IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH 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.1994/2019
C/W
CRIMINAL APPEAL NO.1918/2019

IN CRIMINAL APPEAL NO.1994/2019:

BETWEEN:

1 . SANDEEP
S/O NARAYAN GOWDA
AGED ABOUT 35 YEARS
OCC: FARMER
R/O KIKKERI
THIRTHAHALLI-577 432.

2 . ESHWARANAYAK
S/O TAKANAYAK
AGED ABOUT 44 YEARS
OCC: FARMER
R/O BILLODI
HOSANAGARA-577 418.

3 . SHRINIDHI
S/O NAGENDRANAYAK
AGED ABOUT 22 YEARS
OCC: LABOURER

R/O BILLODI
HOSANAGARA TALUK-577 418.

… APPELLANTS

(BY SRI. RAJESH RAO K., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY THIRTHAHALLI P.S.
REPRESENTED BY S.P.P.
HIGH COURT COMPLEX
BENGALURU-560 001. … RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 26.09.2019 AND SENTENCE DATED 30.09.2019, PASSED BY THE III ADDITIONAL SESSIONS JUDGE, SHIVAMOGGA, IN S.C.NO.28/2018, CONVICTING THE APPELLANT/ACCUSED NOS.1 TO 3 FOR THE OFFENCE PUNISHABLE UNDER SECTION 323 R/W 34 OF IPC AND SECTION 302 R/W 120B OF IPC.

IN CRIMINAL APPEAL NO.1918/2019:

BETWEEN:

1 . SATHISH K.N.,
S/O NAGAPPA GOWDA
AGED ABOUT 44 YEARS
OCC: FARMER
R/O KERODI
THIRTHAHALLI TALUK
SHIVAMOGGA-577432. … APPELLANT

(BY SRI. DINESH KUMAR K. RAO, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY THIRTHAHALLI P.S.,
REPRESENTED BY S.P.P.
HIGH COURT COMPLEX
BENGALURU-560001. … RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) CR.PC BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 26.09.2019 AND SENTENCE DATED 30.09.2019, PASSED BY THE III ADDITIONAL SESSIONS JUDGE, SHIVAMOGGA IN S.C.NO.28/2018, CONVICTING THE APPELLANT/ACCUSED NO.4 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 R/W SECTION 120B R/W SECTION 115 OF IPC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 31.01.2026 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)

Crl.A.No.1994/2019 is filed by accused Nos.1 to 3 and Crl.A.No.1918/2019 is filed by accused No.4 questioning the conviction and sentence for the offence punishable under Section

302 read with Section 120-B of IPC and Section 323 read with Section 34 of IPC imposing life imprisonment and to pay fine of Rs.25,000/- for the offence punishable under Section 302 read with Section 120-B of IPC, in default, to undergo simple imprisonment for six months and to pay fine of Rs.1,000/- for the for the offence punishable under Section 323 read with Section 34 of IPC, in default, to undergo simple imprisonment for 15 days.

2. The factual matrix of case of the prosecution before the Trial Court is that on 03.10.2017 at about 8.45 p.m., when C.W.1-Ashwitha was with her husband deceased Hareesha and daughter Anwitha in their house, the accused Nos.1 to 3 came there with common intention to commit murder of Hareesha and C.W.1 called Hareesha and made him to come outside the house on the pretext of demanding sand and accused No.1-Sandeep assaulted Hareesha on his neck with long and accused No.2 assaulted the deceased on his stomach with long and on seeing this incident, when C.W.1 raised hue and cry, the accused No.3 kicked C.W.1 with his leg and held her neck and assaulted her

and made an attempt to kill her. On hearing the altercation, C.W.2 Manjunatha K.S., C.W.3 Harisha K.S. and C.W.4 Mahesha K.S. came running to the house of C.W.1. On seeing them, the accused Nos.1 to 3 ran away from the spot by giving threat to C.W.1 that they would kill her and thereafter, Hareesha was shifted to SJC Hospital, Thirthahalli in an ambulance and he succumbed to the injuries while taking treatment in the hospital at 10.15 p.m. It is the case of the prosecution that accused No.4 plotted conspiracy to eliminate Hareesha and gave supari to accused No.1 to the tune of Rs.1,26,000/- and accused No.1 availed the services of accused Nos.2 and 3 to eliminate the deceased.

3. Based on the complaint of P.W.1, police have registered the case immediately and thereafter, investigated the matter and filed the charge-sheet against accused Nos.1 to 4 invoking the offence punishable under Sections 323, 504, 506, 307, 302 and 120-B read with Section 34 of IPC. The accused did not plead guilty and claimed for trial.

4. During the course of trial, the prosecution examined the witnesses P.Ws.1 to 17 and got marked Exs.P1 to P33 and material objects M.Os.1 to 19. After completion of the prosecution evidence, the accused was subjected to 313 statement and all of them have denied the incriminating circumstances and they did not choose to lead any defence evidence.

5. The Trial Court having considered both oral and documentary evidence, particularly considering the evidence of the Doctor-P.W.14, comes to the conclusion that it is a case of homicidal death. The Trial Court also answered point Nos.1 to 3 in coming to the conclusion that there was conspiracy and committed murder of deceased causing injury to P.W.1. However, the Trial Court answered point Nos.4, 5, and 6 as 'negative' and comes to the conclusion that the prosecution not proved the offence under Sections 307, 504 and 506 read with Section 34 of IPC. The Trial Court comes to the conclusion while answering point Nos.7 and 8 that accused No.3 caused voluntary hurt to P.W.1. The Trial Court having convicted accused Nos.1 to

4, imposed the sentence and the same is challenged before this Court.

6. The main contention of learned counsel appearing for accused Nos.1 to 3 in Crl.A.No.1994/2019 before this Court is that though prosecution relies upon the evidence of P.Ws.1 to 17, it is clear that P.W.1 had lodged the complaint against unknown persons and incident had taken place on 03.10.2017 at 8.45 p.m. The accused Nos.1 to 3 were arrested on 16.10.2017 and accused No.4 was arrested on 17.10.2017. The counsel would vehemently contend that Ex.P1 does not disclose anything about the motive for committing the offence and it only speaks that incident had taken place and the accused inflicted the injury and the deceased was shifted to hospital and he passed away at 10.15 itself. It is specifically mentioned that when her husband did not provide sand to them, immediately, they inflicted injury with machete and committed the murder and lodged complaint against unknown persons to take action against them. The counsel would submit that, in the complaint, it is mentioned that since the sand was not given, murder has taken place. The counsel would submit that the evidence of P.W.1 cannot be

accepted for the reason that she has given complaint against unknown persons. But, subsequently, Test Identification Parade was conducted and she identified the accused persons. In the cross-examination, she categorically admits that before Test Identification Parade, photos of the accused were published in the newspaper as well as in the media, hence, the evidence of P.W.1 cannot be believed regarding identity of the accused persons is concerned.

7. The counsel also contends that the prosecution relies upon the evidence of P.W.3 i.e., last seen theory and he identified the accused persons before the Court. But, his statement was recorded on 20.10.2017 after the arrest of the accused and his evidence also cannot be believed. The other witnesses P.W.2, P.W.4 and P.W.5 are spot mahazar witnesses, P.W.6 is inquest witness, P.W.7 is the witness for seizure of nighty of P.W.1, P.W.8 is owner of scooty, who has turned hostile. P.W.9 is the Doctor, who treated the injured P.W.1 and issued the certificate, P.W.10 prepared the sketch of the spot and P.W.11 and P.W.14 are the recovery witnesses of material

objects at the instance of accused Nos.1 and 2 and their evidence is not reliable and consistent. The counsel would contend that P.W.10 is the Doctor, who conducted Test Identification Parade and though, P.W.13-Tahsildar, who conducted Test Identification Parade was examined, the same is belated and in view of admission on the part of P.W.1, the same cannot be relied upon. P.W.15 is the Investigating Officer and P.W.16 is In-charge Deputy Director RFSL and her evidence is that there was no blood group of the accused persons and her evidence is that only an 'O' blood group was found in the seized articles. P.W.17 is the witness, who arrested the accused. The counsel also contend that Test Identification Parade was conducted after two months and though, helmet was seized at the spot, no blood stains were found on the same. The counsel also would vehemently contend that, in order to prove the conspiracy, no material is recovered and the evidence of P.W.3 cannot be believed.

8. Learned counsel appearing for the appellant in Crl.A.No.1918/2019 for accused No.4 would vehemently contend

that the evidence of P.W.3 cannot be believed with regard to conspiracy and his statement was recorded afterthought subsequent to arrest of the accused persons and no reason was assigned for arrest. The counsel would contend that there is no recovery from accused No.4 and motive is also not proved and in the cross-examination, P.W.1 categorically says that there is no civil litigation. The Investigating Officer also not speaks anything about conspiracy. But, accused No.4 was arrested in the house and the evidence of P.W.3 cannot be believed and he is the only witness, who speaks about conspiracy.

9. In reply to this argument, learned Additional SPP appearing for the respondent-State would vehemently contend that P.W.1 is an eye witness and apart from that, P.W.1 identified the accused persons when the Test Identification Parade was conducted by P.W.13 in the jail and the Court also has to take note of contents of Ex.P1. She also would submit that spot mahazar is very clear that chilly powder was found in the spot. She would vehemently contend that the evidence of recovery witnesses P.W.11 and P.W.14 is consistent that jerkin

and cap of accused No.1 was seized and also with regard to seizure of cloth and weapon from accused No.2. The evidence of P.W.3 is very clear that he had witnessed all of them and there was no need to give statement immediately after the incident and only after the arrest itself P.W.3 came to know about involvement of these accused, who were discussing the same. The evidence of P.W.16, In-charge Deputy Director RFSL is very clear that blood stained cloth and weapons which were seized at the instance of the accused were stained with blood and FSL report Ex.P31 is also very clear. Though, it is contended that procedure for conducting the Test Identification Parade was not followed, but it is very clear that the evidence of Tahsildar is that he secured other persons and made the accused persons to stand in the middle of other persons and thrice P.W.1 identified each of the accused persons. She would submit that chilly powder was found at the spot and Ex.P4 shows the same and even chilly powder was recovered from the jerkin pocket of accused No.1. In the cross-examination of P.W.1, she has not disputed with regard to motive and she speaks about the motive. The witnesses P.W.11 and P.W.14 speak about recovery of

machete and also jerkin and spot mahazar witness P.W.4 categorically says that chilly powder was seized while drawing mahazar in terms of Ex.P4. P.W.11 also categorically says that when jerkin was seized at the instance of accused No.1, there was chilly powder.

10. In reply to this argument of learned Additional SPP appearing for the respondent-State, learned counsels appearing for accused Nos.1 to 4 would vehemently contend that evidence available on record cannot be accepted and the same not inspires the confidence of the Court. But, the Trial Court committed an error in convicting the accused Nos.1 to 4 in the absence of corroborative piece of evidence.

11. Having heard learned counsels appearing for the appellants, learned Additional SPP appearing for the respondent-State and having perused the evidence available on record both oral and document, we have given our anxious consideration to both oral and documentary evidence available on record and the points that would arise for our consideration are:-

(i) Whether the Trial Court committed an error in convicting and imposing sentence on accused Nos.1 to 4 for the charges levelled against them for the offence punishable under Sections 120-B, 302 and 323 read with Section 34 of IPC?

(ii) What order?

Point No.(i):

12. The case rests upon direct evidence as well as circumstantial evidence. The prosecution mainly relies upon the direct evidence of P.W.1, who had witnessed the incident and also sustained injury in the incident. It is also her statement on 03.10.2017 while lodging the complaint at 10.30 to 11.30 p.m. that at 8.45 p.m., when she was feeding her daughter and her husband was taking food, some people called, hence herself and her husband switched on the light and found three persons. But, they were unknown to her and out of them, one was short and he was wearing blue colour shirt and other two were tall and one was wearing jerkin and another was wearing cap and it appears that they were known to her husband and the person, who is shorter asked her husband to provide sand from Ramesh and

Govindha and they replied that they are not having any sand, but they insisted to give sand from her husband and immediately he replied that he will not give sand and the same is not for sale and go and ask the said Ramesh and at that time, the person who was wearing cap suddenly inflicted the injury on the back of neck of her husband and another person, who is also a tall person, he inflicted injury on the abdomen of her husband and immediately, she made hue and cry and tried to pacify him and the person, who is a short man kicked her and also held her neck and pressed and did not allow her to even scream at the spot. Having heard the screaming sound, neighbourers Manjunatha, Harisha, Mahesha rushed to the spot and witnessing the same, all the three ran away from the place, stating that they will not leave her. Immediately, Manjunath, Harisha and others shifted her to Thirthahalli SJC Hospital and she also took treatment. But, ultimately her husband succumbed to the injuries at 10.15 p.m. It is stated that when her husband refused to give sand, with an ill-will, inflicted injury. Hence, requested to take action against the unknown person.

13. Having considered Ex.P1, it is very clear that overt act of each of accused persons is witnessed by P.W.1 and she has narrated how an incident has taken place in the complaint. The Court also has to see the evidence of P.W.1 and she has reiterated the same in her evidence and also identifies her signature in the complaint Ex.P1 and reiterates that she was not having acquaintance with the accused. However, she has given description of accused persons in the complaint. The police also seized her nighty on 09.10.2017 by drawing mahazar in terms of Ex.P2 and identifies her signature and also identifies M.O.1. It is also her evidence that she was called to District Jail and Test Identification Parade was conducted and she identified the accused when the Test Identification Parade was conducted by the Tahsildar and identifies the signature in Ex.P3 and procedure followed in conducting the Test Identification Parade is also narrated and she identified accused Nos.1 to 4 and says that accused Nos.1 to 3 came near her house and inflicted injury and accused No.4 was also identified in the jail. It is also stated that accused No.4 got killed her husband in respect of the land which is located behind their house. This witness was subjected to

cross-examination. It is elicited in the cross-examination that her husband went to jail in view of complaint given by the first wife and suggestion was made that there were cases against her husband in respect of theft of sandal and witness says old cases were there, but says that the premises was fenced. It is her evidence that when neighbourers rushed to the spot, accused persons ran away from the spot. The police came and conducted the mahazar and visited twice or thrice near her house and the incident has come in the newspaper. It is also stated that in the media, photos of the accused were also shown. It is elicited that she alone went to jail and Test Identification Parade was conducted in between 5.00 to 5.15 and as soon as Test Identification Parade was conducted, signatures were taken and she was sent out and called again and again for continuous Test Identification Parade. It is suggested that accused persons never asked sand with her husband and accused persons also not inflicted any injury and all the suggestions are denied. It is suggested that nowhere accused Nos.1 to 4 are connected to this incident and the same was also denied. In the cross examination by accused No.4 counsel, witness admits that

accused No.4 is cousin of her husband and she says that for the land, accused No.1 got killed her husband. But, she did not make the statement before the police and there was no civil case between her husband and accused No.4. It is suggested that accused No.4 was not connected to this case and she is falsely deposing and the same was denied.

14. Having considered this evidence, it is very clear that she has narrated how an incident has taken place and she is an eye witness to the incident and immediately after the death of her husband, she gave the statement between 10.30 to 11.30 p.m. and narrated each of overt act of the accused persons and also categorically given the description of accused Nos.1 to 3 that two were tall and one was short and the person who was short itself assaulted her and the fact that she also sustained injury is not in dispute and wound certificate is also produced. Hence, it is clear that she is an eye witness to the incident. No doubt, learned counsel appearing for accused Nos.1 to 3 got elicited the answer in the cross-examination that the incident was published in the newspaper and also she says that photo of

the accused also came in the newspaper, this Court has to take note of the same. Though, this answer is given and they were arrested after 13 days and the incident has taken place on 03.10.2017 and accused Nos.1 to 3 were arrested on 16.10.2017 and accused No.4 was arrested on 17.10.2017. But, nothing is elicited in the cross-examination that before Test Identification Parade, the same was published in the newspaper. Hence, it cannot be contended that P.W.1 has already seen the photos prior to Test Identification Parade. Though, this answer is elicited, it is not specific that she had seen the photos prior to the Test Identification Parade. Hence, the very contention of learned counsel appearing for accused Nos.1 to 4 that she had seen the accused persons in the media prior to Test Identification Parade cannot be accepted and no such question was put to the witness P.W.1 that prior to Test Identification Parade, photos were published and also cross-examined to the effect Test Identification Parade was conducted. She also categorically identifies the accused persons thrice when they were made to stand along with other persons and though

suggestion was made that such incident has not taken place, but witness categorically denied the same.

15. With regard to the motive is concerned, no doubt, in the complaint, it is stated that when her husband did not agree to provide sand, they inflicted the injury, in Ex.P1, not stated with regard to motive of backyard land dispute between accused No.1 and accused No.4 is concerned and motive is stated for non-supply of sand. But, accused persons were apprehended after 13 days and then only comes to know about involvement of accused Nos.1 to 3 and accused No.4 was arrested on the next day, in view of voluntary statement of accused Nos.1 to 3. When such being the case, question of mentioning the motive in the complaint does not arise. However, P.W.1 categorically deposed before the Court that accused No.1 got killed her husband in view of dispute with regard to land which is located behind their house. No doubt, in the cross-examination of P.W.1, it is elicited that she came to know that land which is located behind their house, the accused No.4 killed her husband, but she did not make such statement before the police. However, she admits

that there was no civil dispute and also categorically says that her husband was killed in view of land dispute which is located behind their house. This evidence was not rebutted by accused No.4 counsel in the cross-examination, except eliciting that no civil case. But, with regard to dispute in respect of the property which is located behind their house, the same is not denied in the cross-examination of P.W.1. Hence, it is very clear that there was a motive to commit the murder and accused No.4 was having motive to eliminate the deceased through accused Nos.1 to 3.

16. Now coming to the evidence of last seen witness, this Court has to take note of evidence of P.W.3. The P.W.3, in his evidence says that on 03.10.2007, when he was returning near Bobby Cross, Brahma Lingeshwara temple, accused Nos.1 and 4 and other two persons parking the kinetic bike were talking to each other and since there was street light, he identified the accused persons and they all belong to the same village. When he overheard their talk, accused No.4 was telling that this time we should not leave him and he came back to

house. But, on the same day, Hareesha was killed in the night at 10.00 p.m. and he identifies that those persons were there near Brahma Lingeshwara temple and identifies the accused persons before the Court. It is elicited that he was having acquaintance with the deceased from the last 15 years and he used to visit their house and he came to know about his murder on the same night and also attended the cremation. The police also came to the spot, at that time, he did not disclose the same to the police and also he did not mention before the police that accused Nos.2 and 3 were seen in the village. But, he made the statement before the police that he witnessed them since there was street light in the road. He also admits that he was not aware of the dispute between accused and deceased and statement was not made before the police to that effect. He also says that he did not notice the colour of the scooty, but he says that accused persons were talking in loud voice and says that he made the statement on 20.10.2017 before the police.

17. Learned counsel appearing for the appellants would vehemently contend that the evidence of P.W.3 cannot be

believed. But, the evidence of P.W.3 is very consistent with regard to witnessing the accused Nos.1 to 4 in a particular spot. No doubt, P.W.3 immediately did not mention the same to the police when they came to the spot, but at that time, he was not aware of, who are all the culprits. But, accused Nos.1 to 3 were arrested on 16.10.2017 and accused No.4 was arrested on 17.10.2017 and his statement was recorded within three days of the arrest of the accused i.e., on 20.10.2017. When the accused persons were arrested, then only he come to know about involvement of these accused and then he made the statement before the police immediately and there was no delay in making such statement that all of them were talking with each other. No doubt, learned counsel appearing for the appellants would contend that when accused No.4 was telling to accused No.1 not to leave him this time, he would have made the statement, but when the involvement of accused Nos.1 to 4 was not known to anyone till their arrest, question of doubting the role of accused does not arise. Hence, the contention of learned counsel appearing for the appellants cannot be accepted.

18. The case is not only based on the evidence of eyewitness, but also the circumstantial evidence. The case of the prosecution is that immediately after the arrest of the accused, voluntary statement was recorded and they disclosed that they committed the murder and they kept their cloth in a hidden place. Hence, requested the panch witnesses to accompany them and in order to prove the same, the Investigating Officer, who has been examined before the Court categorically says that voluntary statement was recorded and recovery is made at the instance of the accused in the presence of P.W.11. The P.W.11 deposes before the Court that he was a panch witness, who on the direction of the superior on 17.10.2017 went to police station to assist as pancha at 9.00 a.m. to Thirthahalli police station and C.W.22 and accused Nos.1 to 4 were there in the police station, police took both of them and also the accused in a jeep and the accused No.1 led to his house, where he had kept the machete in a manure bag in the cow shed by the side of the house and so also his jerkin and topi and the police have drawn the mahazar by seizing the same and in the said jerkin, there was chilly powder. Both of them have signed the same and he also

identifies machete, jerkin and topi as M.Os.8, 9 and 10. It is also his evidence that accused No.4 also led both of them and also the Investigating Officer near Brahma Lingeshwara temple and showed the place where the accused persons had met and panchanama was drawn in terms of Ex.P12 and identifies the signature as Exs.P12(a) and P12(b). The witness also identifies four photographs which are marked as Ex.P13.

19. It is his evidence in the cross-examination that from the police station to the house of accused No.1, it is around 22 to 23 km. and all of them went in a jeep. In the said jeep, himself, CPI, C.W.22 and Police Constable were there and in another jeep, accused, Sub-inspector and other police staff were there and they followed the accused and the cow shed was on the north of house of accused No.1 and the cow shed was not attached to the house. But there was no door and wall to said cow shed and they could not find the machete and jerkin till they were produced and other accused persons were also there when accused No.1 led them and accused No.1 removed the bag. But, at that time, he was handcuffed. It is also his evidence that one

portion of the jerkin was red in colour and M.Os.9 and 10 were in the said bag and he cannot say how it was recovered, since he had received a phone call at that time and the bag was also seized which was containing M.Os.8 to 10. They left at around 11.10 a.m. from the house of accused No.1 and at around 12.10 p.m., they reached near Bobby Cross Temple and he cannot say which jeep was ahead of their vehicle and none were there near temple and people were also not gathered. It is suggested that no direction was given by the superior and accused not led to any place and seized M.Os.8 to 10 and Ex.P13 is no way connected to accused No.1 and the same was denied. It is suggested that he had signed the same in the police station and the same was denied. Learned counsel also made the suggestion that accused No.4 not led near Brahma Lingeshwara Temple and the same was denied.

20. The other witness is P.W.14. In his evidence, he says that on 16.10.2017, based on the direction of his superior, he went to the Office of Circle Inspector and the Circle Inspector showed the accused and conducted personal search and on

personal search, at the instance of accused No.1, they found Rs.9,000/-, at the instance of accused No.2, Rs.3,500/-, at the instance of accused No.3, Rs.1,000/- and accused No.1 was having two wheeler document and ATM card and the police seized the same in between 7.00 to 8.00 a.m. and C.W.17 also signed the same and he identifies the signature as Ex.P17(a). It is his evidence that the accused person took them and also the police near Shankadahole i.e., near the house of the deceased and at the distance of 100 feet from the house of accused No.2, he had produced the machete and the same was seized by drawing the mahazar and he identifies M.O.11 and mahazar was drawn in between 11.30 to 1.15 p.m. It is also his evidence that accused person took them near Brahma Lingeshwara temple and near the sand, the accused produced his jerkin which was kept near the sand in a plastic bag and the same was seized in between 1.45 to 2.15 p.m. and he identifies the same as M.O.19. He also identifies the signature in Ex.P18(a) and 18(b) and also identifies accused Nos.1 to 3 and also ATM card, documents and RC card as M.Os.12 to 14 and also an amount of Rs.9,200/- which was recovered from accused No.1 containing

Rs.500/- denomination 18 in number and Rs.100/- denomination 2 in number. The same is marked as M.O.15 and so also Rs.3,500/- denomination of Rs.500/- in total 7 notes marked as M.O.16 and M.O.17 and photographs 6 in number marked as Ex.P19.

21. This witness was subjected to cross-examination. C.W.17 is the resident of Balebailu and his house is located at the distance of 1½ k.m. from the police station and both of them went together and accused persons were there in the police station and they were handcuffed and personal search was made, but he is not aware of their names, but amount was there in their pocket and he cannot say in which pocket notes were there. He cannot say the number of the notes of denomination of Rs.500/- and Rs.100/- and police seized the same. They went in two jeeps and accused persons were there in the front jeep and took 15 minutes to go to his house from the station and his relatives and villagers were and he cannot say in which jeep the police had kept the recovered M.O.11 and seized the machete in white colour cloth and took their signature and pasted the same

on the cover and suggestion was made that they have not taken either himself or any panch witness and the same was denied. It is suggested that Exs.P17 and P18 were signed at police station and the same was denied and also suggestion was made that Ex.P19 was created for the case by the police and the same was denied. It is suggested that ATM, RC card and other articles not belongs to the accused and the same was denied.

22. Having considered the evidence of P.W.11 as well as P.W.14, it is very clear with regard to seizure of machete and cloth i.e., jerkin and also cap and nothing is elicited from the mouth of these witnesses to disbelieve the case of the prosecution. The evidence of P.W.15 is very clear that mahazar was drawn in terms of Exs.P6, P4, P2 and P20 and he categorically says that accused Nos.1 to 3 were arrested near Sringeri Temple and produced before the Investigating Officer in terms of Ex.P20 and he identifies his signature and also collecting of documents and seizure of money from the accused persons and drawing of mahazar Ex.P17, so also voluntary statement in terms of Exs.P22 and 23 of accused Nos.1 and 2

and accused Nos.1 to 3 were arrested on 16.10.2017 and accused No.4 was arrested on 17.10.2017 and report was given in terms of Ex.P25 and identifies his signature. He also speaks about recovery at the instance of accused No.1 by drawing mahazar in terms of Ex.P12 so also handing over the same to the FSL. In the cross-examination, it is suggested that M.Os.2 and 4 not belongs to the accused and the same was denied and he did not insist for Test Identification Parade with the Taluka Magistrate.

23. Having considered the evidence of P.W.11, P.W.14 and P.W.15, their evidence is consistent with regard to voluntary statement, recovery of money as well as the report given for arrest in terms of Ex.P20 and Ex.P25 of accused Nos.1 to 3 and accused No.4 and taken to custody is also not disputed seriously in the cross-examination except suggestion. Having taken note of this recovery evidence as well as the report of FSL in terms of the evidence of P.W.16, it is very clear that item No.1 containing one cement bag and item No.2 soil and all details are given item Nos.1 to 10 including shirt, pant, nighty, machete, jerkins and

subjected the same for chemical examination, except item No.3, in all the articles, blood stains were detected. In the cross-examination, suggestion was made the cover of M.O.3, there is a rubber seal of biology section, but there is no signature of the person, who received the articles. He also admitted that seal and signature of the cover of the articles put by their office before examination. The witness voluntarily states that even after examination also, they put signature and seal.

24. Having considered the evidence of P.W.16 as well as recovery witness evidence of P.W.11, P.W.14, P.W.15 and report is given in terms of Ex.P31, except the sample mud, all the items are blood stained and report is also positive. The evidence of P.W.11 and P.W.14 is consistent with regard to recovery at the instance of accused Nos.1 and 2 having seized incriminating articles of weapons which were used for committing the offence and also the clothes which they were worn at the time of the incident and so also the recovery. The evidence of P.W.15-Investigating Officer is clear that he had recorded the voluntary statement of accused persons after their arrest and the accused

persons only lead the punch witnesses and Investigating Officer and staff of the Police and produced the incriminating articles and the same are also blood stained and RFSL report-Ex.P.31 is also very clear in respect of all the items with blood stains of the deceased was found and there is no any explanation on the part of the Investigating Officer when the incriminating evidence is found and accused ought to have given explanation in 313 statement with regard to the blood stains are found in their cloth and no such explanation. Having considered the RFSL report-Ex.P.31 and also the evidence of P.W.16 is consistent with regard to the conducting of test and hence, this Court cannot doubt the evidence of P.W.11, P.W.14, P.W.15 and P.W.16 and the same is proved regarding recovery is concerned.

25. The Court has to take note of conduct of the accused that immediately after the incident, accused No.1 to 3 were not in town and their voluntary statement Ex.P.22 to Ex.P.24 is very clear and no doubt the voluntary statement cannot be relied upon except the recovery and the same is not admissible in respect of whatever the statement made by them immediately

after their arrest, but Court has to take note of the evidence of P.W.17.

26. The P.W.17 in his evidence he says that he has recorded the statement of P.W.1 immediately having come to know about the incident and he rushed to the S.J.C Hospital, Thirthahalli and recorded her statement and issued FIR in terms of Ex.P.33 and statement of the injured eye witness P.W.1 is in terms of Ex.P.1. It is also the evidence of P.W.17 that after registering the case and issuing the FIR, papers were entrusted to C.W.44 that is P.W.15 and P.W.15 appointed him and his staff to apprehend the accused persons, accordingly, apprehended accused No.1 to 3 at Sringeri Sree Sharadamba Temple near in a parking slot at 04:30 a.m., and they were produced before the Investigating Officer at 05:45 a.m., and given the report in terms of Ex.P.20 and so also on 17.10.2017, apprehended the accused No.4 from his house and given the report in terms of Ex.P.25. In the cross-examination, except the suggestions, nothing is elicited and only suggestion was made that A1 to A3 were not arrested at Sringeri temple near and the said

suggestion was denied and hence, Court has to take note of conduct of accused No.1 to 3, after the incident, they left the village but they were arrested on 16.10.2017 after 13 days and they were not in the village, but they were arrested out side and Court has to take note of the accused persons conduct and the same is also aiding factor to prosecution.

27. The Court also has to take note of evidence of P.W.1 and her evidence is very clear with regard to the overt act is concerned and in her statement immediately from 10:30 to 11:30 specific overt act allegation is made with the P.W.17 that person who is very short, kicked her and pressed her neck and he did not allow her to scream at the spot, but specific overt act is alleged against other two accused persons who are tall persons and also narrated that accused have demanded to provide sand, but when the husband did not agree to give, suddenly inflicted injury with the machete on the neck as well as abdomen. Hence, it is very clear that the accused persons came with preparation to eliminate the deceased and there was a motive to eliminate him. No doubt she was not having

acquaintance with accused No.1 to 3, but she has given all the descriptions in respect of the accused persons and the same is also re-iterated in her evidence and the statement of Ex.P.1 made with P.W.17 is very clear with regard to the overt act of each of the accused persons and the same is deposed before the Court and even identified the accused persons before the Court as well as when the Test Identification Parade is conducted. This Court while considering the evidence of P.W.1 with regard to the admission that it has come in media, but no specific question was put to the witness that whether their photographs were published in media prior to the identification or subsequent to the identification and hence, the said stray admission that it has come in the media will not comes to the aid of the accused and no doubt if it is come in the media prior to test identification and then test identification is insignificant and the answer elicited is that in respect of the incident is concerned, it has come in the media and though a stray admission is given that it has come in media photographs, but not put specific question that it has come in the media prior to the Test Identification, no doubt Test Identification is conducted almost after 2 months and also the

Court has to take note of the fact that accused persons were arrested on 16.10.2017 and even after 13 days of the incident, they were arrested and even while cross examining the Tahasildar who has been examined as P.W.13, no suggestion was put to the P.W.13 that before conducting the test identification parade, the photographs of the accused persons were splashed in media and only suggestion was made to P.W.13 that he did not visit district jail and not conducted the Test Identification Parade and Ex.P.3 is prepared in his office and all these suggestions have denied and if such question is put to the P.W.13 that prior to conducting of T.I parade, photographs of the accused were splashed in media then there would have been force in the contention of the learned counsel for the appellant, but prosecution not only relies upon the evidence of P.W.1 as eye witness and also relies upon the circumstantial evidence particularly with regard to the last seen theory as well as recovery and the same has been proved considering the evidence of P.W.11, P.W.14, P.W.15 and P.W.16 and FSL report is also positive in respect of the blood stains of the deceased were found in the cloth of the accused and hence,

the very contention that identification of the accused subsequently to the splashing of the photographs of the accused in media and to that effect no positive evidence. Hence, the contention of the counsel cannot be accepted.

28. Now the arguments of the learned counsel for A4 is that in order to prove the conspiracy against A4, there is no any material and no recovery against A4 and no motive, but P.W.1 categorically in her chief evidence deposes that accused No.4 got killed her husband in respect of the dispute with regard to backyard of their house and the same came to her knowledge. No doubt, at the first instance, motive is stated that they did not give the sand since at the time of the incident, accused persons pretended that they came to get the sand, but they came with weapons with an intention to take away the life and demanding of sand is only a reason for calling the deceased outside the house and hence, she has stated that at the first instance that motive for killing her husband is non giving the sand, but she came to know subsequent to the arrest of accused No.1 to 3 and accused No.4 that the reason for committing the murder and

motive is that there was a dispute in respect of the backyard property of the house of deceased. In the cross-examination of P.W.1 except eliciting from the mouth of P.W.1 that she did not make statement before the Police that there was a motive, but the same came to her knowledge subsequently during the course of investigation. No doubt it is elicited that after her marriage, no dispute and suggestion was made that accused No.4 is no way connected to the same and she is falsely deposing, but the same is categorically denied, but no suggestion is made to the P.W.1 that there was no dispute in respect of the backyard property of the house of P.W.1 between A4 and the deceased and her evidence is not denied in the cross-examination of P.W.1.

29. The P.W.6 also in his evidence categorically deposes that after 1 week, he came to know that accused No.1 to 4 have committed the murder in connection with the property. In the cross examination of this witness, except making suggestion that he is falsely deposing that there was a galata in the respect of the property and not even suggested to the P.W.6 that there was

no any such dispute with the deceased and A4. Apart from that evidence of P.W.5 is very clear that he had witnessed all the accused No.1 to 4 in a particular place on the very date of incident, but he did not makes a statement before the Police immediately, but he was also not aware that who had killed the deceased, after the arrest of accused No.1 to 3 and then accused No.4, on the very next day i.e., on 16.10.2017 and 17.10.2017, he came to know that these accused persons only committed the murder and immediately he made the statement within 3 days of their arrest that is on 20.10.2017 and the evidence of P.W.3 is also consistent and nothing is elicited that he did not witness the accused persons together except eliciting the answer that he did not make the statement immediately to the Police and hence, the very contention of the counsel appearing to the accused that the accused No.4 was not involved in the incident cannot be accepted and the fact that A1 is close relative of the A4 that is sister's son of A4 and also the recovery is made at the instance of accused i.e., supari amount which was distributed among the accused No.1 to 3 and also mahazar was drawn to that effect.

30. The P.W.14 clearly deposes with regard to the amount was recovered from these accused persons, that is from accused No.1 an amount of Rs.9,200/- and from accused No.2 an amount of Rs.3,500/- and from accused No.3 an amount of Rs.1,000/- and even P.W.14 categorically deposes the denomination of notes which were seized at the instance of accused No.1 to 3 and when all these materials taken note of and coupled with evidence of P.W.15-Investigating Officer regarding recovery at the instance of accused persons that is supari amount and categorically made their statement before the Investigating Officer that they are going to produce the money which they have received from accused No.4 that he was entrusted the work to eliminate the deceased and hence, the very contention of the counsel appearing for the appellant/accused No.4 that no material against him cannot be accepted. No doubt there was no any recovery at the instance of accused No.4, but Court has to take note of Court cannot expect the direct evidence in respect of involvement of accused No.4, but Court has to take note of circumstantial evidence available on record and all these circumstances goes against the accused

No.4 and hence, this Court do not find any error on the part of the Trial Court in appreciating both oral and documentary evidence i.e., eyewitness evidence of P.W.1 and also the evidence of other witnesses including last seen witness, recovery and even considering the circumstantial evidence also, the chain link is established against the accused persons. In order to impeach the very testimony of seizure mahazar witnesses P.W.11 and P.W.14, nothing is elicited. Having considered the evidence of the Doctors and also the evidence of FSL expert, clearly established that accused No.1 to 3 have committed murder of Hareesha at the instigation of accused No.4 by plotting conspiracy near Gobby Cross Brahma Lingeshwara temple. No doubt there are some minor discrepancies in the evidence of prosecution witnesses, but the same will not go into the very root of the case of the prosecution and the minor discrepancies bound to occur and Court cannot expect mathematical niceties while examining the prosecution witnesses. The evidence of each witnesses is consistent and there was no any material before the Court that prosecution witnesses having an enmity against accused No.1 to 4 to falsely

implicate the accused persons. Nothing is elicited in the cross-examination of prosecution witnesses that there was an enmity between the accused persons and the prosecution witnesses.

31. The counsel appearing for the appellants also vehemently contend that evidence of P.W.3 cannot be believed with regard to the conspiracy since he has not given the statement immediately to Police and his evidence cannot be doubted on the ground that he has not acted in a particular manner and this Court already pointed out that he came to know about the involvement of accused No.1 to 4 only after their arrest and immediately he gave the statement before the Police with regard to the conspiracy is concerned and there is no any inordinate delay in recording the statement of P.W.3. The P.W.3 categorically says that he is also having an acquaintance with accused No.1 and 4 and also he had seen accused No.2 and 3 in the village.

32. The counsel would contend that when the P.W.3 has overheard that this time not to leave, but it is not his evidence that he was telling in respect of the deceased and if it is

overheard that A4 was telling in respect of deceased, then he would have intimated the same to the Police immediately even prior to the arrest, but when the evidence of P.W.3 is very clear that he overheard the say of A4, not to leave him this time and there was no any word to take away the life of deceased, but only he overheard that this time not to leave him and hence, the evidence of P.W.3 cannot be disbelieved, even to this witness, not suggested anything that he is having an ill-will against accused No.1 to 4. He specifically deposes before the Court that he had seen the accused No.1 to 4 with the help of streetlight, but he also categorically says that he was not aware of the dispute between the deceased and the accused No.4 and he has not given any such statement before the Police and only suggestion was made that he did not witness the accused No.1 to 4 near the Brahma Lingeshwara temple and the same was denied, but he categorically says that he is a distant relative of both the deceased as well as accused No.4 and when A4 is also the distinct relative of P.W.3, question of deposing against him also doesn't arise and also Court cannot expect that P.W.3 is giving evidence against accused No.4 when the answer of P.W.3

is very clear that he is relative of both deceased as well as accused. The Trial Court also taken note of there is no any enmity is elicited from the mouth of P.W.3 to disbelieve his evidence. The evidence of P.W.3 clearly establishes the involvement of accused No.4 in the commission of conspiracy, abatement and murder of deceased.

33. The P.W.2 and P.W.4 are the mahazar witnesses of the spot and seized the articles at the spot and they have also blood stained and report Ex.P.16 is very clear and so also the evidence of witnesses P.W.5 is in respect of inquest and P.W.4 is in respect of the spot mahazar and case of the prosecution is also that chilli powder was lying at the spot and the same is evident in Ex.P.4. Apart from that chilli powder was seized at the instance of the accused when the jerkin was seized wherein also chilli powder was found and document of Ex.P.17, Ex.P.18 and also the evidence of P.W.11, P.W.14 coupled with P.W.15 evidence and the evidence of the Police also cannot be brushed aside merely because P.W.15 is the Police officer and P.W.15-Investigating Officer evidence also corroborates with the

evidence of P.W.11 and P.W.14 and also the evidence of P.W.1 and P.W.3. Having taken note of cumulative evidence available on record including the evidence of injured P.W.1, it is very clear that these accused persons only committed the murder of the deceased. Though prosecution invoked the offence under Section 307 of Indian Penal Code that accused persons made an attempt to take away the life of the P.W.1 and having considered the nature of injury of P.W.1, the Trial Court rightly invoked Section 323 of IPC and not invoked 307 of IPC and there was no material that with an intention to take away the life of P.W.1, an assault was made and only A3 assaulted that is kicked the P.W.1 and only an attempt is made to press her neck, but there was no any injury on the neck and found the injury in terms of the wound certificate which is marked as Ex.P.10 injuries that 1.1 x 1 cm abrasion over right side of lower lip on examination of P.W.1 and tenderness present over right ring finger and it was a soft tissue injury and injuries are simple in nature. The evidence of Doctor is also very clear that injured has given the history of assault by hands and that injury could be caused if a person dragged and assaulted by hands. In the cross-examination also injury No.2

can be caused if a person falls on the ground. Having taken note of nature of injuries, rightly invoked Section 323 of IPC and not Section 307 of IPC.

34. We have assessed both oral and documentary evidence available on record meticulously and considering the overall material available on record, particularly evidence of P.W.1 and P.W.3 with regard to the involvement of accused No.1 to 4 and also the P.W.1 is an eye witness to the incident and particularly the recovery at the instance of the accused and evidence of P.W.11, P.W.14, P.W.15, P.W.16 and P.W.17, evidence of FSL expert and also the evidence of the Doctor-P.W.12 who conducted post mortem, it is very clear that inside wound over the base of the skull measuring 14 x 8 x 10 cm exposing up to spinal cord and fracture of vertebra present and incised wound over left side of lower face exposing fractured body of mandible and sutured wound over abdomen from left loin to right and nature of injuries found which corresponds with the evidence of P.W.1 having inflicted the injury and even opinion was also sought from Investigating Officer and Ex.P.16

report is also given that it was possible to cause such injuries mentioned in the post mortem report by using the weapon sent by the Investigating Officer for examination and machetes which were seized at the instance of the accused were also sent to the Doctor to furnish the opinion whether that machete measuring 52 cms long with 15 cms of wooden handle and there inner part was sharp and the outer edge was blunt, whether using such weapon could cause such injuries and Doctor after examining the same, given the opinion that MO.8 and MO.11 would cause such injuries.

35. The evidence of the Doctor-P.W.12 also very clear that cause of death is due to hemorrhage and shock secondary to the injury sustained and when the evidence of the Doctor clearly shows that it is a homicidal and the material collected by the Investigating Officer and the same has been spoken by prosecution witnesses consistently and witnesses withstood the cross-examination of the counsel for the accused and when such material are taken note of by the Trial Court and appreciated the evidence available on record in proper perspectives. Hence, we

do not find any error on the part of the Trial Court in convicting the accused for the offences which have been invoked and sentencing the accused and sentence also commensurate with the gravity of the offence and hence, we answer the point accordingly.

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

ORDER

The appeal filed by accused No.1 to 3 and accused No.4 in Crl.A.No.1994/2019 connected with Crl.No.A.No.1918/2019 are ***dismissed***.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

ST/RHS