

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.771/2018

BETWEEN:

1 . MADHU @ MADHUKUMAR
S/O MUNIYAPPA
AGED ABOUT 28 YEARS
R/AT BIDIGERE VILLAGE
TUBUGERE HOBLI
DODDABALLAPURA TALUK. ... APPELLANT

(BY SRI. M.SHASHIDHARA, ADVOCATE)

AND:

1 . STATE BY DODDABALLAPUR RURAL POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001. ... RESPONDENT

(BY SMT. RASHMI PATEL, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2)
OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT
OF CONVICTION DATED 14.02.2018 AND ORDER OF SENTENCE

DATED 20.02.2018 PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, DODDABALLAPURA IN S.C.NO.10028/2014 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 506 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.02.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

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

Heard learned counsel for the appellant and learned High Court Government Pleader for the respondent-State.

2. This appeal is filed against the conviction of accused and imposing the sentence of life imprisonment with fine of Rs.20,000/-, in default to pay the fine amount, to undergo further simple imprisonment for a period of two years for the offence punishable under Section 302 of IPC and also imposing simple imprisonment for a period of one year with fine of

Rs.1,000/-, in default to pay the fine amount, to undergo simple imprisonment for a period of three months for the offence punishable under Section 506 of IPC and also for set off under Section 428 of Cr.P.C. and prayed this Court to set aside the conviction and sentence.

3. The factual matrix of case of the prosecution is that the accused was having enmity on the deceased about pledging his gold necklace at Devanahalli and deceased came to know about the fact that accused is loving the complainant. Hence, Muniswamy has slapped his wife and accused. Thereafter, accused with criminal intention and also with well preparation committed murder of Muniswamy on 14.06.2014 at about 6.30 p.m. On the said date, time and place, when the accused left the spot after assaulting Muniswamy with chopper, when Narasimhamurthy made an attempt to apprehend the accused, he caused life threat on him by showing the chopper. The complaint is registered based on the complaint of the wife of the deceased as per Ex.P1. The police having registered the complaint issued FIR and the same was sent to the Court

through C.W.22. It is also the case of prosecution that having registered the case, inspected the spot and conducted the mahazar in terms of Ex.P2 and also apprehended the accused, seized the auto and recovered the machete. The clothes of the accused was also seized and the same was sent to FSL and obtained the FSL report as per Ex.P23 and filed the charge-sheet.

4. The Trial Judge having received the charge-sheet, taken cognizance and secured the accused and accused did not plead guilty and claims for trial.

5. Hence, the prosecution mainly relies upon the evidence of P.W.1 to P.W.13 and documents Exs.P1 to P25(a) and also material objects M.O.1 to M.O.7 i.e., stained and unstained mud, chopper, blood stained shirt, blood stained pant so also blood stained pant and shirt of the accused as M.Os.6 and 7.

6. The Trial Court having considered both oral and documentary evidence comes to the conclusion that prosecution

has proved the case against the accused for both the charges and convicted and sentenced the accused for both the offences.

7. Learned counsel for the appellant in his argument would vehemently contend that learned Trial Judge failed to take note of material contradictions, omissions and inconsistencies in the evidence of prosecution witnesses. The Trial Court has put the burden upon the accused to prove the innocence, instead of prosecution proving the guilt of the accused and the learned Trial Judge failed to consider that there is no corroborative material produced with respect to pledging necklace by the deceased Muniswamy. The Trial Judge also failed to consider the fact that prosecution failed to examine one Mr. Champaklal, the shop owner, who took gold necklace from deceased Muniswamy. The Trial Judge also committed an error in relying upon the evidence of P.W.1 and the evidence of P.W.3 and P.W.6, who claim that they are the eyewitnesses to the incident and their evidence is not believable and both of them have not completely supported the case of prosecution. P.W.8-Doctor in his report has not mentioned the weapon used to commit the murder of the

deceased and also not stated whether there was blood stain on the weapon or it was sharp or not. The Trial Court has failed to consider the fact that first wife of deceased Muniswamy has lodged complaint against Smt. Shobha, the complainant for killing her husband. The counsel also in his argument would vehemently contend that there is recovery of weapon from the autorickshaw by drawing mahazar in terms of Ex.P14 and the evidence of Investigating Officer, who has been examined as P.W.12 is not consistent and so also the evidence of P.W.10, who is the witness for recovery of weapon and his evidence is also not reliable. The counsel would vehemently contend that when the prosecution has not proved the case, question of giving any explanation does not arise and benefit of doubt goes in favour of the accused, but Trial Court failed to take note of the said fact into consideration.

8. Learned counsel for the appellant in support of his argument relied upon the judgment in **SMT. SANDHYA JADHAV vs. STATE OF MAHARASHTRA** reported in **2006 CRI. L. J. 2111** and the Apex Court in the judgment discussed

with regard to invoking Section 300, Exception 4 which is discussed in paragraph No.9. The counsel would submit that there was no preparation for committing the murder and would also submit that, alternatively this Court can look into Section 300, Exception 4, if the Court comes to the conclusion that accused indulged in such act.

9. The counsel also relied upon the judgment in **SUNIL RAI ALIAS PAUNA AND ORS. vs. UNION TERRITORY, CHANDIGARH** reported in **AIR 2011 SUPREME COURT 2545** and referring this judgment, the counsel would contend that Apex Court in paragraph No.30 discussed the blood group was not determined and it is not known what is his blood group. Moreover, the jacket was recovered from a rickshaw standing out in the open space where it was accessible to anyone. In the aforesaid circumstances, the recovery of the blood-stained jacket from its owner is a circumstance too fragile to bear the burden of the appellant's conviction for murder. The counsel would submit regarding seizure of clothes in the case on hand, it was seized in the police station and the evidence of the recovery witness is

also very clear that in his presence the accused has not changed the clothes and the same was not worn by the accused. Hence, the evidence of recovery witness also cannot be relied upon.

10. Per contra, learned High Court Government Pleader for the respondent-State would submit that accused was having enmity against the deceased and he came with weapon in his autorikshaw and he himself called both P.W.1 and the deceased to be in a particular place saying that he is coming and he quarreled with the deceased and inflicted injury with weapon which he brought in the autorikshaw and he was aware of the fact that he is likely to cause death and inflicted injury on the vital part. Hence, question of invoking Section 300, Exception 4 does not arise. She would submit that the weapon which was seized from the autorickshaw was stained with blood and the same is spoken by P.W.10 and cloth was also seized in the police station, since it was stained with blood and with regard to seizure of cloth also, the same is spoken by P.W.11. She would further submit that both chopper and cloth were stained with blood and FSL report Ex.P23 is very clear that the same is

stained with 'O' blood group. She would also submit that there is no explanation on the part of accused in 313 statement and would submit that the evidence of Doctor-P.W.8 and PM report Ex.P13 is very clear with regard to nature of injuries and the Doctor categorically deposed that those injuries are cut injuries. The Doctor also having examined the weapon gave the opinion that M.O. which was used could cause the nature of such injuries. She would submit that all the witnesses have supported in case of prosecution, except P.W.2, who turned hostile only in respect of spot mahazar. She would submit that the incident has taken place on 14.06.2014 and immediately, very next day, the accused was arrested and recovery was made. Hence, the Trial Court has not committed any error and no such material contradictions and minor discrepancies would occur and the same will not go to the very root of case of the prosecution.

11. Having heard learned counsel for the appellant and the learned High Court Government Pleader for the respondent-State and also considering the material available on record, the points that would arise for consideration of this Court are:

- (i) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 302 and 506 of IPC and whether it requires interference for acquittal and set aside the sentence?
- (ii) What order?

Point No.(i):

12. Having heard the respective counsel and also the grounds urged in the appeal memo as well as oral submission of respective counsel, this Court has to re-appreciate both oral and documentary evidence available on record. We have given our anxious consideration to the evidence available on record and the law was set in motion based on Ex.P1-complaint, wherein the complainant P.W.1 reiterated the charges levelled against the accused in the complaint and specifically stated with regard to the galata which had taken place regarding pledging of necklace and the deceased had slapped on his wife. At that time, accused went and brought machete and inflicted injury on the head. As a result, he fell down and blood was oozing and when she screamed at the spot, at that time, Narasimhamurthy and

Somashekar came in Tata sumo and tried to help him and they were also threatened and immediately, Narasimhamurthy chased him and she herself and Somashekhar shifted her husband in the very same Tata Sumo and Doctor declared that he is no more. This complaint was received by P.W.13 and he registered the case and sent the FIR to the Court and identifies the signature in Ex.P25 and at the request of PSI, he arrested the accused and produced him before the PSI and he gave the report to that effect and identifies the accused. It is also his evidence that on the instruction of PSI, seized the motorcycle of the deceased and produced before the CPI and the same was seized by drawing mahazar in terms of Ex.P9. This witness was subjected to cross-examination and in the cross-examination, got elicited that complaint was received at 8.00 p.m. and FIR was sent to C.W.22 and suggestion was made that complaint given by the complainant is different from the one which is being sent to the Court and the same was denied and nothing is elicited from the mouth of P.W.13.

13. Now this Court has to consider the evidence of P.W.1, who is the eyewitness to the incident. This witness says that she is the second wife of deceased and first wife is her elder sister and deceased was visiting both the houses. It is also her evidence that she knows the accused and she was working in garments factory and came to know about the accused, but, the accused had pledged his chain in pawn broker's shop and he requested that he has received notice from the pawn broker to release the same and the same was got released through her husband. It also her evidence that her husband was in need of money, hence, he again pledged the same, since the same was not taken by the accused for making payment and having come to know about the same, accused insisted to get release the same. But, that on 04.06.2014 when both herself and her husband were proceeding in the scooty, accused called and told them to be there in a particular place, hence, they parked the vehicle and immediately, accused came in an autorikshaw and he questioned her husband and quarrel has taken place and when her husband slapped her, he went and brought the machete and inflicted injury on the neck. In the meanwhile,

P.W.3 and P.W.6 came and stopped Tata Sumo and she instructed both of them to catch hold of him and Narasimhamurthy tried to hold him. At that time, he caused threat to him and immediately, her husband was taken to the hospital and Doctor declared him as dead. Then, the body was shifted to mortuary and police recorded her statement in terms of Ex.P1 and also conducted spot mahazar in terms of Ex.P2 and seized stained and unstained mud and she also identifies the machete as M.O.3 and clothes of her husband. She also identifies M.Os.4 and 5 i.e., blood stained pant and shirt and also identifies the photo of autorickshaw in which accused came i.e., Ex.P3 and also identifies the photo of her husband as Ex.P4. In the further chief-examination, she identifies two photographs as Exs.P6 and P7 i.e., the scooter which belongs to her husband. It is also her evidence that after handing over the necklace to her, accused was claiming that he fell in love with her and she replied that she is having husband and children and the said fact was also brought to the notice of her husband. Hence, her husband quarreled with accused to come and take the necklace and thereafter, accused committed the murder.

14. In the cross-examination, it is elicited that she is a second wife and her husband used to stay in her sister's house and suggestion was made that both sisters were not cordial and the same was denied. But, she claims that there was no relationship between her and the accused and she only got introduced him to her husband in connection with pledging necklace and get release the same. It is also elicited that when her husband was in need of money, pledged the necklace in pawn broker's shop at Devanahalli. P.W.1 also admits that her sister also gave complaint against her. Before P.W.3 and P.W.6 came to the spot, at that time, incident had already taken place and her cloth was also stained with blood. It is suggested that it was an accidental fall and hence, he had sustained injury to his head and at that time, she only inflicted injury with some weapon and she committed murder and the same was denied. It is elicited that Ex.P1 was got written by police. It is elicited that she did not mention in the complaint about pledging of necklace and get release of the same. But, suggestion was made that she did not mention that accused only assaulted with machete and

the same is not mentioned in the complaint and the same was denied.

15. P.W.2 is the brother of P.W.1 and he says that he came to know about the incident through P.W.1 and the evidence of this witness is not material and he is only a hearsay witness and there is no effective cross-examination. This witness also partly turned hostile. But, in the cross-examination by learned Public Prosecutor, he categorically says that he came to know about pledging of necklace and getting release of the same through his sister P.W.1. It is suggested that in order to save his sister P.W.1, he is falsely deposing before the Court and the same was denied.

16. The other witness is P.W.3, who is a witness for seizure of machete, since he came to the spot. In his evidence, he says that he witnessed the accused inflicting injury on the head and left hand with machete. As a result, the deceased fell down at the spot and also caused life threat. On enquiry, he revealed the motive for committing the murder and cloth of the accused was also blood stained and he witnessed the same at a

distance of 10 feet. This witness was subjected to cross-examination and in the cross-examination, he says that he brought his friend in his Tata Sumo and also says that P.W.1 is not his relative and also admits the relationship between P.W.1 and the deceased that she is the second wife and Lakshmamma is the first wife and Lakshmamma was residing along with the deceased. In the further cross-examination, it is elicited that he came across their vehicle and immediately, parked the vehicle and P.W.1 was alone and her husband had already fell down and immediately, he himself and P.W.1 shifted the injured to the hospital and witness says that in the spot, both P.W.1 and her husband were there and no other persons were there. On enquiry, she revealed that accused himself assaulted with machete then he came to know about the same. But, in the cross-examination, he says that he came to know about the incident through P.W.1. But, again this witness was cross-examined by learned Public Prosecutor and he gives the evidence that he witnessed the incident and accused ran away from the spot causing life threat to him in an autorickshaw and

again says that the evidence which he has given on 07.12.2015 is true.

17. This Court has to examine the evidence of P.W.5, who only speaks about seizure of M.O.4 and M.O.5 i.e., stained mud and unstained mud.

18. The witness P.W.4 has turned hostile to the case of the prosecution.

19. The other material witness is P.W.6, who is also an eye witness. He says that when he went to spot along with P.W.3, he found P.W.1 and also the deceased. When they parked their car, accused came in an autorikshaw and quarreled with the deceased and immediately, inflicted injury with machete on his head. As a result, he fell down and he witnessed the same sitting in the car. While going near the place of incident, he ran away from the spot and when they tried to catch hold of him caused life threat and he himself chased him in the very same motorcycle of the deceased, but he stopped the autorickshaw near Bidigere Cross and ran away from the spot. P.W.3 and P.W.1 shifted the injured to the hospital and came to know that

he passed away. He says that people were taking that P.W.1 was paramour of accused. Hence, he committed murder of her husband and identifies M.O.6 and M.O.7. This witness was subjected to cross-examination and in the cross-examination, similar answers are elicited from the mouth of this witness also stating that there was darkness and incident has taken place at around 7.30 p.m. and P.W.1 only stopped their vehicle. But, he did not enquire about her and also did not witness anything. In the further cross-examination also, when the learned Public Prosecutor treating him as hostile made the suggestion in the line of statement which was given, he admits that he has given the statement before the police that he witnessed the incident.

20. The other witness is P.W.7-Engineer who prepared the sketch and his evidence is not material.

21. P.W.8 is the Doctor, who conducted PM and shown two injuries, that too on the head i.e., lacerated wound measuring 20 cm. X 2 cm. and the same is very depth and bone was visible and another cut injury measuring 15 x 20 cm. and 8 cm. depth in cervical vertebra and found blood veins. He also

examined the weapon which was sent and given the report in terms of Ex.P12 and Ex.P13 and given the opinion that the said machete could cause the injuries like that. This witness was subjected to cross-examination and in the cross-examination, it was elicited that the injuries could be caused, if it is sharp-edged machete and also admits that he has not prepared any sketch. It is also elicited that at the time of conducting inquest, cloth of the deceased also has to be examined. It is suggested that if a person falls down accidentally and comes in contact with a sharp edged object, this type of injury could be caused. But, witness says that would be very rare and bone was not fractured. It is suggested that, he did not mention the measurement of machete and width and he admits the same and suggestion was made that M.O.3 was not sharp edged weapon and the same was denied. However, he admits that in one end, it was having curve and suggestion was made that Ex.P3 could not cause the injuries mentioned in Ex.P12 and the same was denied. Having considered the evidence of P.W.8, nothing is elicited. But, it is a case of homicidal having considered the nature of injuries.

22. P.W.9 is a hearsay witness and his evidence is not material.

23. The other witness is P.W.10 for recovery of machete and his evidence is that when he was proceeding in front of Doddaballapura Circle Inspector Office, he was called and requested to become a Pancha and he agreed and along with him C.W.14 was there and when he was called, police and one Madhukumar was there and they left the police station along with the accused and they were in another vehicle and the accused led them near grape garden of Ashwathappa and produced the machete from the autorikshaw and he made the statement that he inflicted the injury with the said machete on the head of the deceased and the same was seized and also taken down the number of the autorikshaw and also identifies M.O.3 and Ex.P3, wherein in the auto, C.W.14 and accused were present and also identifies him before the Court. In the cross-examination, he admits that P.W.1 belongs to her village and when the suggestion was made that he did not read the contents of mahazar and also the auto number, he says that having read

the contents itself he signed the same. It is suggested that nothing is seized in his presence and he had signed the same in the police station and the same was denied. It is also suggested that Ex.P3-photo was not taken at the spot and the same was denied and the evidence of P.W.3 is consistent with regard to seizure is concerned and withstood the cross-examination.

24. The prosecution also relies upon the evidence of P.W.11 with regard to seizure of clothes of the accused at the police station. He says that police on 15.06.2014 at 4.30 p.m., he had signed the mahazar and police seized pant and shirt and he had signed the same and left the place and identifies the cloth i.e., M.O.6 and M.O.7. This witness was subjected to cross-examination and in the cross-examination, he categorically says that on that day, accused was wearing green colour shirt and black colour pant and after he went to the police station, collected the cloth and drawn the mahazar and his signature was taken. But, at that time, accused was not wearing the cloth, but they were packing the same.

25. The other witness is P.W.12, who is the Investigating Officer, who conducted further investigation having received the papers from P.W.13. He says with regard to conducting spot mahazar, seizure of articles at the spot, machete as well as cloth in the presence of panch witnesses and also investigating the matter and recording of voluntary statement of the accused. This witness was subjected to cross-examination and suggestion was made that accused has not given any voluntary statement and the same was denied. It is suggested that M.O.3 is not pertinent to this case and the same was denied. In the further cross-examination, he admits that sister of P.W.1 gave the statement stating that her sister P.W.1 was having illicit relationship with the accused and the said portion of the statement is marked as Ex.D1. But, witness says that he enquired with regard to the said complaint, but case was not registered. He also admits that P.W.6 made the statement that when they chased him, he stopped the vehicle near Bidigere Cross and ran away from the spot and also recorded the statement of P.W.3. It is also suggested that during the course of investigation, he came to know that accused called and told P.W.1 and deceased to be

there at the spot and he went and committed murder with the machete and the same came to his knowledge as per Ex.D2.

26. Having considered both oral and documentary evidence available on the record and considering Ex.P1-complaint, incident has taken place at 6.30 p.m. and immediately, complaint was given at 8.00 p.m. on the very same day and there is no delay in registering the case. In this complaint, both facts of inflicting injury as well as causing life threat to Narasimhamurthy, when he tried to chase him and caught hold of him is explained. The evidence available on record before the Court is the evidence of P.W.1, P.W.3 and P.W.6. But, it is very clear that P.W.3 and P.W.6 have supported the case of the prosecution when they were examined in chief at one instance and subsequently, during the course of cross-examination by the learned Public Prosecutor, after sometime, they deposed before the Court that both of them went to the spot after the incident and this Court has to take note of the evidence of P.W.1 whether both of them are eyewitness or not. No doubt, P.W.1 in her cross-examination with regard to arrival

of P.W.3 and P.W.6 admits that when both of them came to the spot, already incident had taken place and her husband had fallen down. Hence, it is clear that these two witnesses did not witness inflicting of injury. But, when both of them went to the spot, she has requested both of them to catch hold of him when he was running away from the spot.

27. Hence, the very complaint which came into existence is very clear that when she screamed at the spot, P.W.3 and P.W.6, who came in Tata Sumo tried to catch hold of him and life threat was caused to him by showing the very same machete and he ran away and Narasaimhamurthy tried to catch hold of him by taking the very same vehicle belonging to the deceased and his evidence is very clear that when he chased, he stopped the autorikshaw near Bidigere Cross and ran away from the spot. This evidence is very clear that though P.W.3 and P.W.6 not witnessed inflicting the injury, but when they went to the spot, they saw the accused running away from the place. Though P.W.3 and P.W.6 partly turned hostile during cross-examination, but once again answers are elicited treating them as hostile to

this effect. But, the evidence of P.W.1 is very clear that she was very much present and she has also spoken with regard to motive for committing the murder that her deceased husband had pledged the necklace and got released the same and once again the deceased had pledged the same.

28. No doubt, learned counsel for the appellant would submit that pawn broker was not examined, there is no dispute to that effect and also there is no need to examine the pawn broker. But, the fact is that P.W.1 is the second wife of the deceased and the first wife is the sister of P.W.1 and sister of P.W.1 was not having good relationship and she gave the complaint. But, the evidence of P.W.12-Investigating Officer is very clear that he examined and enquired about the complaint and material available before the Court is very clear that accused was arrested immediately and though sister of P.W.1 made allegation against her, but, other material before the Court is very crucial and suggestion was made that P.W.1 only inflicted injury and the same is not substantiated but suggestion is denied.

29. The other contention of learned counsel for the appellant is that very recovery is not proved. Having considered recovery of machete, the witness P.W.10 has spoken that accused led him and also the police near the grape garden of Ashwathappa and produced the machete from the autorikshaw and he made the statement that he inflicted injury with the said machete on the head of the deceased and the same was seized and even though it was disputed that he was not very much present, but he categorically says that the same was seized at the spot. No doubt, he admits that P.W.1 belongs to her village, the same cannot take away the case of the prosecution with regard to recovery of machete is concerned. But, when suggestion was made that he did not read the contents of the mahazar and also auto number, he categorically says that he read the contents of the mahazar and signed the same and during that time Ex.P3-photo was also taken. Though he disputes the same, but categorically deposes that photo was taken. Hence, it is clear with regard to machete was seized at the instance of the accused and hence the contention of learned

counsel for the appellant that same is not proved cannot be accepted.

30. The other witness P.W.11 is the witness with regard to seizure of cloth of the accused i.e., shirt and pant of the accused which is marked as M.O.6 and M.O.7 in the police station and blood stains found on the machete as well as cloth of the accused is proved as 'O' blood group and FSL report which is marked as Ex.P23 is very clear that machete which is article No.3 as well as cloth of the deceased and accused are stained with blood and blood stains were not detected in item No.2 i.e. sample mud and all others articles were stained with 'O' group blood and there is no explanation on the part of the accused regarding blood stains found on his cloth as well as machete. In the case on hand, there is a clear evidence of the eyewitness i.e., P.W.1 and though it is claimed by the prosecution that other witnesses are also eyewitnesses, but they are not eyewitnesses to inflicting injury, but came to the spot when the incident was going on and the evidence of witness P.W.6-Narasimhamurthy is very clear that he chased the accused with motorcycle belonging

to the deceased and he had parked the vehicle near Bidigere Circle and he ran away. The evidence of another witness P.W.3-Somashekar is very clear that they are the circumstantial witnesses, who came to the spot and though P.W.3 deposes that he witnessed the incident of inflicting injury sitting in the car and the said evidence cannot be accepted. But, the fact is that both of them came and found the accused at the spot along with injured and P.W.1.

31. When such materials are considered before this Court, the evidence clearly points out the role of the accused in committing the murder. The motive is insignificant in a case of direct evidence, since P.W.1 witnessed the incident and the case of the prosecution is also that the dispute between the deceased as well as the accused is in connection with pledging gold necklace belonging to the accused and the evidence of P.W.1 is also very clear that earlier it was pledged and the accused himself requested to get release the same. Thereafter, the accused did not come forward to make the payment. But, when the husband was in need of money, he pledged the gold

necklace insisting to hand over the same. But the fact is that on the date of the incident, accused himself called both P.W.1 as well as deceased to be there at the spot that he is coming and quarreled with the deceased and the same is witnessed by P.W.1. Though, a suggestion was made to the brother of P.W.1 that P.W.1 and accused were having illicit relationship and it has come in the evidence that people were talking about the same in the village. But, none of the witnesses speak about the same.

32. No doubt, the relationship between the sisters' i.e. P.W.1 and her sister was strained and though it is suggested during course of cross-examination that she only inflicted injury, but having considered the fact that machete was recovered at the instance of the accused and bloodstains of the accused as well as deceased was 'O' blood group and in the absence of any explanation and the defence which was taken is not substantiated and instead, the material available before the Court was not disputed by the defence with regard to recovery of both weapon as well as cloth and also FSL report goes against

the accused and all these materials are very clear that accused himself committed the murder of the deceased.

33. The other contention of learned counsel for the appellant relying upon the judgment of the Apex Court in **SMT. SANDHYA JADHAV vs. STATE OF MAHARASHTRA** reported in **2006 CRI. L. J. 2111** is that the Trial Court ought to have invoked Section 300, particularly Exception 4 and brought to notice of this Court paragraph No.9 that there was no preparation for committing the murder and alternatively, this Court has to take note of Section 300 and also Exception 4. Having considered the said principle, the said judgment and also the judgment which was relied upon by learned counsel for the appellant in **SUNIL RAI ALIAS PAUNA AND ORS. vs. UNION TERRITORY, CHANDIGARH** reported in **AIR 2011 SUPREME COURT 2545**, wherein the Apex Court also in paragraph No.30 discussed with regard to blood group was not determined. But, in the case on hand, blood group was determined as 'O' blood group and cloth of the deceased and accused was stained with 'O' blood group. Hence, the judgment of the Apex Court in

SUNIL RAI's case will not come to the aid of the appellant. The other judgment with regard to invoking Section 300 and Exception 4 also will not come to the aid of the appellant, since he came with an autorikshaw along with machete and when the scuffle had taken place between deceased and accused and when the deceased slapped on his wife, immediately, he brought the machete which he carried in his autorikshaw and inflicted the injury. Hence, it is very clear that he himself called both P.W.1 and deceased to be there in a particular place. But, he came in an autorikshaw with machete and inflicted the injury and also considering the nature of injuries found in the PM report, the evidence of P.W.8 is very clear that there was a deep injury of 20 centimeter x 2 centimeter and the same is very depth and bone was visible and another cut injury measuring 15 x 20 cm and 8cm depth in cervical vertebra and found blood veins and the judgment relied upon by the learned counsel for the appellant in **SMT. SANDHYA JADHAV**'s case will also not come to the aid of the appellant that due to sudden provocation, the incident has taken place. Hence, it is not a case to modify the judgment of conviction and sentence considering the material

available on record. Therefore, we answer point No. (i) accordingly.

Point No.(ii):

34. In view of the discussion made above, we pass the following:

ORDER

- (i) The criminal appeal is *dismissed*.
- (ii) The judgment of conviction and sentence passed in S.C.NO.10028/2014 dated 14.02.2018 for the offence punishable under Sections 302 and 506 of IPC by the Trial Court is hereby affirmed.
- (iii) The appellant is entitled for benefit of set off under Section 428 of Cr.P.C.

**Sd/-
(H.P. SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

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