildar called this witness and his staff by name Dasappa, Hanumantharaju, Yogesh

Kumar to his Office at Kaveri Bhavan and opened the sealed cover and showed one pistol-MO.10, and one checked shirt-MO.11 and blue jeans pant-MO.12, which were worn by accused No.1 and they all identified the said articles. He has stated that on 21.3.2014, MO.13-cash of Rs.10,69,330/- had been released by the Police in the Police Station as per the order of the Court and he deposited the same in the Bank, at that time, video and photos had been taken and the same is marked as Ex.P7. In the cross-examination of PW.1, nothing is elicited to disbelieve his evidence.

15. PW.2-Dasappa, Clerk at Cash Section, Corporation Bank. He has stated that since twenty years, he is serving in the Corporation Bank, Chikkabanavara. On 19.11.2012, at about 3.00 p.m., he was working in the Cash Section and was receiving cash from the customers and at that time, the additional customer, Muralidhar, Manager of Chamundeswari Petrol Bunk, had come to deposit a cash of Rs.6.95 lakh. Thereafter, three customers also deposited the amount. At about 4.00 p.m., one stranger entered the Bank holding a pistol in his left hand and the said stranger threatened the Bank Manager and staff of the Bank and that the stranger had

covered his half portion of face by a kerchief and had worn a cap on his head. He has stated regarding threat given by him by showing a pistol, taken cash and his mobile. Further, he has stated that he asked his staff of the Bank to drop the mobiles, but Muralidhar, did not drop the mobile and therefore, he shot at him on his right shoulder by his pistol and Muralidhar sustained injury. After the robbery, at about 6.00 p.m., the Police came to the Bank and checked in CCTV camera. When his superior asked him to tally the cash in the computer, they found that there was shortage of Rs.15,23,927/-. The Police enquired the Manager and other witnesses. On 7.1.2013, this witness and other eyewitnesses went to Central Prison and they identified accused No.1. He also identified the bag-MO.5 of accused No.1 and MO.13-cash of Rs.10,69,330/-. Further, on 7.2.2013, he had gone to the Office of Tahsildar and he identified the pistol-MO.10, shirt-MO.11, and pant-MO.12 of accused No.1. He has also identified cash chest roll relating to his Cash Department, which are marked as Exs.P3 and P4. In the cross-examination, nothing is elicited to disbelieve the evidence of this witness.

16. PW.3-R. Munilakshmamma, Attender, Corporation Bank, Chikkabanavara, has stated that on 19.11.2012, at about 4.00 p.m., when she was making entry by sitting near computer, at that time, one person came from outside, he was wearing a cap and covered his face (half) by a kerchief, he was holding pistol in his left hand and on his backside, he was hanging up a bag. Further, she has reiterated the evidence of PWs.1 and 2. She has identified accused No.1 during the test identification period and stated that the said accused himself had committed the alleged offence and she also identified the shirt and pant of accused No.1, which were worn by him on the date of the incident.

17. PW.4-Venkatachalappa, husband of PW.5. He has reiterated the evidence of PWs.1 to 3.

18. PW.5-Sarvamangala, PW.6-Hanumantharaju L., and PW.7-Siddaiah are the customers of the Corporation Bank, Chikkabanavara, who witnessed the incident and reiterated the oral testimonies of PW.1 to PW.4.

19. PW.8-Venkatesh, owner of Petrol Bunk, has stated that Muralidhar (deceased) was working as Manager in his

Chamundeshwari Petrol Point, Chinnabanavara. One Madhu, is his brother's son and he was looking after accounts of the said petrol bunk and the deceased was looking after the business transactions of his petrol bunk and they had Bank Account in the Corporation Bank, Chikkabanavara. On 19-11-2012, Muralidhar and Madhu had been to the Bank. Later, Madhu returned back to petrol bunk and Muralidhar was in the Bank to deposit a sum of Rs.6.90 lakh to his account. At about 4:30 p.m., he came to know that Muralidhar sustained injury by gunshot in the Bank. Thus, he had gone to the Bank and saw Muralidhar and there was bleeding on his right shoulder, immediately, he and others shifted Muralidhar to NRR Hospital and at 6:00 p.m. Muralidhar succumbed to the injuries. Later, he came to know about the incident through PWs.1 to 4. It is his further evidence that, on 20-11-2012, the Police called him to the Police Station to identify the accused. Thus, he visited the Police Station, at that time, three accused persons were in the custody of the Police. These accused took the Police to Ganapathi Nagar and in one of the houses at second floor, accused No.2 produced a blue bag containing cash of Rs.1.30 lakh from accused No.2. Further, accused No.3 went to another room in the same house and brought cash of Rs.1,29,500/-

kept in the plastic cover. Hence, in his presence, the Police conducted mahazar vide Ex.P12.

20. PW.9-Parvatamma, wife of the deceased, has stated that her husband was working as Manager in petrol bunk at Chikkabanavara. On the date of incident, she received phone call from the friend of her husband that when her husband had gone to the Bank to deposit the cash, someone had shot her husband and he has sustained injury.

21. PW.10-B.V. Prakash, witness to inquest mahazar-Ex.P13, has stated that the Police conducted inquest mahazar in the Hospital on the dead body of the deceased on 19.11.2012 vide Ex.P13.

22. PW.11-Shiva, witness to seizure mahazar-Ex.P15, has stated that the Police called him to act as one of the Panchas. On 19.11.2012 at about 9:30 p.m., the Police and he went to Sanman Deluxe Lodge, arrested accused No.1 and on his search, he produced one checked shirt, blue jeans pant, cash of Rs.7.98 lakh, pistol and a magazine. Further, in the wallet, they found cash of Rs.1450/-, two Bank cards, Nokia mobile phone and Samsung mobile and thus, the Police drafted

seizure mahazar vide Ex.P15 and he has identified these articles as MOs.5, 10, 11, 12, 16 to 18 and 19 to 28.

23. PW.12-Fazal is running a footwear showroom in front of Janapriya Apartment, wherein the Corporation Bank, Chikkabanavara Branch, is situated in the same complex. He has stated that prior to the incident, at about 3:30 p.m., accused Nos.2 to 4 were standing in the parking place in front of his shop. In the cross-examination, he admitted that his shop is situated in the basement and the Corporation Bank is situated in the first floor. He also admitted that from the basement, one cannot see what is happening in the Bank situated in the ground floor and so also, one cannot say what is happening in the basement from the Bank, situated at first floor.

24. PW.13-Fasiulla has stated that on 19.11.2012, the Police called him and conducted spot and seizure mahazar in the Corporation Bank vide Ex.P2 and seized MOs.1 to 4- bloodstained paper, bloodstained cotton pieces (2 Nos.) and cartridge.

25. PW.14-Inam Rashidh, witness to seizure mahazar-Ex.P17, has stated that on 20.11.2012, the Police called him to the Police Station to act as Pancha and accordingly, he went to the Police Station, at 6:30 a.m., accused No.4 was in the custody of Police. Accused No.4 took the Police and him to AGB Layout 10th Cross, in one of the houses at first floor, he produced a sum of Rs.1.00 lakh from his suit case. Thus, the Investigating Officer seized the said amount under mahazar.

26. PW.15-Yogesh Kumar, Assistant Manager, Corporation Bank, is also one of the eyewitnesses. He has reiterated the evidence of PWs.1 to 7 and corroborated their testimonies. This witness was cross-examined. In the cross-examination, he stated that, the Bank Manager has shown CCTV camera and finger prints to the Police on the date of incident. Police were there in the Bank till midnight. He further stated that he saw accused No.1 in CCTV footage and thereafter, he identified accused No.1 in the Jail, while conducting test identification parade.

27. PW.16-Naveen Kumar, witness to seizure mahazar-Ex.P19, stated that on 20-11-2012, the Police called him and his friend, Arjun, to Soladevanahalli Police Station at 8:15 a.m.,

where the Police showed accused No.1 in the Police station. Later, accused No.1 took the Police and this witness to Prashanth Nagar, where he produced a LG Reliance mobile phone which belongs to PW.2-Dasappa, Cashier. Hence, the Police seized the said mobile phone under the mahazar. This witness identified the said mobile phone as per MO.30.

28. PW.17-Sharath Gowda, Manager of Sanman Deluxe Lodge, has stated that on 19.11.2012 at 5:34 p.m., accused No.1 booked Room No.204 in the Lodge. He came for duty at 7:00 p.m. and on the same night, at about 9:00 p.m., the Police Inspector and other officials came to their Lodge, showed a photo and enquired as to the person shown in photo has booked any room or not. Hence, He checked CCTV footage and showed to the Police, at the same time, accused No.1 came from Room No.204 to Reception counter. The Police enquired accused No.1 and in turn, he disclosed his name as Devesh Kumar Singh and when the Police asked to show his bag, immediately, accused No.1 tried to escape from Reception area and the Police chased him and caught hold of him with the help of Upparpete Police. On being enquired, accused No.1 disclosed that on the same day at 4:00 p.m., he entered the Corporation

Bank, situated at Hesaragatta Road, showed pistol to Manager and Cashier and robbed cash of Rs.15.00 lakh. He has further stated that, accused No.1 distributed the robbed amount to accused Nos.2 and 3. Hence, the Police seized the bag containing a pistol and other articles. He has further stated that on 24.11.2012, at 10:45 a.m., the Police seized the CCTV camera and the register book of the Lodge.

29. PW.18-Ravikumar has stated that, on 09.01.2013, the Police called him to act as one of the Panchas. Accordingly, he stood as Pancha, wherein the Police seized CCTV footage and hard disk under Ex.P5.

30. PW.19-Prashant, BEML employee, has stated that, the Police conducted seizure mahazar vide Ex.P5 on 09.01.2013 and seized video clippings of CCTV camera from 15.11.2012 to 19.11.2012 in a computer at the Corporation Bank. The Police also seized three CDs and one hard disk. PWs.18 and 19 have identified those articles as per MOs.6 to 9.

31. PW.20-Dr. Nagesh H. B., ESI Dispensary, Sriramapura, has stated that he owned a house at Geleyara Balaga Extension, wherein he has constructed three floor

building and accused No.4 was a tenant under him and he was staying in the first floor of the said rented house. He further stated that accused No.4 paid Rs.30,000/- as advance and a monthly rent of Rs.8,000/- per month was fixed, however, he did not return.

32. PW.21-Anjanappa, Carpenter, has stated that accused Nos.2 and 3 had given advance for his house for rent at second floor.

33. PW.22-Bhaskar, witness to seizure mahazar-Ex.P24, has stated that on 07.02.2013, Soladevanahalli Police called him to the Office of Tahsildar in respect of Bank shootout case and to act as Pancha. Accordingly, he went to the Office of Tahsildar, the Tahsildar opened the sealed cover, wherein he showed a pistol, checked shirt and blue jeans pant. Hence, the Bank Manager and himself identified these articles and thus, the Investigating Officer seized those articles under MOs.10 to 12 under mahazar.

34. PW.23-Nataraj, Assistant Engineer, Development Division, KIADB Division, Tumkuru, who prepared the sketch of the scene of offence as per Ex.P25 in the Corporation Bank.

35. PW.24-Dr. Sujith, Proprietor and Medical Officer of NRR Hospital, has stated that on 19.11.2012 at about 4.20 p.m., injured in the Corporation Bank shootout case, Sri Muralidhar, was brought to his Hospital. He has stated that in spite of treatment, he died. He further stated that a bullet had pierced through his right shoulder and there was bleeding. Hence, he issued Medico Legal Certificate as per Ex.P27.

36. PW.25-Dr. S. Harish, Professor, Forensic Science Department, has stated that he conducted post-mortem examination on the dead body of deceased Muralidhar on 20.11.2012 between 10.15 a.m. and 12.45 p.m. in Crime No.173 of 2012 of Soladevanahalli Police Station. On examination of the dead body, he found the following injuries:

"An oval-shaped punctured wound (entry wound) measuring 1.3x1cm present over the front of upper part of right arm, obliquely situated 21cm from midline, 12cm below the tip of right (not clear) process, 142cm from right heel upper and outer edge bevelled and margins and graded 3mm wide. There is no evidence of (not clear) blackening and tattooing."

On dissection, the bullet has pierced the skin, passed through the subcutaneous tissues, muscles and entered the thoracic cavity through right 6th intercostals space, fracturing right 6th rib in anterior axillary line, passing through the lower

lobe of right lung and lodged behind the body of 7th thoracic vertebra, which was chiselled and round nosed bullet measuring 1.1 cm in length and 0.8 cm in diameter recovered. Total depth of the wound is 29cm and wound is directed inwards, downwards and backwards.

After examination, bullet was marked as 'H' at its base. Then packed, labelled, sealed and handed over to the Investigating Officer along with sample seal. On internal examination, anterior and lateral chest wall muscles show extravasations between third and fifth ribs along anterior axillary line. All injuries were ante-mortem in nature and fresh. As per the opinion of the doctor, the death is due to haemorrhage and shock, as a result of bullet injury to the chest sustained.

37. PW.26-B.C. Ravindra, Ballistic Expert, has stated that on 04.01.2013, he examined in all 16 articles and opined that pistol in Article No.4 is in working condition at the time of examination and the bullet in Article No.16 has been fixed through the pistol in Article No.4.

38. PW.27-H.S.Bhanumoorthy, Principal, Acharya Polytechnic College, Bengaluru, has stated that he has given a letter-Ex.P31, which contains the particular of accused Nos.1 to 4 stating that they were studying in their College.

39. PW.28-Suman, Cashier at Sanman Deluxe Lodge, Bengaluru, has stated that since three years prior to the incident, he was working as a Cashier in Sanman Lodge. On 19.11.2012, accused No.1 came to Sanman Lodge at 5.30 p.m. and asked for a room. Hence, he allotted Room No.204 at second floor of the said Lodge and accordingly, he allotted a room by receiving ID proof of accused No.1, wherein the name of accused No.1 was shown as Devesh Kumar Singh, Acharya Engineering College, student. On the same day, at 07.00 p.m., due to urgent work, he went to his work by handing over charge to Sharath Gowda. He further stated that on the same day at 10.00 p.m., said Sharath Gowda called over phone and stated that the person who was in Room No.204 was taken into custody by Soladevanahalli Police. Later, this witness identified accused No.1 in the CCTV footage.

40. PW.29-Eranna, Supervisor, Sanman Lodge, reiterated the oral testimonies of PW.11 and PW.28 and corroborated their testimonies.

41. PW.30-N. R. Umesh Chandra, Tahsildar, has stated that on 04.02.2013, Soladevanahalli Police, submitted a requisition along with a copy of order of the Court in respect of Crime No.173 of 2012, wherein he was instructed to identify the articles sent by the FSL in presence of the witnesses. Accordingly, he requested the Police to secure the witnesses on 07.02.2013 at 03.00 p.m. Thus, the Investigating Officer secured PW.1 and PW.2, at that time, the Tahsildar opened the sealed cover sent by the FSL, which contains a pistol, shirt, and pant which was showed to PW.1 and PW.2 and they identified the same. Hence, he prepared a report as per Exs.P33 to 35.

42. PW.31-Jagdish Kumar, Police Constable, has stated that on 19.11.2012, he accompanied the Investigating Officer and recorded the entire incident, soon after the shootout till the arrest of accused No.1 in Sanman Deluxe Lodge, Bengaluru.

43. PW.32-Purushotham, Deputy Superintendent of Police, C.I.D, Bengaluru, has stated that after shootout in the

Corporation Bank, he visited the Hospital and conducted inquest mahazar in presence of witnesses as per Ex.P13 on the dead body of the deceased.

44. PW.33-Hanumantharaju S.M., Police Constable, who secured accused No.4.

45. PW.34-Ramesh, Head Constable, who secured accused Nos.2 and 3.

46. PW.35-Suma R., Tahsildar, who has stated that on 07.01.2013 at 2:45 p.m., she conducted Test Identification Parade in the Central Prison, where accused No.1 was identified by PWs.1 to 7. Hence, she submitted the test report.

47. PW.36-R. Jayaram, Police Inspector, Jalahalli Police Station, has stated that after receipt of information in respect of Bank robbery and murder on 19.11.2012, he visited the Corporation Bank at 5.30 p.m., saw CCTV footage, and as per the instructions of the Deputy Commissioner of Police, he went in search of Lodges, within the limits of Upparpete Police Station and in Sanman Lodge, he arrested accused No.1 and on search, he found a pistol, magazine and cash of Rs.7.98 lakh.

This witness reiterated the testimonies of PWs.17 and 31 and corroborated their testimonies.

48. PW.37-Rangadamegowda, Head Constable, Soladevanahalli Police Station, has stated that on 29.11.2012, he secured Post-Mortem examination report, sealed clothes of the deceased, bullet and blood sample bottle, and produced before the Investigating Officer. On 03.12.2012, as per the instructions of the Investigating Officer, he carried 17 seized articles to the Forensic Science Laboratory, Bengaluru, for chemical examination.

49. PW.38-Prakash, Police Constable, Soladevanahalli Police Station, has stated that on 19.11.2012, soon after the death of the deceased at NRR Hospital, he shifted the dead body to M. S. Ramaiah Hospital for Post-Mortem examination.

50. PW.39-Ravi Kumar J.J., Police Constable, Soladevanahalli Police Station, has stated that soon after conducting the Post-Mortem examination, he handed over the dead body of the deceased to the uncle of the deceased.

51. PW.40-M. Balaji, Police Sub-Inspector of Police, Soladevanahalli Police Station, stated that he received a

complaint, registered the case and handed over the file for further investigation to the Inspector of Police.

52. PW41-Chandrasekhar, Police Inspector, Soladevanahalli Police Station, has stated that on 19.11.2012, soon after receipt of information, he visited the Corporation Bank, received the complaint, handed over by PW.40, who in-turn registered the case, conducted investigation and filed the charge-sheet against accused Nos.1 to 4.

53. PW.42-Krishna Prakash T.S., Fingerprint Expert, has stated that on 19.11.2012, he received message from Control Room as to commission of offence within the limits of Chikkabanavara, Soladevanahalli, and hence, he visited the Corporation Bank along with his staff, where he secured the fingerprints of the Bank and accused No.1, and accordingly, issued report as per Exs.P65 to P67.

Analysis of Evidentiary value of
eyewitnesses

54. A perusal of the evidence of the prosecution witnesses, it appears that PWs.1 to 3 and 15 are the staff of the corporation bank and PWs.4, 5, 7 and 8 are the customers

of the corporation bank, who were present in the corporation bank at the time of the incident and they are the eye witnesses to the said incident. Soon after the incident, once again, these witnesses saw accused No.1 in CCTV camera footage installed in the bank. The eye witnesses to the incident have given vivid account and the role played by accused No.1. They have categorically stated that on 19.11.2012 at 4.04 p.m., accused No.1 entered the corporation bank by wearing half monkey cap by holding a pistol in his hand, threatened the bank manager and cashier and fired towards Muralidhar with his pistol on his right shoulder, who sustained severe injuries and thereafter, accused No.1 collected the cash of Rs.15,23,927/- from the bank by showing pistol to PWs.1 and 2, snatched the mobile phone of PW.2 Dasappa and fled away from the bank. Immediately, injured Muralidhar was shifted to NRR Hospital, where he died on account of gun shot injury at 6.00 p.m. while taking the treatment. Hence, PW.1 lodged the complaint vide Ex-P.1.

55. Further, PWs.2 to 7 and 15 have categorically stated these aspects and reiterated the oral testimony of PW.1. The evidence of these eye witnesses is clear, cogent and convincing

so as to accused No.1 entering the bank, threatening the inmates of the bank, firing towards Muralidhar and collecting cash of Rs.15,23,927/-from the cashier of the bank.

56. It is trite law that eyewitness testimony holds high evidentiary value in murder cases and can form the sole basis for conviction, if the witness is entirely reliable, consistent, and free from bias. While Section 134 of Evidence Act requires no specific number of witnesses, the Court must scrutinise testimony for accuracy, as minor inconsistencies with medical evidence may not invalidate the entire account.

57. In the instant case, all the eyewitnesses have specifically denied in their cross - examination that prior to conduct of identification parade, Police had shown accused persons during the course of investigation and they had seen accused persons in the newspaper and media. None of the eyewitnesses have stated before the Court that they have identified the accused before the Court, since accused No.1 was shown in the Police Station prior to identification parade or in television news or print media or in the Court, when the accused were in judicial custody. In fact, they have clearly and specifically stated that they have witnessed the incident of

murder and robbery in the bank and they had seen accused No.1 at the time of the incident. It shows that only, accused No.1 was in the bank by holding a pistol and several persons including eyewitnesses to the incident have witnessed the entire incident. Hence, the evidence of eyewitnesses is clear and cogent beyond shadow of any doubt.

Homicidal death

58. In the instant case, accused No.1 fired at Muralidhar and caused bleeding injuries to his upper right shoulder, consequent to which, Muralidhar died due to injuries sustained.

59. The Homicidal death, as defined by the Hon'ble Supreme Court of India through interpretation of the Indian Penal Code under sections 299 and 300, is killing of a human being by another, categorised by intent and knowledge. It encompasses culpable homicide and murder, determined by whether the act was done with an intention to cause death or bodily injury likely to cause death.

60. Insofar as *homicidal death* of the deceased is concerned, the evidence of panch witness PW.8-T. Venkatesh, Owner of the Chamundeshwari Petroleum Point, Bengaluru,

PW.9-Parvathamma, wife of the deceased, and PW.25 Doctor, who conducted the post mortem examination of deceased are to be analysed.

61. PW.8 T. Venkatesh, Owner of Chamundeshwari Petroleum Point, Bengaluru, has stated that he knows the deceased Muralidhar and he is the manager of the said petrol bunk and was looking after the affairs of the petrol bunk and he(PW.8) is having bank account at Chikkabanavara Corporation Bank. That on 19.11.2012, Muralidhar had been to Chikkabanavara bank to deposit amount of Rs.6,90,000/- to his account. Thereafter, at 4.30 p.m., the manager of the bank informed over phone that Muralidhar had sustained gun shot and asked him to come to the bank. Immediately, he went to the bank and the bank staff and public shifted injured, Muralidhar, to an Ambulance. When he saw the injured, there was bleeding on his right shoulder and he also accompanied injured, Muralidhar, to NRR hospital and the Doctors present in the said hospital treated the deceased and at 6.00 p.m., the doctors, at the said hospital informed him that Muralidhar died. In this regard, the Investigating Officer conducted inquest mahazar in his presence vide Ex-P12 and he saw the gun shot

injury on the right shoulder of the deceased. Nothing is elicited in the cross-examination of PW.8 so as to disbelieve the aspect of homicidal death of the deceased.

62. PW.9 Parvathamma, wife of the deceased, has deposed that on 19.11.2012, her husband (deceased) had been to regular work and he had come for lunch at 2.30 p.m. and thereafter, she came to know through one of the friends of the deceased that when her husband/deceased Muralidhar had been to the bank for deposit of amount, he was shot and he had sustained injury to his hand and he was shifted to NRR hospital. Later, she went to the hospital to see her husband, who was taking treatment; however, he succumbed to the injuries.

63. PW.25 -Dr. S. Harish, Professor, Department of Forensic Science, M.S. Ramaiah Hospital, Bengaluru, has deposed that on 20.11.2022, he conducted the post-mortem examination on the deceased between 10.15 a.m. and 12.45 p.m. and found that the shirt of deceased was torn, blood stained and his right shoulder was torn. He has identified the shirt, banian, pant and underwear of the deceased as M.Os.31 to 34. He further stated that, he examined the dead body of

the deceased and found the following internal and external injuries:-

" An oval shaped punctured wound (entry wound) measuring 1.3 x 1cm present over the front of upper part of right arm obliquely situated 21 cms from midline, 12 cm below the tip of right (not clear) process, 142 cm from right heel, upper and outer edge beveled and margins and graded 3 mm wide. There is no evidence of (not clear) blackening and tattooing.

On dissection the bullet has pierced the skin, passed through the subcutaneous tissues, muscles and entered the thoracic cavity through right 6th intercostal space, fracturing right 6th rib in anterior axillary line, passing through and through the lower lobe of right lung and lodged behind the body of 7th thoracic vertebra, which was chiseled and a round nosed bullet measuring 1.1 cm in length and 0.8 cm in diameter recovered. Total depth of the wound is 29 cm and wound is directed inwards, downwards and backwards.

After examination bullet was marked as "H" at its base, then packed, labeled, sealed and handed over to the concerned police along with sample seal.

INTERNAL EXAMINATION:

- A. Scalp, Skull: Intact.
Brain, Meninges etc.,: Intact and Pale.
- B. Respiratory System: (Larynx, Trachea, Lungs & Pleurae)

Right pneumothorax present.

Anterior and lateral chest wall, muscles shows extravasation between 3rd to 5th ribs along anterior axillary line.

Right Lung: Collapsed, injury described.

Left Lung: Intact and Pale.
- C. Circulatory System:

Heart: Intact and Pale. Coronary arteries: Patent.
Aorta: Intact.

D. Gastro-Intestinal System:

(Mouth, Tongue, Oesophagus peritoneum, intestines, stomach & its contents, liver, gall bladder & spleen)

Stomach: Contains about 100 ml of thick green coloured fluid. No unusual smell, mucosa appears wound.

Liver: Intact and Pale.

Spleen: Intact and Pale.

Intestinal Coils: Contains gas and its contents.

E. Genito-Urinary System: (Kidney, Bladder & Generative Organs)

Empty Intact
Right Kidney: Intact and Pale.
Left Kidney: Intact and Pale.

F. Other Relevant Observations:

- 1) All injuries are antemortem in nature and fresh.
- 2) Range: Distant range.
- 3) Time since death could not be ascertained as body was kept in cold storage. "

The Doctor was of the opinion that the death of the deceased is due to haemorrhage and shock as a result of bullet injury to the chest sustained. Accordingly, he issued Ex-P28 Post Mortem examination report.

64. Medical evidence, including post-mortem report, constitutes expert opinion under Section 45 of Evidence Act, primarily serving to corroborate or contradict oral testimony

rather than acting as substantive evidence. Post-mortem reports (Section 294 CrPC) help determine the cause, time, and manner of death. While not always conclusive, they are crucial for verifying prosecution claims.

Finger print expert

65. Fingerprint experts provide crucial forensic analysis, offering high evidentiary value by linking suspects to crime scenes through unique, permanent, and universal prints. As scientific witness, they analyse latent prints, provide expert testimony under Section 45 of Evidence Act, and corroborate evidence, making them vital for identification, prosecution, and exoneration.

66. In the instant case, the eyewitnesses have clearly stated that on 19.11.2012, finger print experts had come and they had taken finger prints at the place of incident and also at cash counter of PW.2. Some witnesses have stated that on the date of the incident, they watched CCTV footages along with Investigating Officer and photos from the CCTV. The perusal of Ex-P2 spot mahazar, it reveals that the Investigating Officer had called dog squad, finger print experts and inspected the

spot and photos of the spot were taken. Thus, it clearly corroborates that on the date of the incident, finger print experts had visited the corporation bank.

67. To substantiate the evidence of the prosecution, the prosecution examined PW.42 Krishna Prakash, finger print expert, who has stated that as per the instructions of the Assistant Commissioner, Finger Prints, Bengaluru Division, he received the information at 4.30 p.m. on 19.11.2012 to visit the corporation bank and to collect finger prints in respect of commission of the offence, which took place, on the same day at 4.04 p.m. Thus, he went to the Corporation bank, Chikkabanavara Branch and inspected the scene of offence. Initially, he examined entrance rolling shutter, glass door of the chamber of Bank Manager, glass door of cabin of bank cashier. He took finger impressions at glass door of the bank cashier cabin as per 'A' and also took the finger impressions of cashier cabin partition as per 'D'. He further stated that 20.11.2012, he compared 'A' impression with other accused finger impression, same was not tallied with any other finger impression. It is his further evidence that on 27.11.2012, he secured the finger impression of four staff of the bank and four accused persons

and compared the finger impression and found that the finger impression of accused No.1 tallied with 'A' impression secured in the corporation bank on 19.11.2012. Hence, he submitted a report as per Exs-P64 and 65.

68. Though the learned counsel for accused No.1 contended that the finger impression shown in Exs-P66 and P67 are not connected to Crime No.173 of 2012 and the same pertains to Crime No.547 of 2012. We have perused the contents of Exs-P66 and 67, wherein, the serial number is shown as 547/12, whereas, in the middle of the report, there is a clear mention of Soladevanahalli Police, Crime No.173 of 2012. Therefore, Ex-P66 pertains to this case and also belongs to accused No.1. Thus, it clearly establishes that on 19.11.2012, accused No.1 entered the Corporation bank in order to commit the offence. Further, accused No.1 nowhere denied that his finger prints had been taken by the police in the police station.

Ballistic expert report

69. A ballistic report holds high evidentiary value in criminal trials involving fire arms, often acting as crucial forensic proof to link a specific weapon to a crime scene

through expert analysis of bullets, casings, and trajectory. It helps establish the range of fire, time of discharge, and confirms if a weapon is functional. It acts as an unbiased, scientific assessment that is difficult to dispute. Under Section 45 of Evidence Act, the opinion of a ballistic expert is relevant and admissible in evidence. A ballistic report is usually considered as corroborative evidence, not substantive, and is read along with eyewitness testimony or other evidence. If direct, reliable eye witness testimony is available, the ballistic report does not assume much importance.

70. As per the prosecution case, Muralidhar died on account of gunshot injury and to substantiate the same, the prosecution examined PW.26 - B.C. Ravindra, Ballistic Expert, who has stated that on 30.11.2012, the Assistant Commissioner of Police, sent in all 10 sealed articles for examination of articles said to contain one fired 7.65 mm calibre fired cartridge case, one pistol without a magazine, which can accommodate 7.65 calibre cartridge. He examined the barrel of pistol through a lens from muzzle side. Traces of gun powder residues were adhering to the inner wall of the barrel and the muzzle end was not rusted and not oiled. On

examination, it reveals that the pistol bears signs of discharge and it is a fire arm. He also examined that, there are no proof marks and company name on the pistol without rifling, thus, the pistol has been illegally manufactured fire arm as per Ex.P30. He also examined a magazine, which is a component of country made pistol chambered for 7.65 mm pistol cartridges. He also conducted test firing through the pistol and the pistol was in working condition at the time of examination. He also examined the cartridge case have been fired through the pistol. Therefore, the bullet shown in Article 16 of the report was fired through the pistol. Thus, the gun shot injury sustained by Muralidhar is through M.O.10 pistol, which was used by accused No.1, as per finger print and ballistic reports and the oral evidence of PWs.26 and 42. These evidence also corroborates the oral testimonies of eyewitnesses to substantiate that Muralidhar suffered gun shot injury by accused No.1 in the corporation bank, Chikkabanavara.

In the present case, accused No.1 entered the Corporation Bank with a pistol in order to commit robbery in the Bank. His intention was to commit robbery. However, he shot deceased, who succumbed to the gunshot injury. Though the present incident occurred on spur of moment and accused

No.1 had no intention or motive to eliminate the deceased, but, the manner in which he entered the bank with weapon clearly indicates that he had clear intention to commit the crime and hence, it cannot be said that the alleged offence would attract Section 304 Part I IPC and not Section 302 IPC. In this regard, the Hon'ble Supreme Court in the case of **Basdev v. State of Pepsu**¹ has held at paragraph No.6 as under:

"6. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and **knowledge is an awareness of the consequences of the act**. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. **The demarcating line between knowledge and intention is no doubt thin** but it is not difficult to perceive that they connote different things."

(Emphasis supplied)

71. The test applied by the Hon'ble Apex Court in the aforesaid decision is that there are two different terminologies viz., 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with the knowledge that his act is likely to cause death. It would be unsafe to treat the intent and knowledge in equal terms. They are not different things. 'Knowledge' would be one

¹ 1956 SCC ONLINE SC 13

of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased, but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under Part I of Section 304 IPC. It is in this background that the expressions used in IPC viz., intention and knowledge have to be seen as there being a thin line distinction between these two expressions. The act to constitute murder, in the given facts and circumstances, would disclose that the ingredients of Section 300 IPC are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part II of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, the injury found to be present was the injury that was intended to be inflicted.

72. The Hon'ble Apex Court in the case of **Deepak v. State of Uttar Pradesh**² held that the incident had taken

² (2018) 8 SCC 228

place in the heat of the moment and the assault by a single sword blow in the rib cage was without any premeditation and the incident occurred on spur of moment and thus, inferred that there was no intention to kill and as such, the offence was reduced from Section 302 IPC to Section 304 Part I IPC and the appellant was ordered to be released forthwith by sentencing him to the period of detention already undergone.

73. On careful perusal of the said provisions makes it clear that culpable homicide is not murder if it is committed without premeditation in a sudden fight, in a heat of passion, upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. It clearly indicates that offence comes under Section 304 IPC, for which the punishment is imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any

intention to cause death, or to cause such bodily injury as is likely to cause death.

74. The Hon'ble Apex Court in the case of **Anbazhagan v. State represented by the Inspector of Police**³ defined the context of true test to be adopted to find out the intention or knowledge of the accused in doing the act and in that regard, at paragraph No.66, it is held as under:

"66.(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused.

To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken

³ 2023 SCC OnLine SC 857

out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC, it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between two parts of section 304 IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the

exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

- (6) *The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.*
- (7) *The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.*
- (8) *The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.*
- (9) *Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or*

injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

75. In order to consider the aspects of 'intention' or 'knowledge' in the instant case, a perusal of appeal papers would indicate that on the day of the incident, accused No.1 entered the Corporation Bank, to commit robbery by showing pistol and in the mean-while, he shot Muralidhar as he did not obey his instructions, with MO.10-pistol on his right shoulder and the deceased succumbed to the injuries. Insofar as the incident having occurred and the veracity of the evidence tendered by the prosecution witnesses, there is detailed

consideration made by the trial Court believing the versions stated by the prosecution witnesses, more particularly, PWs.1 to 7 and 15. Therefore, the only aspect which arises for our consideration is as to "whether even if the incident is accepted in the manner it occurred, was it on spur of moment and without premeditation?".

76. To invoke the provisions of Exception 4 to Section 300 IPC, four requirements must be satisfied:

- i. It must be a sudden fight;*
- ii. There should be no premeditation;*
- iii. The act must be done in a heat of passion; and*
- iv. The assailant should not have taken any undue advantage or acted in a cruel or unusual manner.*

The material on record clearly depicts that there was premeditation on the part of accused No.1 and the act committed by accused No.1 was not in a heat of passion and use of MO10-pistol and shot on the right shoulder of the deceased is with premeditation. As stated supra, accused No.1 has taken advantage and soon after the incident, accused No.1

fled away by robbing cash of Rs.15,23,000/-, in the bank and the intention was to rob the cash from the bank even at the cost of life of any person in the bank and thus, accused No.1 had the knowledge that if firing is made, it would take away the life of any person.

77. In view of the above, the present case definitely falls under the provisions of Section 302 IPC, as accused No.1 had inflicted gunshot injury on the right shoulder of the deceased with an intention and knowledge that the same would lead to the death of the deceased and act of accused No.1 is punishable under the provisions of Section 302 IPC.

78. The oral evidence of PWs. 8 and 9, medical evidence, finger print and ballistic expert evidence clearly corroborate that the death of Muralidhar was homicidal one. Thus, it can be held that the death of deceased Muralidhar is homicidal one.

Test Identification Parade

79. The Test Identification Parade (TIP) is a vital investigative, non-substantive, and corroborative procedure conducted before a Magistrate to test the memory of a witness in identifying suspects, particularly when they were previously unknown. It serves as a crucial safeguard against mistaken

identity, ensuring that the Courts identification is not based on "tutoring" or false recollection.

80. In the instant case, independent witnesses PWs.1 to 7 and 15 have also been examined as eyewitnesses. They have supported the case of the prosecution insofar as identification of accused No.1 is concerned. No doubt, in the identification parade done by the Tahsildar, there are some minor irregularities. P.W.35, Taluka Magistrate has clearly stated that she has conducted identification parade in the Central Jail by issuing notice to the witnesses on 7.1.2013. The witnesses have also stated that they received Notice from the Tahsildar before conducting identification parade and they had gone to Central Jail on 7.1.2013. They have identified accused No.1 independently. They were sitting in a room and identification parade was conducted in a verandah. They were called one by one to identify the accused persons among other persons, who were standing in the verandah as per instructions of the Tahsildar. It is admitted fact that the Tahsildar did not prepare any admitted Questionnaire and some of the witnesses have stated that they have put their signature in the Taluk Office and some of the witnesses have stated that they have put the

signature in the Central Jail. Merely, because the Police Inspector has put his signature that he received notice on 18.12.2012, it cannot be said that the said Notice was not issued to the witnesses by the Tahsildar. All the witnesses have clearly stated that prior to the identification parade, they received Notice from the Tahsildar and they have also stated that on 7.1.2013, test identification parade was conducted by the Tahsildar in their presence. Therefore, on the ground that there are some minor irregularities, it cannot be said that the Tahsildar did not conduct identification parade and it is not in accordance with law. Test Identification Parade is not a substantive piece of evidence and the same can be taken into consideration for corroboration purpose. All the witnesses have identified accused No.1 before the Court during the course of trial. Therefore, Test Identification Parade report corroborates substantive piece of evidence given before the Court by the witnesses. Nobody have stated before the Court that since they had seen the accused persons in the TV or Police Station or in the Court prior to the identification parade, they are identifying accused No.1 before the Court. They have also denied the suggestions put by the learned counsel for accused No.1 in the cross-examination that they are deposing that on the date of

the incident, accused No.1 had illegally entered the Bank, committed robbery and caused death of Muralidhar by firing from the pistol.

81. Learned counsel for accused No.1 vehemently contended that the Test Identification Parade was not in accordance with law and hence, it is fatal to the case of the prosecution. In this regard, the learned counsel relied upon the decision in the case of ***P. Sasikumar v. State Represented by the Inspector of Police*** reported in ***(2024) 8 Supreme Court Cases 600***, wherein, the Hon'ble Apex Court had held as under:-

22. *However, the High Court has believed the testimony of PW 5 who has identified Accused 2 under similar circumstances! The appellant was also stranger to PW 5 and PW 5 had also seen the accused i.e. the present appellant for the first time on that fateful day i.e. on 13-11-2014 while he was wearing a green-coloured monkey cap. The only reason assigned for believing the testimony of PW 5 is that he is after all an independent witness and has no grudge to falsely implicate the appellant. This is the entire reasoning.*

23. *We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see : Kunjumon v. State of Kerala [Kunjumon v. State of Kerala, (2012) 13 SCC 750 : (2012) 4 SCC (Cri) 406]).*

24. *After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused.*

The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

26. *The relevance of TIP has been explained by this Court in a number of cases (see : Ravi Kapur v. State of Rajasthan [Ravi Kapur v. State of Rajasthan, (2012) 9 SCC 284, para 35 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107] , Malkhansingh v. State of M.P. [Malkhansingh v. State of M.P.,(2003) 5 SCC 746, para 16 : 2003 SCC (Cri) 1247]).*

27. *In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of Jayan v. State of Kerala [Jayan v. State of Kerala, (2021) 20 SCC 38] and Amrik Singh v. State of Punjab [Amrik Singh v. State of Punjab, (2022) 9 SCC 402 : (2023) 2 SCC (Cri) 404] .*

28. *In Jayan [Jayan v. State of Kerala, (2021) 20 SCC 38] , this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words : (Jayan case [Jayan v. State of Kerala, (2021) 20 SCC 38] , SCC p. 44, para 18)*

"18. It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time-gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy."

29. *Under these circumstances, we hold that the identity of the present appellant is in doubt. The appellant could not have been convicted on the basis of a very doubtful evidence as to the appellant's identity.*

82. In the case of **Gireesan Nair and Others v. State of Kerala** reported in **(2023) 1 SCC 180**, the Hon'ble Apex Court at para graph Nos.32, 33 and 34 has held as under:-

32. *If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh [Chunthuram v. State of Chhattisgarh, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1955) 1 SCR 903 : AIR 1955 SC 104].*

33. *It is significant to maintain a healthy ratio between suspects and non-suspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sine qua non that the non-suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452] and Ravi v. State [Ravi v. State, (2007) 15 SCC 372 : (2010) 3 SCC (Cri) 730]).*

34. *It is for the prosecution to prove that a TIP was conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP. Thus, the burden is not on the defence. Instead, it is on the prosecution (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428, para 4 : 1999 SCC (Cri) 1452].*

83. The Honb'le Apex Court in the case of **Kamal v. State (NCT of Delhi)** reported in **2023 SCC OnLine SC 933** at paragraph Nos.12 and 13 has held as under:-

12. *"It is pertinent to note that the learned Judges of High Court have themselves noted that Naresh Kumar (PW21), in his cross-examination, has stated that he was shown Kamal Kishore and Manoj on 12th September 2009 in the Police Station where Kavita and Jai Singh were also present and therefore, the refusal by them for Test Identification Parade (TIP) was justified.*

13. *We fail to appreciate the correctness of this finding. If the accused are already shown to the witnesses in the Police Station, then the sanctity of TIP before the court is doubtful."*

84. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Syed Umar Sayed Abbas and Others*** reported in **(2016) 4 SCC 735** has held at paragraph Nos.6, 7, 8, 16 and 17 as under:-

6. *The trial court convicted the respondent-accused on the basis of the testimonies of five eyewitnesses — Hemant Parshuram Akre (PW 1), Ganesh (PW 4), Rajesh Tanaji Akre (PW 5), Rajaram Sarfare (PW 6) and Kishor Maniklal Damaniya (PW 7), out of which PW 6 was the injured eyewitness. The trial court found their depositions to be corroborative of each other and also in tandem with the testimonies of PW 18 and PW 21, the Special Executive Magistrates, who conducted the test identification parade of the accused. The trial court held that it was conclusively established by the test identification parade and eyewitness testimonies that A-1 and A-12 had fired on the deceased. The recovery of the weapon along with the ballistic report further strengthens the conclusion. The trial court found that the prosecution has proved its case beyond reasonable doubt and hence the accused were convicted of the offences charged after being found guilty.*

7. *However, the High Court pointed out serious lacunae in the above said evidences and hence the conviction order was set aside and the benefit of doubt was given to the accused. The High Court is of the view that the trial court had placed unwarranted reliance on the test identification parades in arriving at the guilt of the accused when the same suffered major discrepancies along with the inconsistencies of the depositions of the eyewitnesses to that of the injured eyewitness' testimony.*

8. *We have perused the documentary and oral evidences on record and gone through the submissions of both — the appellant State as well as the respondents. We shall now examine each and every contention in the light of the arguments adduced before us in the Court. In our considered view, the main issue in the case is whether the identity of the accused was properly established with the aid of the testimonies of the eyewitnesses and whether the test identification parades were conducted properly. All the other evidences are secondary and need to be examined only if the accused can be linked to the crime. To decide the same we shall analyse the depositions of the eyewitnesses.*

16. *The learned counsel for the respondent-accused has cited the decision of this Court in Siddanki Ram Reddy v. State of A.P. [Siddanki Ram Reddy v. State of A.P., (2010) 7 SCC 697 : (2010) 3 SCC (Cri) 483] wherein it was held : (SCC pp. 703-04, para 24)*

"24. When an attack is made on the injured/deceased by a mob in a crowded place and the eyewitnesses had little time to see the accused, the substantive evidence should be sufficiently corroborated by a test identification parade held soon after the occurrence and any delay in holding the test identification parade may be held to be fatal to the prosecution case."

17. *It is very clear that in the present case the incident of firing occurred in the circumstances wherein much time was not available for the eyewitnesses to clearly see the accused. In such a situation, it was of much more importance that the test identification parades were to be conducted without any delay. The first test identification parade was held by PW 21 after about 1½ months of the incident. The second test identification parade was conducted by PW 18 after more than a year of the incident. Even if it is taken into account that A-12 was arrested after a year and within one month thereafter the test identification parade was conducted, still it is highly doubtful whether the eyewitnesses could have remembered the faces of the accused after such a long period. Though the incident took place in broad daylight, the time for which the eyewitnesses could see the accused was not sufficient for them to observe the distinguishing features of the accused, especially because there was a commotion created after the firing and everyone was running to shelter themselves from the firing."*

85. The Hon'ble Apex Court in the case of **Chandrabhan Sudam Sanat v. State of Maharashtra** reported in **(2025) 7 SCC 401** at paragraph Nos.80, 81 and 82 held as under:-

80. *PW 20, on top of it, admits to police pressurising the taxi drivers. There is also contradiction between PW 20 and PW 21. PW 20 states that he gave the statement only after PW 21 told him about his statement. PW 21 denies any such happening. The way his physical features are remembered also does not inspire confidence. It should not be forgotten that they are referring to a time when the station would have been bustling with hectic activity, when the train would have arrived and people would be departing in hordes in a hurried manner. To recollect something that happened two-and-a-half months back in this situation would be a tall order. The identification parade conducted by PW 39 Vishnu Janu Kanhekar also lacks steam since the photographs of the appellant were admittedly published earlier in the newspapers as deposed by DWs 1, 2 and 3.*

81. *In Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472] , this Court in para 10 held as under: (SCC p. 32)*

"10. Two identification parades were held in the course of investigation. At the first identification parade PW 1 identified all the seven accused persons whereas PW 2 identified three of them, namely, Accused 2, 6 and 7 alone. It is, however, in evidence that before the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock-up for a few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether."

82. *In Gireesan Nair v. State of Kerala [Gireesan Nair v. State of Kerala, (2023) 1 SCC 180 : (2023) 1 SCC (Cri) 338] , this Court in para 31 held as under: (SCC p. 195)*

"31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media

(newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472])."

The purpose of conducting Test Identification parade is to have corroboration of the evidence of eye witness in the form of earlier identification, but, if the evidence of identification in the Court is found reliable, absence of corroboration by Test Identification parade would not matter. Test Identification parade strengthens identification made in the Court. It is a rule of prudence to look for corroboration of the evidence in Court of a witness as to identity of the culprits, in the form of an earlier Test Identification parade.

86. The Hon'ble Apex Court in **Arjun Marik and Others v. State of Bihar** reported in **1994 Supp (2) SCC 372** at para graph No.27 held as under:-

27. *"This brings us to the evidence regarding the identification of the articles seized from the house of the appellant which is also not free from doubt. The articles were seized on 20-7-1985 but they were put to test identification on 29-8-1985. No reason for this delay is forthcoming. The prosecution approached Upendra Sharma who at the relevant time was Circle Officer, Deoghar. The articles are said to have been identified by Murlidhar Jha, PW 1 and Surnath Jha, PW 6. The most surprising part of their evidence is that they go even to the length of identifying the currency notes which are said to have been stolen from the house of the deceased Sitaram. It is beyond comprehension as to how the currency notes could be*

identified by these witnesses. It may be pointed out here that all the articles said to have been seized from the house of the appellants are claimed by appellant 1, Arjun Marik as belonging to him and in support of his claim he has adduced evidence. The defence witness 2 is M.D. Mahto who is a cultivator of Village Bara where the appellants also reside. He deposed that the appellant Arjun Marik is a well to do person having about 150 to 200 bighas of land and owns about 40 to 50 cows and 15 to 16 buffaloes. Defence witness 3 is one Sahdeo Raut, resident of the same Village Bara and knows the family of appellant, Arjun Marik fully well. He also corroborated the statement of DW 1. Defence witness 4 is one Surya Narayan Poddar, resident of Village Kasai which is one-and-a-half kilometre away from Village Bara to which the appellants belong. DW 4 is a Goldsmith by profession. He stated that appellant Arjun Marik is known to him and he identified him in the Court. The witness deposed Arjun Marik has many cattles and produced 300 maunds of paddy. He further deposed that about 7/8 years back he had gone to the house of Arjun Marik to clean his ornaments and stated that he had cleaned one gold necklace, one nath, a silver hansuli, three pairs of mathias, two pairs of silver kara, one pair of silver payal, karanphool and balpatra. This evidence was led to show that appellant 1 was a man of means and status and he would have hardly resorted to such a criminal act as has been alleged against him."

87. The Hon'ble Apex Court in the case of **Subramanya**

v. State of Karnataka reported in **(2023) 11 SCC 255** held

at paragraph No.78 as under:-

78. " If, it is say of the investigating officer that the appellant-accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes, etc. then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence, etc. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the

police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchanama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or bloodstained clothes or any other article is discovered then that part of the entire process would form the second part of the panchanama. This is how the law expects the investigating officer to draw the discovery panchanama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

88. In the case of **Babu Sahebagouda Rudragoudar and Others v. State of Karnataka** reported in **(2024) 8 SCC 149**, the Hon'ble Apex Court held at paragraph No.66 as under:-

66. Further, in *Subramanya v. State of Karnataka*, a [*Subramanya v. State of Karnataka*, (2023) 11 SCC 255], it was held as under : (SCC pp. 299-300, paras 76 to 78)

"76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

'27. How much of information received from accused may be proved.—*Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.'*

77. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the

appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

78. xxxxx."

89. Perused the evidence and the decisions cited supra. In the instant case, the witnesses had no occasion to see the accused before the identification parade. Insofar as accused No.1 is concerned, PWs.1 to 7 and 15 saw accused No.1 in the bank and there was sufficient time to identify accused No.1, as his face mask was partially seen and accused No.1 was identified by competent witnesses in prison during Test Identification parade. Insofar as recovery is concerned, accused Nos.1 to 4 during their custody have given voluntary statement and pursuant to their voluntary statement, the amount was seized. Insofar accused No.1 is concerned, he was caught red-handed in Sanman Deluxe Lodge and amount of Rs.7,98,000/- was recovered from his possession. Pistol, bag, Pistol and magazine also were recovered from the possession of the accused, same was tested by finger print and ballistic expert and it was tested positive. Therefore, recovery laid by the Investigating Officer is in accordance with Section 27 of Evidence Act. Accused No.1 has not placed any contra evidence to disbelieve the evidence of the witnesses.

Recovery based on voluntary statement

90. It is the case of the prosecution, on 19.11.2012 at 4.05 p.m., accused No.1 entered the Corporation Bank with pistol, shot Muralidhar with the pistol and collected cash of Rs.15,23,927/-. In this regard, the prosecution examined PW.8 - Venkatesh, who has stated that accused Nos.2 and 3 were in the custody of Police in connection with bank robbery and murder case. They confessed before the Investigating Officer and they took them to a room, where accused No.2 furnished a sum of Rs.1,30,000/- kept in the bag of his room and accused No.3 also furnished a sum of Rs.1,29,500/- from his room in the plastic cover kept in his room. Thus, the Police seized said amount under Ex-P12 Mahazar. Further, the prosecution examined PW.11 - Shiva. He has stated that on 19.11.2012 at 9.20 p.m., the Police seized cash of Rs.7,98,000/- and M.O.10 pistol, two mobile phones, M.O.11 - shirt and M.O.12 - jeans pant from accused No.1 in his presence under Ex-P15 seizure Mahazar. In order to corroborate the oral testimony of PW.11, the prosecution also examined PW.31- Jagadish Kumar, who caught hold of accused

No.1 in Sanman Delux Lodge, Bengaluru, who has reiterated the oral testimony of PW.13.

91. It has also come in the evidence of the Investigating Officer and witnesses that the voluntary statement of accused No.1 has been recorded by the Investigating Officer as per Ex.P56. On the basis of this voluntary statement of accused No.1, M.O.30- Mobile was recovered under Ex.P.19. Further, Ex.P.57 discloses that P.W.41 i.e., Investigating Officer had issued notice on 22.11.2012 and Ex.P.57(b) is the signature of accused No.1, in which, he has made an endorsement that he had received weapon through Deepak Kumar in presence of Ajma Ali and he has no licence and relevant documents. The eyewitnesses, panch witnesses, Investigating Officer and other witnesses have given evidence against accused No.1 saying that accused No.1 entered the Corporation Bank on 19.11.2012 illegally, committed robbery and caused the death of Muralidhar by shoot-out towards him and robbed cash from the Bank and the mobile of the Cashier and on the same day, he was arrested in front of Sanman Lodge and they have recovered cash, Pistol, mobiles and his bag, shirt and pant at M.Os.5, 10 to 12 and M.O.13 and other 2 mobiles, which are

marked as M.O.16 to MO.28. When oral and documentary evidence is produced by the prosecution, the burden shifts on accused No.1 to show that he is innocent and he is in no way connected to the alleged material objects, which have been placed before the Court. In his statement recorded under Section 313 Cr.P.C., except denying the incriminating materials, he has not placed any contra evidence so as to disbelieve the prosecution version.

92. Section 27 of Indian Evidence Act 1875, clearly speaks that on the basis of the voluntary statement of the accused, if any material object is recovered, that portion of voluntary statement is admissible in evidence. In this case also, it is alleged that on the basis of the voluntary statement of accused No.1 at Ex.P.15 & 56, M.O.30 and M.O.16 to MO.28 were recovered. Accused No.1 has nowhere stated that he had not given any voluntary statement and no material object has been recovered from him and he ought to have explained under what circumstances, he has put his signature to the register at Sanman Deluxe Lodge, Bengaluru, and under what circumstance, his finger prints had been taken, etc. He did not explain the circumstances and he did not deny the recovery of

material objects from his possession before the Investigating Officer and panchas.

93. Whereas, in the instant case, the eyewitnesses have clearly identified accused No.1 in the Bank while he shot deceased Muralidhar and committing robbery. PW.1 clearly identified accused No.1 in the bank, before the Tahsildhar while conducting Test Identification parade and also identified before the Court.

94. Insofar as involvement of accused Nos.2 to 4 in the offence is concerned, the prosecution relied upon the testimony of PW.12 Fazal, who has stated that on the date of the incident, at about 4.00 p.m., he saw accused Nos.2 to 4 in front of the Bank. PW.8 Venkatesh, Owner of Petrol bunk stated that the Investigating Officer seized cash of Rs.1,30,000/- and Rs.1,29,500/- from accused Nos.2 and 3 respectively, in his presence under Ex-P2 seizure Mahazar. PW.14 Inam Rashid also stated that the Investigating Officer seized a sum of Rs.1.00 lakh from accused No.4 in his presence under Ex-P17 seizure Mahazar. The oral testimonies of PWs.12, 8, 14 stand corroborated with the testimony of the Investigating Officer. Hence, there is sufficient material to show

that soon after the incident, accused Nos.1 to 4 distributed robbed amount amongst themselves, accordingly, accused No.1 took cash of Rs.7,98,000/- and same was seized under Ex-P15 seizure Mahazar. It shows that accused Nos.1 to 4 conspired together to commit robbery in the Corporation Bank, accordingly, accused No.1 entered the Corporation bank and accused Nos.2 to 4 were waiting in front of the Bank, accused No.1 after committing murder of Muralidhar, robbed cash of Rs.15,23,927/- in the bank and fled away.

CCTV footage-importance of witness

95. The Hon'ble Apex Court in the case of ***Randeep Singh alias Rana and another v. State of Haryana and Others*** reported in ***2024 SCC OnLine SC 3383*** has held at paragraph Nos. 10 and 11 held as follows:-

10. *PW-24 claims to be a CCTV engineer. He stated that Balaji Digital Security Advisor, where he worked as an engineer, had a contract with the Bank. He claimed that he prepared a CD from the security system of the Bank of Baroda as per the request made by the Police. He accepted that he did not put his identification on the CD or make any markings on the CD. He admitted that editing could be made of the CCTV footage on the CD and that the CD could be tampered with. He also did not depose that he had seen the CCTV footage before downloading on the CD. Thus, neither PW-1 nor PW-24 had seen the CCTV footage downloaded on the CD. Moreover, the CD did not bear any marking or sign from either of the witnesses. Most importantly, the prosecution failed to produce the certificate under Section 65B of the Evidence Act concerning the CD.*

Therefore, the evidence in the form of the CD will have to be kept out of consideration as it is not admissible in evidence.

11. *There is one more crucial aspect. Assuming that the CCTV footage was admissible, the learned trial Judge and the Judges of the High Court did not see the CCTV footage. Still, the Courts relied upon it."*

96. In this case, all the eyewitness have clearly stated that on the date of incident, finger prints experts had come and they had taken finger prints at the place of incident and also cash counter. Some of the witnesses have stated that on the date of incident, they watched CCTV footages along with Investigating Officer and photos from the CCTV had been taken and at the spot, Police had drawn the mahazar as per Ex.P.2. On perusal of Ex.P.2, at page No.3, it is clearly mentioned that Police had called dog squad, finger prints experts and inspected the spot and photos of spot has been taken. This mahazar is drawn from 19:00 hours to 20:30 hours (7p.m. to 8.30p.m.). Therefore, it corroborates substantive evidence given by the witnesses before the court that on the date of incident, finger prints experts had come. On perusal of Ex.Ps.64 and 65, the fingerprint 547/BMGH/2012 of Assistant Commissioner, Fingerprints Division, Bengaluru, dated 20.11.2012 and 27.11.2012 issued to Police Inspector, Soladevanahalli, to do

the necessary requirements, it is along with letter of Police Inspector dated 26.11.2012 and also copy of the fingerprints of accused No.1. Ex.P.66 is Annexure-1 and Ex.P.67 is Annexure-2 of the Assistant Police Commissioner of Fingerprints, Bengaluru City.

Criminal Conspiracy

97. Here, the charge is against accused Nos.1 to 4 relating to criminal conspiracy against accused Nos.1 to 4 under section 120(B) of IPC. In several decisions, it is held that 'it is difficult to prove offence of criminal conspiracy by direct evidence. In other words, hatching of conspiracy is done in secrecy. Prosecution is required to establish conspiracy by indirect evidence also i.e., by other circumstances.

98. In the present case, there is no direct or indirect evidence before the Court in respect of the criminal conspiracy of accused Nos.1 to 4 and on the basis of the said conspiracy, the robbery and murder has been committed. One or two witnesses have stated that on the date of incident, they saw accused Nos.2 to 4 standing in the parking place, which is in the ground floor and some witnesses have stated that as per the voluntary statements of accused Nos.2 to 4, cash of

Rs.1,30,000/-, Rs.1,29,000/- and Rs.1,00,000/- respectively, have been recovered from them by the Investigating Officer. Thus, there is sufficient evidence against accused Nos.1 to 4 in respect of robbery committed in the Corporation Bank, Chikkabanavara, on 19.11.2012. In spite of the aforesaid amounts recovered at the instance of accused Nos.2 to 4 in the manner stated by the prosecution witnesses, the trial Court has not properly appreciated the oral and documentary evidence on record, so as to convict accused Nos.2 to 4 for the offences punishable under Sections 120B and 392 IPC and also for the offence punishable under Section 302 of IPC since all of them in furtherance of common object had gone to the Bank to commit robbery and when accused No.1 carried a pistol with him, it is with the knowledge of others that accused No.1 carried the same in order to create fear in the mind of the bank officials, customers and public. It further appears that, if any situation arises in the bank, to use the pistol for commission of offence. As such, accused No.1 entered the bank, showed the pistol to the bank officials and customers and asked them to drop their mobiles, however, as one of the customer by name Muralidhar did not oblige, he shot on his right shoulder,

thereby committed the murder of Muralidhar, who succumbed to the gun shot injury.

99. Section 391 IPC speaks about dacoity which reads as under:-

"When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity"."

100. Section 396 IPC speaks about dacoity with murder:-

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Therefore, to constitute an offence of dacoity, it essentially should be committed by five or more persons. Similarly, to constitute offence of dacoity with murder, any one of the five or more persons should commit a murder while committing the dacoity, then every of such person so committing attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder.

101. In the instant case, accused No.1 entered the bank in order to commit dacoity, while committing dacoity, he committed the murder. The evidence clearly establishes that accused Nos.1 to 4 and two absconding accused were conspired together to commit the offence, hence, every one of such person so committing, especially accused Nos.2 to 4 would be deemed to have committed the offence of murder. The Hon'ble Apex Court in the case of **Rafiq Ahmed v. State of Uttar Pradesh** reported in **AIR 2011 SC 3114** has held *that if anyone of the member of dacoity committed murder, then, by fiction of law, all the members would be deemed to have committed the offence of murder.*

Applicability of Sections 396 and 302 IPC

102. It has come in the evidence that accused No.1 has illegally entered the bank premises for the purpose of committing dacoity in the bank and for that purpose, he was holding the pistol to give threat to the bank customers and bank staff and when one of the customers Muralidhar, resisted to drop the mobile, he shot towards Muralidhar and caused injury to him and thereby, caused the death of Muralidhar and the said accused No.1 robbed the cash, mobile of PW.2 from

the bank and ran away from the bank along with cash by causing death along with other accused. The prosecution has proved that accused Nos.1 to 4 have committed the offences of dacoity. Charge is also made against accused Nos.1 to 4 and two absconding accused under sections 302 and 396 of IPC. The evidence produced by the prosecution discloses accused No.1 entered the bank, committed the murder of Muralidhar and robbed cash from the bank and later, the robbed amount was shared among themselves and recovery is made at the instance of all the accused. Therefore, Sections 396 and 302 IPC are applicable to the case on hand as against accused Nos.1 to 4 in view of sharing of common object.

Offence under Arms Act

103. As per the prosecution case, Muralidhar died on account of gunshot injury and to substantiate the same, the prosecution examined PW.26 - B.C. Ravindra, Ballistic Expert, who has stated that he has examined the articles which contained one fired 7.65 mm calibre fired cartridge case, one pistol without a magazine, which can accommodate 7.65 calibre cartridge. He examined the barrel of pistol through a lens from muzzle side. Traces of gun powder residues were

adhering to the inner wall of the barrel and the muzzle end was not rusted and not oiled. On examination, it reveals that the pistol bears signs of discharge and it is a fire arm. He also examined that, there are no proof marks and company name on the pistol without rifling, thus, the pistol has been illegally manufactured fire arm.

104. It transpires from the material available on record that accused Nos.1 to 4 and absconding accused Nos.5 and 6 had common object of committing dacoity in the Corporation Bank, Chikkabanawara and hence, accused No.1 entered the bank by holding a pistol-M.O.10 in his hand and in the process, he fired a gunshot from his pistol towards Muralidhar, which resulted in his death.

105. It is very clear that accused No.1 had no licence to possess the Pistol. In spite of this, he had possessed the said Pistol MO.10 and used the same at the time of committing robbery and caused death of Muralidhar. There is no evidence to show that as to how the said Pistol came in possession of accused No. 1. Even though, prosecution has contended that accused No.1 has purchased said Pistol from accused No.5, no evidence is produced by the prosecution to that effect. But, the

evidence produced by the prosecution discloses that without valid licence, accused No.1 was in possession of the said Pistol and used the same at the time of committing robbery and caused death of Muralidhar. Therefore, all of them have committed the offences punishable under Sections 25 and 27 of Arms Act in view of sharing of common object.

106. Hence, we have re-appreciated the evidence on record and come to the conclusion that accused Nos.1 to 4 and two others conspired together to commit robbery/dacoity in the Corporation Bank, Chikkabanavara Branch, accused No.1 trespassed to the Bank, shot Muralidhar with M.O.10 - Pistol and caused the death of Muradlidhar and by showing the Pistol, he robbed a sum of Rs.15,23,927/-, thereby all of them committed offences punishable under Sections 120B, 448, 396 and 302 of IPC and Section 25(1) (a) and 27(1) of Arms Act and all of them went near the bank and only accused No.1 entered inside and others were watching and facilitating accused No.1 to rob the cash and all of them have shared their common object to commit the robbery and the act of accused No.1 also amounts to sharing of common intention of all of

them and hence, the charges leveled against the accused persons are proved.

Accordingly, we proceed to pass the following

ORDER

- i. Crl.A.No.838/2016 filed by the appellant/accused No.1 is ***dismissed.***
- ii. Crl.A.No.947/2017 filed by the appellant/State is ***allowed-in-part.***
- iii. The impugned judgment of conviction and sentences passed by the trial Court against accused No.1 for the offences punishable under Sections 448 of IPC and under Sections 25(1)(a) and 27(1) of Arms Act is confirmed and the offence punishable under Section 392 of IPC is modified to Section 396 of IPC.
- iv. The judgment of acquittal passed by the trial Court against accused No.1 for the offences punishable under Sections 120B, 396 and 302 of IPC and under Sections 29(a) and (b) of Arms Act is set aside and he is convicted for the offences punishable under Sections 120B, 396 and 302 of IPC.

- v. The judgment of acquittal passed by the trial Court against accused Nos.2 to 4 is set aside and they are convicted for the offences punishable under Sections 120B, 448, 302 and 396 of IPC and under Sections 25(1)(a) and 27(1) of Arms Act.
- vi. Accused Nos.2 to 4 are sentenced to undergo simple imprisonment for a period of six months and to pay fine of Rs.10,000/- each, in default, they shall undergo simple imprisonment for a period of one month for the offence punishable under Section 448 of IPC.
- vii. Accused Nos.1 to 4 are sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- each, in default, they shall undergo simple imprisonment for a period of three months for the offence punishable under Section 120B of IPC.
- viii. Accused Nos.1 to 4 are sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- each, in default, they shall undergo simple imprisonment for a period of three months for the offence punishable under Section 302 of IPC.

- ix. Accused Nos.1 to 4 are sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- each, in default, they shall undergo simple imprisonment for a period of three months for the offence punishable under Section 396 of IPC.
- x. Accused Nos.2 to 4 are sentenced to undergo simple imprisonment for a period of three years and to pay fine of Rs.25,000/- each, in default, they shall undergo simple imprisonment for a period of one month for the offence punishable under Section 25(1)(a) of Arms Act.
- xi. Accused Nos.2 to 4 are sentenced to undergo simple imprisonment for a period of three years and to pay fine of Rs.25,000/- each, in default, they shall undergo simple imprisonment for a period of one month for the offence punishable under Section 27(1) of Arms Act.
- xii. Out of the total fine amount, 80% of fine amount shall be given to PW9-Smt. Parvathamma, wife of Late Muralidhar (deceased), as compensation under Section 357 of Cr.P.C.
- xiii. All sentences shall run concurrently.

xiv. Accused Nos.1 to 4 are directed to surrender before the Trial Court within two weeks from today, and in turn, the Trial Court shall send the accused persons to prison to serve remaining part of sentence by issuing conviction warrant and entitle to get the benefit under Section 428 of Cr.P.C.

Registry is directed to send the trial Court records alongwith copy of this judgment, forthwith.

The trial Court is directed to retain the material objects marked in S.C.No.227/2013 in order to conduct trial in respect of absconding accused Nos.5 and 6.

In view of disposal of main appeals, pending interlocutory applications, if any, stand dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

KVK / MN