

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30TH DAY OF JUNE 2020

PRESENT

THE HON'BLE MR.JUSTICE B.A.PATIL

AND

THE HON'BLE MRS.JUSTICE M.G.UMA

CRIMINAL APPEAL NO.100192/2015
C/W CRIMINAL APPEAL NO.100012/2016

IN CRL.A. NO.100192/2015:

BETWEEN

RUDRAPPA S/O HANUMAPPA TALAWAR,
AGE:41 YEARS, OCC:COOLIE,
R/O HOSAGUDDA VILLAGE,
TQ:GANGAVATHI, DIST:KOPPAL.

... APPELLANT

(BY SRI.T.HANUMAREDDY, ADV.)

AND

THE STATE OF KARNATAKA,
THROUGH KANAKAGIRI POLICE STATION,
GANGAVATHI RURAL CIRCLE,
DIST:KOPPAL, REP. BY SPP,
HIGH COURT OF KARNATAKA, DHARWAD.

... RESPONDENT

(BY SRI.V.M.BANAKAR, ADDL.S.P.P.)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2)
OF CR.P.C SEEKING TO ALLOW THE APPEAL SET-ASIDE THE
JUDGMENT OF CONVICTION AND SENTENCE DATED 02.07.2015
FOR OFFENCES PUNISHABLE UNDER SECTION 302 READ WITH
SECTION 34 OF IPC IN S.C. NO.41/2014 ON THE FILE OF THE

LEARNED DISTRICT AND SESSIONS JUDGE, KOPPAL AND
CONSEQUENTLY ACQUIT THE APPELLANT FROM ALL THE
CHARGES LEVELLED AGAINST HIM.

IN CRL.A. NO.100012/2016:

BETWEEN

1. NINGAPPA S/O KARIYAPPA HARIJAN,
AGE:47 YEARS, OCC:COOLIE,
R/O:HOSAGUDDA VILLAGE,
TQ:GANGAVATHI, DIST:KOPPAL
2. DEVENDRAPPA S/O MARIYAPPA HARIJAN,
AGE:25 YEARS, OCC:COOLIE,
R/O:HOSAGUDDA VILLAGE,
TQ:GANGAVATHI, DIST:KOPPAL.

... APPELLANTS

(BY SRI.T.HANUMAREDDY, ADV.)

AND

THE STATE OF KARNATAKA
THROUGH KANAKAGIRI POLICE STATION,
GANGAVATHI RURAL CIRCLE,
DIST:KOPPAL, REP BY SPP,
HIGH COURT OF KARNTAKA, DHARWAD

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CONSEQUENTLY ACQUIT THE APPELLANTS FROM ALL THE
CHARGES LEVELLED AGAINST THEM.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 09.06.2020, COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, B.A.PATIL J.,
DELIVERED THE FOLLOWING:

COMMON JUDGMENT

Criminal Appeal No.100192/2015 has been preferred by accused No.3 and Criminal Appeal No.100012/2016 has been filed by accused Nos.1 and 2, assailing the judgment of conviction and order of sentence passed by the District and Sessions Judge, Koppal in S.C. No.41/2014 dated 02.07.2015.

2. I have heard the learned counsel Sri.T.Hanumareddy for the appellants – accused Nos.1 to 3 and the learned Additional S.P.P. Sri.V.M.Banakar for the respondent – State.

3. Since these two appeals are arising out the common judgment, they have been clubbed together and disposed of with a common judgment.

4. The genesis of the case of the prosecution in brief is that the deceased Hanumawwa was given in marriage to Sri.Mariyappa about 20 years back; out of the said wedlock, they have begotten two children i.e., accused No.2 and the juvenile offender, who is in-

conflict with law. Her husband expired and thereafter, the deceased started residing along with accused Nos.1 and 2 and the juvenile-in-conflict with law with her parents. As she has inherited the property of her husband, she used to go to the village of her husband and was in the habit of wandering to other villages and used to stay there itself, to which accused Nos.1 and 2 and the juvenile-in-conflict with law used to object and advise her on the ground that her character is questionable. Even they thought it to done away with the life of the deceased. Though the complainant has also advised not to do any such heinous act. All the relatives and the accused persons were fed up, as she has not stopped her behaviour and she has brought disrespect to their family in their society and in that light, when Hanumawwa had been to the village to see her landed property, thereafter she did not return. A complaint was registered by accused No.1 about the missing of the deceased and subsequently on 28.07.2014 the dead body of the deceased was found in

hillock area and on the evening of 31.07.2014, accused No.1 made a confession to the complainant and disclosed that on 24.07.2014 at about 06:00 p.m. after coming to know that the deceased Hanumawwa was coming along with P.W.11 from Hulihaider on the pathway, at about 07:00 p.m. himself, accused Nos.2 and 3 and the juvenile-in-conflict with law by holding the clubs, stones in their hands went near them. By seeing the same, P.W.11 being afraid as the deceased told to fled away, he ran away from the scene of the offence. As the deceased did not mend her character and their dignity and respect has been lower down in the society, they committed the murder by assaulting with clubs, stones on her head and back. He further told that with an intention to screen the offence, the dead body was thrown into the thick bushy area.

5. After hearing the confessional statement of the accused No.1, complainant went and filed the complaint as per Ex.P-1. On the basis of the said complaint, a case was registered in Crime No.95/2014.

Thereafter, after investigation, the charge sheet was filed. The learned Magistrate committed the case to the Sessions Court after following the formalities. The learned District Judge after hearing both the parties prepared the charge, read over and explained to the accused. Accused persons abjured their guilt and pleaded false implication and hence, faced the trial.

6. In order to prove its case, the prosecution examined in all 22 witnesses, got marked 29 documents and 10 material objects. Thereafter, the statements of accused persons under Section 313 of Cr.P.C. were recorded. Accused persons denied the same and they did not choose to adduce any evidence on their behalf nor got marked any documents. The learned Trial Judge after hearing the arguments and scrutiny of the evidence, found that the prosecution had been able to prove the case against the present appellants and accordingly convicted them. Challenging the legality and correctness of the same, the accused Nos.1 to 3 are before this Court.

7. The main grounds urged by the learned counsel for the appellants are that no credence has to be given to the evidence of P.W.1 – the complainant. The Trial Court should not have been relied upon his evidence. Though P.W.1 has deposed before the Court that accused No.1 has made a confession, but it is very doubtful for the reason that why and with what confidence, accused No.1 has made an extra judicial confession before him has not been properly explained. In the absence of any such material, the said evidence is not trustworthy and reliable. It is further submitted that the extra judicial confession is considered to be a very weak type of evidence. On the basis of such evidence, without there being any corroboration, the said evidence will not make any progress in the case of the prosecution. It is his further submission that the prosecution has relied upon only circumstantial evidence. If all the circumstances and chain of events if they are not so linked, so as to point out the guilt of the accused, then under such circumstances, the benefit of

doubt ought to have been given to the accused. It is his further submission that the accused and the deceased lastly seen together and in that light, the evidence of P.W.11 is not a trustworthy evidence, as admitted by him he was having an illicit relationship with the deceased and to protect himself and to see that the accused persons are convicted as they were objecting must have deposed falsely in order to tie up the accused persons.

8. It is his further submission that the motive alleged as against accused No.3 is that he was also intending to have an illicit relationship with the deceased and when he asked, she has slapped him. Then under such circumstances, that too when accused Nos.1 and 2 and the juvenile-in-conflict with law were objecting her for illicit relation, then under such circumstances, he joining along with accused Nos.1 and 2 and other one, is very strange and the theory itself is not acceptable.

9. It is his further submission that there is delay in filing the complaint. The missing complaint has been filed on 24.07.2014 and accused No.1 has confessed on 31.07.2014 and a complaint came to be registered on 01.08.2014 and instead of conducting investigation on the complaint which has been filed under UDR, a fresh investigation has been made by registering false complaint. It is his further submission that P.W.1 though has lastly seen the deceased along with the accused and even though they have been threatened, there is apprehension of doing something to the deceased, if that is the case, why he has not filed any complaint immediately before the jurisdictional Police or why he has not informed to anybody, that itself creates a doubt in the evidence of P.W.1. It is his further submission that the conduct, reaction, behaviour of this witness is unnatural. In order to substantiate his said contention, he has relied upon the decision in the case of ***Lahu Kamlakar Patil and another vs. State of Maharashtra*** reported in ***(2013) 6 SCC 417***. When

such evidence is unbelievable, then under such circumstances, the Trial Court could have been given benefit of doubt and they could have been acquitted for the alleged offences. Even the evidence of P.Ws.9 and 12 is also not trustworthy and reliable. It is his further submission that even the prosecution which has relied upon the recovery evidence, is also not proved in accordance with law.

10. It is his further submission that there is no recovery at the instance of the accused. Though there is no clinching evidence as against the accused, the Trial Court without properly appreciating the evidence, in its right perspective has wrongly convicted the accused. On these grounds, he prayed to allow the appeal and to set aside the judgment of conviction and order of sentence and acquit accused Nos.1 to 3.

11. Per contra, the learned Additional S.P.P. vehemently argued and contended that there is strong motive behind the alleged offence. It is accused Nos.1, 2 and juvenile-in-conflict with law and accused No.3

nurtured the animosity, as the character of the deceased is questionable and they advised not to continue the said act. In spite of the same, the deceased carried out the said illicit relationship with P.W.11 and others. In that light, they had quarreled earlier and the evidence produced clearly goes to show that because of the said motive, the accused persons have taken an opportunity while coming and have assaulted with club stones and done away with the life of the deceased. It is his further submission that accused No.1 has made an extra judicial confession before P.W.1 and P.W.1 strongly deposed before the Court. He further submitted that there is strong circumstance that the deceased and C.W.11 were last seen together along with the accused persons. The evidence of P.W.11 clearly goes to show that the accused persons came there by holding the club and stones; and deceased advised him to flee away from that place and in that light, his presence at the place of incident is acceptable. Even there is evidence to show that earlier to the incident, deceased was man

handled and even accused No.3 was insisting the deceased to have sexual relation with him and even P.Ws.11 and 12, they have also seen the deceased and C.W.11 getting down from the bus and coming towards the place of the incident. If all the circumstances, if they have been seen together, then there is acceptable evidence to convict the accused.

12. It is his further submission that P.W.9 went towards Hosagudda and saw the deceased and C.W.11 getting down at Tavarageri bus stop and proceeding towards Hosagudda. When there are strong circumstances to connect the accused to the alleged crime, under such circumstances, there are no good grounds to interfere with the judgment of the Trial Court. Under Section 8 of the Evidence Act, the conduct of the accused is also very important. In that light, if the conduct of accused No.1 and other accused persons if it is seen, under such circumstances, the case of the prosecution is going to establish and the accused are liable to be convicted. The Trial Court after considering

all the materials placed on record has come to the right conclusion and has rightly convicted the accused. There are no good grounds to interfere with the judgment of the Trial Court. The judgment of the Trial Court deserves to be confirmed. On these grounds, he prays to dismiss the appeal.

13. We have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records, including the Trial Court records.

14. Prosecution in order to prove its case, got examined as many as 22 witnesses. P.W.1 is the complainant and he has spoken with regard to the questionable character of the deceased and he has advised the accused persons not to do such things and he has also warned not to cause any harm to the life of the deceased. He has further deposed with regard to the confession made by accused No.1 about he filing a false complaint and further telling that himself, accused Nos.2, 3 and juvenile offender together found deceased

Hanumawwa in the company of P.W.11 at hillock area and they tried to assault and P.W.11 took to his heels and all of them assaulted the deceased Hanumawwa with club, stones and she died and have thrown the dead body in the bush. During the course of cross-examination, he has deposed that Hanumawwa did not lodge complaint against accused Nos.1 and 2 for assaulting earlier and accused No.1 alone has told about the crime. The other suggestions have been denied by this witness.

15. P.W.2 is the seizure mahazar pancha of the blood stained mud, bangle pieces and one pair of chappal and clothes of the deceased, as per Exs.P-2, P-3 and P-4. So also, P.W.3 is the witness to the said panchanamas and he has further deposed that he has not seen accused No.3 while he was on his way to the land near hillock area.

16. P.Ws.4 and 5 are the witnesses, wherein the accused persons have shown the spot and a spot mahazar has been drawn, as per Ex.P-5 and they are

also panch witness to the recovery mahazar of the club
Ex.P-6.

17. P.W.6 is the father of the deceased. He has spoken with regard to the character of the deceased. P.W.7 is the mother of the deceased she speaks with regard to the character of the deceased. P.Ws.2 to 4 have not supported the case of the prosecution and they have been treated as hostile, even nothing has been elicited by the prosecution so as to accept their evidence. P.W.8 is the person who has shown the dead body in the hillock area and informed the same. P.W.9 is the person, who saw deceased and C.W.11 getting down at Tavarageri bus stop and proceedings towards Hosagudda and he has also spoken that P.W.11 as to where he had gone all these days and he told that he has been to Bengaluru and came back. P.W.10 is the scribe of the complaint, Ex.P-1 at the instance of P.W.1.

18. P.W.11 is the person, who speaks about illicit relationship with the deceased and he further deposed that the accused Nos.1 and 2 and juvenile

offender used to abuse Hanumawwa and they used to assault her, as she had illicit relationship and they used to threaten her to take away her life and she used to tell all the facts to him. He has further deposed that about 9 months back, accused No.2 and the juvenile offender came to Karkala with others to man handle them. He has further deposed that accused No.3 used to tell Hanumawwa not to have relationship with him and he used to insist her to have relationship with him. He has also spoken with regard to her property and other aspects. He has also spoken with regard to coming on 21.07.2014 and he went to Tavarageri village where the deceased came about 04:00 p.m. and both of them had their tiffin in a hotel and thereafter, came to bus stand in order to go to Hosagudda village. At about 05:00 to 05:30 p.m. the bus came and they proceeded towards Kanakagiri via Hulihaider and they got down from bus at about 06:00 p.m. and proceeded towards Hosagudda village by walk, as the bus was not proceeding towards Hosagudda. He has further deposed that they came

near the hillock and all the accused persons and juvenile offender also came there, holding clubs and stones and they started abusing the deceased Hanumawwa and she was not ready to mend herself leaving her bad character and they came to them by threatening to take away her life and at that time, Hanumawwa told him to flee away from the spot, as she apprehended that they would kill him. Immediately he took to his heels. Later came to know that the accused persons murdered Hanumawwa. During the course of cross-examination, he has deposed that he has not lodged complaint against accused Nos.1 and 2 and juvenile offender and others, when they had come to Karkala to man handle them. Neither himself nor Hanumawwa lodged any complaint before the Police. So also whenever accused Nos.1, 2 and juvenile offender abused and assaulted Hanumawwa, they have not filed any complaint. The other suggestions made have been denied.

19. P.W.12 is the person, who has seen P.W.11 and deceased getting down from the bus and proceedings towards Hosagudda. But this witness has not supported the case of the prosecution and he has been treated as hostile. P.W.13 speaks with regard to the strained relationship of accused No.3 with deceased. He has further deposed that the deceased Hanumawwa had illicit relationship with P.W.11 and her son used to advise not to have relationship with P.W.11 and that the deceased was not in good terms with accused No.3. Once the deceased had assaulted accused No.3 and because of that the relationship was strained. During the course of cross-examination, nothing has been elicited from the mouth of this witness.

20. P.W.14 is a person who had spoken with accused No.3 in a hotel. At that time, accused No.1 came and he called accused No.3 to come along with him to go to Tavarageri. Later accused No.3 went along with accused No.1. During the course of cross-examination, nothing has been elicited so as to discard

his evidence. P.W.15 is the sister of the husband of the deceased Hanumawwa. She also says with regard to the character and relationship and she has deposed in her cross-examination that the deceased Hanumawwa was in good terms with her sons.

21. P.W.16 is the owner of the hotel where P.W.11 and the deceased went and have taken the tea. But he has not supported the case of the prosecution and he has been treated as hostile. P.W.17 is the Assistant Engineer, who has prepared the sketch of scene of offence, as per Ex.P-15. P.W.18 is the ASI, who received a complaint filed by accused No.1, as per Ex.P-16. P.W.19 is the CPI, who investigated the case and filed the charge sheet. P.W.20 is the PSI. He has received the UDR complaint and registered the case and issued the FIR, as per Ex.P-28. P.W.21 is the Doctor, who conducted autopsy over the body of the deceased. In his evidence, he has deposed that he has conducted autopsy over the body of the deceased and he has noticed cut injury occipital region, right head parital

injury, forehead injury, cut injury left parital and other injuries. He has also opined that the cause of the death is due to head injury as a neurogenic shock and he has issued the post mortem report, as per Ex.P-21. During the course of cross-examination, nothing has been elicited so as to discard the evidence of this witness. P.W.22 is the scribe and Ex.P-16 is the complaint which has been filed by accused No.1.

22. From the above evidence, let us consider whether the prosecution has established the case beyond all reasonable doubt. Admittedly, the case on hand rests on circumstantial evidence. It is trite of law that in order to bring home the guilt of the accused, under circumstantial evidence, all the circumstances are to be linked up with one another and Court will be in a position to see the chain of events and if all the chain of events and important links have been established by the prosecution, then it is said to have been proved.

23. On perusal of the evidence and materials placed on record, the seizure mahazar panchas and other panch witnesses, father and mother of the deceased, they have not supported the case of the prosecution. During the course of arguments, learned counsel for the appellants fairly conceded that he is not going to dispute that the deceased died a homicidal death, but it is not the accused persons who have caused the death of the deceased. In that light, with reference to the evidence of Doctor P.W.21, we are of the considered opinion that the prosecution has clearly established the fact that the deceased died a homicidal death.

24. The prosecution in order to establish its case has relied upon the following circumstances, i) motive, ii) extra judicial confession, iii) recovery of incriminating articles at the instance of the accused, iv) last seen theory, prior to the incident and at the time of the incident, v) accused persons going together towards hillock near Hosagudda village.

25. Insofar as the “motive” is concerned, it is the case of the prosecution that the deceased had a questionable character and that she used to go out of the village and she was also having illicit relationship with P.W.11. Even inspite of the advise made by the accused persons, she did not mend her character and in that light, the accused persons intended to done away with the life of the deceased and even P.W.1 advised them not to take any such steps. Prosecution in order to establish the said issue has got examined P.Ws.1, 11 and 13.

26. P.W.1 is the complainant and in his evidence he has deposed with regard to the questionable character of the deceased, he had advised not to indulge in such activities and even the accused were also advised not to take away the life of the deceased and they did not heed to the said advise and even he has spoken with regard to the threatening of the deceased, earlier to the incident. During the course of cross-examination of this witness, it has been brought on

record that neither P.W.11 nor deceased Hanumawwa have filed any complaint against accused Nos.1 and 2 for having assaulted earlier to the incident. Except that nothing has been elicited from the mouth of this witness. P.W.11 has also deposed that he was having illicit relationship with the deceased Hanumawwa and the accused persons had threatened the deceased to take away her life and the deceased Hanumawwa used to tell all these facts to him. He has further deposed that the deceased has been man handled by accused No.2. He has further deposed that accused No.3 used to tell Hanumawwa not to have relationship with him and he used to insist her to have illicit relationship with him and there was a scuffle in between Hanumawwa and accused No.3 and Hanumawwa assaulted accused No.3 with chappal. He has also spoken with regard to the act of the accused persons prior to the alleged incident. During the course of cross-examination, he has also admitted the fact that he has not lodged the complaint against the accused No.2 and others when they had

come to Karkala to man handle them and they have been also not filed any complaint before the Police when accused Nos.1 and 2 and juvenile offender used to abuse and assault Hanumawwa. Except that nothing has been brought on record.

27. P.W.13 has spoken with regard to the relationship of the deceased with P.W.11 and she was not in good terms with accused No.3 and she also spoke with regard to the deceased assaulting accused No.3. By taking into consideration all these evidence, it is not in dispute that the deceased had a questionable character and the accused persons used to nurture the enmity with her and advised her not to have illicit relationship with P.W.11 and others. In this behalf, the prosecution has clearly established the motive aspect is concerned.

28. Only on proving the motive, the case of the prosecution is not going to be established. Whenever the charge sheet sought to be proved, is only on circumstantial evidence and it plays an important part in order to tilt the scale, depending upon the other

circumstances on which the prosecution is intending to rely upon. This proposition of law has been laid down by the Hon'ble Apex Court in the case of ***Kuna @ Sanjay Behra vs. State of Odisha*** reported in ***(2018) 1 SCC 296***.

29. The second circumstance on which the prosecution is intending to rely upon is that of "extra judicial confession made by accused before P.W.1". In that light, P.W.1 has deposed that 8 to 9 months back Hanumawwa was murdered by accused persons and after three days, after recovery of the dead body, accused No.1 told him that he has falsely lodged the complaint against others and himself, accused Nos.2, 3 and juvenile offender together found Hanumawwa in the company of C.W.11 at a hillock area near Hosagudda village and they tried to assault and had C.W.11 took his heels, all of them assaulted Hanumawwa with club and stones and she died. He further stated that they have thrown the body in the bush in the said area and on the same day evening, he has filed the complaint.

During the course of cross-examination of this witness, nothing has been elicited so as to discard this aspect.

30. The third circumstance on which the prosecution intending to rely upon is that of “recovery”. In this behalf, the prosecution has relied upon the evidence of P.Ws.2 and 3, but they have not supported the case of the prosecution and they have been treated as hostile and that circumstances has not been proved by the prosecution.

31. The next circumstance on which the prosecution is intending to rely upon is that the “deceased and C.W.11 were lastly seen near the bus stand”. In that light, the prosecution has relied upon the evidence of P.Ws.9 and 12. P.W.9 in his evidence has deposed that the deceased and C.W.11 got down from the bus and he spoke to C.W.11 as to where he had gone all these days and he told that he had gone to Bengaluru and came back to Tavarageri and now proceeding towards Hosagudda village and thereafter deceased and C.W.11 went towards Hosagudda village.

This circumstance is also going to be substantiated by P.W.12. P.W.12 has also not supported the case of the prosecution and treated as hostile and this circumstance will not help the prosecution in this behalf.

32. The next circumstance which the prosecution is intending to rely upon is that the “accused and the deceased were last seen prior to the incident”. In that behalf, the prosecution has relied upon the evidence of P.W.11. He has deposed with regard to illicit relationship with the deceased and he has further deposed that on 21.07.2014 she had gone to Hattigudda village to see her properties and she had informed him to come to Tavarageri village on 24.07.2014. Accordingly, he went to Tavarageri village and there the deceased Hanumawwa came at about 04:00 p.m., both of them had tiffin in the hotel of P.W.16 and thereafter at about 05:00 or 05:30 p.m. bus came which proceed towards Kanakagiri via Hulihaider and they got into the bus and at about 06:00 p.m. the

bus came to Hulihaider, where they got down in order to go to Hosagudda. He has further deposed that there is a path way from Hulihaider to Hosagudda village and one has to go on the said way in order to reach Hosagudda. He has further deposed that when he had come near hillock, all the accused persons and juvenile offender came on their way and at that time accused No.1 was holding stick and accused Nos.2, 3 and juvenile offender were holding stones and they came towards them and abused Hanumawwa that she is not ready to mend herself leaving her bad character and they also threatened to take away her life. At that time, Hanumawwa told him to flee away from the spot, as she apprehended that they would kill them. Immediately he took his heels from the scene of offence. On perusal of the evidence and cross-examination, he has not lodged the complaint before the Police when the juvenile offender and the accused persons tried to assault him as well as the deceased.

33. Be that as it may. In his evidence, he has deposed that later he came to know that the accused persons murdered Hanumawwa. If really he was present when the incident has taken place, no ordinary person will keep quite, that too when he was there with her, who is having illicit relationship with her. The non-filing of the complaint or non-informing of the said fact to anybody, creates doubt in the evidence of this witness. The conduct of the witness itself is suspicious. It is an admitted fact by himself that he and the deceased were having illicit relationship and even P.Ws.9 and 12 have seen that both were going together by boarding the bus and other witness have also seen the accused and the deceased getting down and going towards Hosagudda. When that being the case, under such circumstances, if any murder takes place, the first person who is going to be caught is P.W.11. Under such circumstances, the said witness could have given the complaint and information to the Police immediately when he himself

has fled away from the spot. In that regard, the reaction of this witness appears to be unnatural.

34. We are conscious of the fact that there cannot be uniformity in human reaction and behaviour. But if the conduct of the witness is so unnatural and is not in accordance with acceptable human behaviour, then under such circumstances, the testimony becomes questionable and his evidence is likely to be discarded. This proposition of law has been laid down by the Hon'ble Apex Court in the case of ***Luha Kamlakar Patil and another vs. State of Maharashtra*** quoted supra. At paras 21, 26 and 27, it has been observed as under:

21. The attack is based on the grounds, namely, that the said witness (PW2) ran away from the spot; that he did not intimate the police about the incident but, on the contrary, hid himself behind the pipes near a canal till early morning of the next day; that though he claimed to be eye witness, yet he did not come to the spot when the police arrived and was there for more

than three hours; that contrary to normal human behaviour he went to Pune without informing about the incident to his wife and stayed for one day; that though the police station was hardly one furlong away yet he did not approach the police; that he chose not even to inform the police on the telephone though he arrived at home; that after he came from Pune and learnt from his wife that the police had come on 21.2.1988, he went to the police station; and that in the backdrop of such conduct, his version does not inspire confidence and deserves to be ignored in toto.

26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves

examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded.

27. Keeping in mind the aforesaid, we shall proceed to scrutinize the evidence of PW-2. As is evincible from his deposition, on seeing the assault he got scared, ran away from the hotel and hid himself behind the pipes till early morning. He went home, changed his clothes and rushed to Pune. He did not mention about the incident to his family members. He left for Pune and the reason for the same was also not stated to his family members. He did not try to contact the police from his residence which he could have. After his arrival at Pune, he did not mention about the incident in his sister-in-law's house. After coming back from Pune, on the third day of the occurrence, his wife informed that the police had come and that

Bhau, who had accompanied him, was dead. It is interesting to note that in the statement under Section 161 of the Code, he had not stated that he was hiding himself out of fear or he was scared of the police. In the said statement, the fact that he was informed by his wife that Bhau was dead was also not mentioned. One thing is clear from his testimony that seeing the incident, he was scared and frightened and ran away from the hotel. He was frightened and hid himself behind the pipes throughout the night and left for home the next morning. But his conduct not to inform his wife or any family member and leaving for Pune and not telling anyone there defies normal human behaviour. He has also not stated anywhere that he was so scared that even after he reached home, he did not go to the police station which was hardly at any distance from his house. There is nothing in his testimony that he was under any kind of fear or shock when he arrived at his house. It is also surprising that he had not told his family members and he went to Pune without disclosing the reason and after he arrived from Pune and on being informed by his wife that his companion Bhau had died,

he went to the police station. We are not oblivious of the fact that certain witnesses in certain circumstances may be frightened and behave in a different manner and due to that, they may make themselves available to the police belatedly and their examination gets delayed. But in the case at hand, regard being had to the evidence brought on record and, especially, non-mentioning of any kind of explanation for rushing away to Pune, the said factors make the veracity of his version doubtful. His evidence cannot be treated as so trustworthy and unimpeachable to record a conviction against the appellants. The learned trial court as well as the High Court has made an endeavour to connect the links and inject theories like fear, behavioural pattern, tallying of injuries inflicted on the deceased with the Post Mortem report and convicted the appellants. In the absence of any kind of clinching evidence to connect the appellants with the crime, we are disposed to think that it would not be appropriate to sustain the conviction.”

35. In that light, the prosecution has utterly failed to prove the last seen theory. When the accused

and the deceased were going together and the presence of the accused has not been proved, under the admitted facts and circumstances, we are of the considered opinion that the burden shifts upon P.W.11 to explain properly. But his conduct itself is doubtful, then that itself creates doubt in the case of the prosecution.

36. On perusal of the entire evidence, the prosecution has utterly failed to prove all the circumstances. It is trite of the law that if all the chain of events and important links are not established, case of the prosecution fails. It is settled law that the circumstances so connected must prove the offence against accused and accused alone. Otherwise benefit of doubt has to be given to accused. Trial Court without properly analyzing the evidence has come to a wrong conclusion, as such, it requires intervention by this Court.

37. We have carefully and cautiously gone through the other circumstances on which the prosecution is intending to rely upon. But the said

evidence is also not so trustworthy and reliable. In that light, there are no other grounds to bring home the guilt of the accused beyond all reasonable doubt. In that light, the benefit of doubt goes to the appellants – accused.

38. For the discussions held by us above, we pass the following order:

ORDER

The appeals are allowed. The judgment of conviction and order of sentence passed by the District and Sessions Judge, Koppal in S.C. No.41/2014 dated 02.07.2015 is set aside. The appellants – accused Nos.1 to 3 are acquitted of all the charges levelled against them. Bail bonds and surety bonds stand cancelled.

The learned District Judge is directed that if any fine amount is deposited by the appellants – accused, the same may be refunded to them on proper identification and acknowledgment.

: 37 :

Registry is directed to send back the Trial Court records forthwith.

Sd/-
JUDGE

Sd/-
JUDGE

Rsh