

(2016) 03 KAR CK 0247

In the Karnataka High Court

Case No : Criminal Appeal Nos. 414, 370 and 517/2012

Gopi and Others

APPELLANT

Vs

Balaji and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, Section 201, Section 302, Section 34

Citation : (2016) 03 KAR CK 0247

Hon'ble Judges : Mohan M. Shantana Goudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Tomy Sebastain, Senior Counsel for Reny Sebastain, Advocates, for the Appellant; S. Balakrishnan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J.—1. The judgment and order of conviction dated 29.02.2012 passed by the Fast Track Court-IX, Bengaluru in Sessions Case No. 18/2010 is called in question in these appeals filed by the convicted accused.

By the impugned judgment, the Court below has convicted accused Nos. 1 to 5 and 7 for the offences punishable under Section 302 r/w 149 of IPC and under Section 201 r/w 149 of IPC.

2. Criminal Appeal No. 414/2012 is filed by convicted accused No. 4, Criminal Appeal No. 370/2012 is filed by convicted accused Nos. 1 to 3 and 7 and Criminal Appeal No. 517/2012 is filed by convicted accused No. 5.

3. It is relevant to note that, accused No. 1 namely Balaji i.e. one of the appellant in Criminal Appeal No. 370/2012 has expired and therefore, the appeal filed by him abates. Original accused No. 6 was absconding, even when the trial was being conducted and therefore the case against him was split up before the Court below.

Accordingly, the appeals filed by convicted accused Nos. 2, 3, 4, 5 and 7 are

heard and are decided by this common judgment.

4. The case of the prosecution in brief is that:

Deceased Ramachandra and P.W. 21 (Lokesh) were spreading rumours that wife of accused No. 1 namely Malathi, had got illicit relationship with accused No. 2 (Praveen); in that regard, accused No. 1 was telling the deceased and P.W. 21 (Lokesh) to stop spreading of such rumours; the deceased as well as accused No. 1 were police constables and were knowing each other; despite repeated warnings and requests of accused No. 1 requesting the deceased and P.W. 21 to stop spreading the aforementioned news, the deceased continued his activities of spreading rumours.

On the night of the incident i.e. on 16.07.2009, the deceased had gone to his relatives house to attend the function and came back to his house at Bengaluru. When he was having dinner with his wife (P.W. 3) and his brother-in-law (P.W. 5), the door of the house was knocked by accused No. 1; on being asked by the deceased as to who is knocking the door, accused No. 1 told that, he is Mr. Balaji; since the deceased was knowing accused No. 1, he opened the door; accused No. 2 Praveen was also standing along with accused No. 1 Balaji outside the house of the deceased at about 12.00 mid night; after completing the dinner, the deceased went along with accused Nos. 1 and 2 on a motor cycle; though, P.W. 3 and P.W. 5 requested the deceased not to go out of the house during mid night, the deceased told P.W. 3 and P.W. 5 that he would return back immediately. P.W. 3 and P.W. 5 thought that, the deceased is being taken by accused No. 1 for certain official work and therefore, they kept quite. After leaving house, at about 12.00 midnight, interviewing between 16.07.2009 and 17.07.2009, the deceased did not return back till morning.

At about 8.00 a.m., on 17.07.2009, P.W. 18-Ankappa who was also knowing the deceased found the dead body of the deceased by the side of godown of Hindustan Liver Ltd., situated at Kumaran's School, Kanakapura Road and informed the same to his wife (PW 4) about seeing the dead body of the deceased; during the relevant point of time, P.W. 4 was going along with P.W. 3 from the school of her children to their house; consequently, P.W. 4 in turn informed about the message she received from her husband to P.W. 3; Accordingly, P.Ws. 3, 5 and others rushed to the spot where the dead body was found. Meanwhile the police had also arrived at the said spot wherein the dead body was found. The FIR came to be lodged by P.W. 3 (the wife of the deceased) at 10.00 am on 17.10.2009 before P.W. 28-the Inspector of Police attached to Subramanyapura Police station, Bangalore South Taluk, which came to be registered as Cr. No. 384/2009 for the offences punishable under Sections 302, 201 R/w 34 of IPC.

P.W. 27-the Assistant Commissioner of Police took over the investigation from P.W. 28 and laid the charge sheet. It is also to note that P.W. 28 had already conducted scene of inquest mahazar etc., before handing over the investigation

to P.W. 27.

In order to prove the case, the prosecution in all examined 28 witnesses and got marked 46 exhibits and 17 material objects. On behalf of the defence Ex. D1 came to be marked. As mentioned supra, the trial Court convicted accused 1 to 5 and 7 for the offences with which they were charged.

5. Sri S. Balakrishnan, learned Advocate appearing on behalf of the accused-2 and 3 submits that the trial Court has erred in convicting the accused for the offences with which they have been charged; only two circumstances are relied upon and both the circumstances are not proved by the prosecution beyond reasonable doubt; based on the circumstantial evidence burden lies heavily on the prosecution to prove its case by drawing all the circumstances to the satisfaction of the Court so as to complete the chain of circumstances; since none of the circumstances are proved by the prosecution, the accused ought to have been acquitted by the trial Court; the material on record does not unerringly point towards guilt of the accused. He draws attention of the Court that accused No. 2 did not accompany accused No. 1 along with the deceased during night on 16.07.2009 from the house of the deceased and there is no material produced by the prosecution to show that accused No. 2 either followed accused No. 1 and the deceased or had rejoined them. He further submits that the aspect of recovery is also not proved by the prosecution.

6. Sri Kemparaju, learned counsel appearing on behalf of accused No. 7 reiterated the very contentions as raised by Sri S. Balakrishnan; he submits that P.W. 28 had handed over the investigation in favour of P.W. 27 on 20.07.2009 itself and there is nothing on record to show that the investigation was re-entrusted to P.W. 27 by P.W. 28; since P.W. 27 was in-charge of investigation after 20.07.2009, the deposition of P.W. 28 that he conducted recoveries at the instance of the accused etc., falls to the ground. He further draws the attention of the Court that though P.W. 27 was incharge of the investigation after 20.07.2009 he has not deposed about the recovery mahazars; he has not identified any of the articles recovered and therefore the circumstances of recovery cannot be believed. He further submits that except the allegations that certain recoveries made at the instance of accused No. 4, no other allegations are found against accused No. 4.

7. Sri Kemparaju, learned counsel appearing on behalf of accused No. 7 and Sri Manjunath, learned counsel appearing on behalf of accused No. 5 also argued supporting the aforementioned arguments of the learned counsel. They both submit that absolutely no reliable material is found against accused Nos. 5 and 7.

8. Before proceeding further it would be relevant to note the versions of each of the witnesses in brief:

P.Ws. 1, 2, 4, 6, 17, 21 have turned hostile to the case of the prosecution. Therefore, their evidence is of no use either to the case of the prosecution or to the defence.

P.W. 3 is the wife of the deceased. She has deposed that during the night of 16.07.2009 some one knocked the door; after knowing that accused No. 1-Balaji; the deceased himself opened the door; P.W. 3 saw accused No. 1; accused No. 1 requested the deceased to accompany him during the night intervening 16/17.07.2009 and he took the deceased with him on his scooter. She has lodged the complaint-Ex. P12 at 10.00 a.m. on 17.07.2009. Based on which, investigation started; she is also the witness to the panchanama-Ex. P13; she has identified accused No. 1-Balaji in the police station shown by the police; she has also identified accused No. 2-Praveen in the police station after five days.

P.W. 5-Muniraju is the brother of P.W. 3 (i.e., brother-in-law of the deceased). He also deposed that accused-1 and 2 took deceased Ramachandra on the intervening night 16/17.07.2009; he has deposed about the seizure of scooter bearing No. KA-05HF-702 on 19.07.2009 at the instance of accused No. 1 from his parents house and the same was subjected to property form; he has also identified the photograph of Zen car marked as MO. 12, which had followed the deceased and accused No. 1 during intervening night 16/17.07.2009.

P.W. 7-Abdul Rasheed is a panch witness for mahazar-Ex. P19 drawn on 26.09.2009 under which MO 2-dragger, MO 3 to MO 6, blood stained clothes of accused Nos. 2 and 5 were seized; he is also the panch witness to mahazar-Ex. P20 drawn on 26.09.2009 regarding seizure of Register of AMS lodge situated at Hogenakal, Tamilnadu, to show that accused Nos. 2, 5, 6 and 21 stayed in the said lodge on 17.07.2009 from 8.00 a.m. to 9.00 p.m.

P.Ws. 7 and 8 are mahazar witnesses to Ex. P19.

P.W. 9 is a doctor who conducted autopsy over the dead body; autopsy report is at Ex. P21. After examining the dragger-MO 2 marked as Ex. P24, he is of the opinion that the injuries sustained by the deceased might have been caused by MO 2.

P.W. 10 is a police constable; he has handed over 14 sealed articles for FSL for examination.

PW 11 is a spot witness and seizure mahazar-Ex. P13 which was drawn on 17.07.2009. Under the said Mahazar, blood stained mud, plain mud were seized; He is also the witness for mahazar Ex. P22 drawn on 17.07.2009 wherein the collection of blood in cotton, 21 pieces of pant marked as MO 9 and one wooden handle knife measuring 3/4 feet marked as MO 10 was seized.

P.W. 12 is the witness to the Mahazar Ex. P6 drawn on 19.07.2009 wherein Honda Dio scooter was seized at the instance of A1-Balaji.

P.W. 13 is a witness for Ex. P18.

P.W. 14 is the proprietor of AMS lodge at Hogenakal in Tamilnadu; he has deposed that accused Nos. 1, 2, 3 and 7 had stayed in Room No. 104 from 8 a.m. to 9 a.m. on 17.07.2009; he has further deposed about the seizure of copy

of lodge register at Ex. P20 by the police at the instance of accused Nos. 2 and 5 on 27.09.2009.

P.Ws. 15 and 16 are the police constables who participated during the course of investigation at different levels.

P.W-18 is the friend of the deceased and husband of P.W. 4; he has deposed that he identified the body of the deceased Ramachandra and informed the death of the deceased to P.W. 4, who in turn passed the message to P.Ws. 3 and 5 at about 8.00 a.m. on 17.07.2009.

P.W. 20 is another police constable, who accompanied the Investigation Officer to Hogenakal Falls at Tamilnadu. At the time of drawing the panchanama at Ex. P19 where M.Os. 2 to 6 were seized; he has deposed that AMS lodge owner identified accused Nos. 2 and 5.

P.W. 22 is the officer of FSL; she has examined 14 material objects sent to her and has given report that the material objects sent to her contains "A" Group as human blood as per Ex. P31.

P.W. 23 is the Sub-Inspector of Police; he has deposed that accused No. 3 was produced before him and he recorded his voluntary statement on 31.08.2009.

P.W. 24 is a neighbour of P.W. 3; she has deposed that deceased Ramachandra was taken by his friends on 16.07.2009 and she came to know from P.W. 4 that Ramachandra was murdered. She has turned hostile to the case of the prosecution.

P.W. 25 is the room boy of AMS Lodge at Hogenakal; he has deposed that four persons stayed in Room No. 104, took bath and he served food to them; he has also deposed about the seizure of register marked at Ex. P23 under panchanama Ex. P20.

P.W. 26 is the Engineer, who drew the sketch of scene of offence as per Ex. P36.

P.W. 27 is the Deputy Superintendent of Police; he took over the investigation from P.W. 28 on 20.07.2009, continued the investigation till the final report is filed on 13.10.2009.

P.W. 28 is the Inspector of Police attached to Subramanyapura Police station. He registered the case in Crime No. 384/2009 based on the complaint lodged by P.W. 3 (wife of the deceased) as per Ex. P12 on 17.07.2009 and sent FIR to jurisdictional Court as per Ex. P37; he conducted part of investigation and handed over the records to P.W. 27 on 20.07.2009.

9. From the aforementioned evidence on record, it is clear that there are no eyewitnesses to the incident in question. The case of the prosecution fully rests on circumstantial evidence. The circumstances relied upon by the prosecution are:

a) motive of commission of offence;

b) accused Nos. 1 and 2 were seen with the deceased at midnight intervening between 16.07.2009 and 17.07.2009 and the dead body was found at the earlier hours of 17.07.2009;

c) Recovery of weapons-M.Os. 2 and 10 at the instance of accused Nos. 1 and 2 and blood stained clothes of the deceased at the instance of accused Nos. 1 and 2;

d) The report of FSL expert Ex. P31 supports the case of the prosecution to the effect that the blood found on the clothes of the accused and the weapon MO-10 (dagger) had contained "A" Group of human blood.

10. Reg: Motive:

The motive as alleged by the prosecution against accused No. 1 is that the deceased and P.W. 21 were spreading rumors in the locality and in the friends circle that the wife of the accused No. 1 was having illicit relationship with accused No. 2 and in that regard accused No. 1 and his friends used to warn the deceased frequently; even though requests were made to the deceased and accused No. 1 but the act of the deceased and P.W. 21 in spreading false rumours did not stop. Being frustrated, accused No. 1 with the help of accused Nos. 2 to 7 committed the murder of the deceased as mentioned supra.

In order to prove the aspect of motive, not even one witness is examined. None of the witnesses have deposed about the commission of offence. However, P.W. 5- brother-in-law of the deceased has faintly deposed before the trial Court that he had heard from some source that the deceased and P.W. 21 were spreading rumours as mentioned supra, which means even P.W. 5 did not have first hand information and his deposition before the Court with regard to the motive is hearsay. Moreover, none of the persons in the locality/friends of accused No. 1 or even the wife of accused No. 1 is examined before the trial Court to prove the circumstances of motive. Thus, in our considered opinion, the prosecution has not proved the circumstances of motive against accused No. 2. The allegation made against accused No. 1 remained as allegation and the same is not proved by the prosecution. Accordingly, the circumstances of motive relied upon by the prosecution cannot be believed.

11. Reg: Last seen circumstance:

It is the case of the prosecution that on the night of 16.07.2009, when the deceased was taking dinner with P.Ws. 3 and 5 in his house, at about 11.30 p.m., the door of the house was knocked by accused No. 1; the deceased opened the door and talked with accused No. 1; at that point of time accused No. 2-Praveen was also present along with accused No. 1; both of them had come on a scooter, which is seized in the case. P.Ws. 3 and 5 who were having dinner with the deceased also saw accused Nos. 1 and 2 in front of their door and they also saw the deceased being taken by accused Nos. 1 and 2 outside the house and both the accused took the deceased in the Deo Honda scooter and black coloured car

followed the said scooter.

In order to prove the said circumstance, the prosecution has relied upon the evidence of P.Ws. 3 and 5. Since the last seen circumstance is an important circumstance in the matter, we have carefully evaluated the evidence of P.Ws. 3 and 5 with utmost care and caution.

Ex. P12-the complaint lodged by P.W. 3 discloses that accused Nos. 1 and 2, who came to the house of the deceased in the night intervening 16/17.07.2009, took the deceased with them on the scooter together. However, P.W. 3 in her examination-in-chief before the trial Court confines the circumstance of last seen only to accused No. 1. It is deposed by P.W. 3 in examination-in-chief that on being asked by P.W. 5 as to who was tapping the door, accused No. 1 who was standing outside the house of the deceased told his name; since the deceased was knowing accused No. 1, he opened the door. P.W. 3 saw accused No. 1 sitting on the scooter. Accused No. 1 told the deceased that some galata is going on and therefore, the deceased had to go along with accused No. 1. Accordingly, the deceased followed accused No. 1; accused No. 1 took the deceased on his scooter and a black coloured car also followed the scooter. Hence, it is clear from the examination-in-chief of P.W. 3 that she has not at all deposed that accused No. 2 accompanied accused No. 1 along with the deceased on the scooter. However, it is clear from the examination-in-chief of P.W. 3 that accused No. 2 was also present along with accused No. 1 during the said night. P.W. 3, though in the examination-in-chief, did not implicate accused No. 2 as the person who accompanied the deceased and accused No. 1, in the cross-examination, a suggestion is made to the effect that P.W. 3 has not contacted accused Nos. 1 and 2 after they took the deceased. Based on this suggestion, it is contended by learned public prosecutor that the suggestion put forth by the defence in the cross-examination of P.W. 3 itself is sufficient to conclude that accused No. 2 also followed accused No. 1 and deceased on the scooter. Though such arguments of learned counsel appear to be attractive the same cannot be accepted having regard to the totality of the evidence of P.W. 3. In paragraph-8 of the deposition, P.W. 3 has admitted that she was knowing accused No. 1 but not accused No. 2. It is further admitted in paragraph-10 of her deposition that she doesn't know as to what is written in FIR lodged by her.

From the aforementioned version, it is clear that firstly she is not a person who gave information to the police as found in the complaint-Ex. P12 to the police, secondly, she does not know what is written in Ex. P12. It is also borne out from the records that she does not know accused No. 2. Since she did not know about the contents of Ex. P12-complaint, the defence counsel is justified in arguing that the averment made in the complaint that accused No. 2 also went with accused No. 1 appears to be highly suspicious and unbelievable.

Another witness for last seen circumstance is P.W. 5, who is none other than the brother of P.W. 3 and brother-in-law of the deceased. He has deposed almost on par with the evidence of P.W. 3. According to him, while the deceased was having

dinner with P.W. 3 and himself, somebody tapped the door of the house of the deceased during midnight intervening 16/17.07.2009; since the deceased came to know the voice of accused No. 1, he opened the door, P.Ws. 3 and 5 also went near the main door and saw accused Nos. 1 and 2 standing near the main door of the house; the deceased was taken by accused No. 1 on his scooter and thereafter a car followed the said scooter. P.W. 5 has also deposed that accused No. 2 also went along with deceased and accused No. 1 on the scooter. On the other hand, the evidence of P.W. 5, if carefully perused, it is clear that accused No. 2 was present in front of the house of the deceased along with accused No. 1 during the night intervening 16/17.07.2009, he did not accompany accused No. 1 and the deceased on the scooter; which amply means that accused No. 2 parted the company of accused No. 1 and the deceased from the house of the deceased itself. There is nothing on record to show that accused No. 2 followed accused No. 1 and the deceased subsequently. So also, there is nothing on record to show that accused No. 2 boarded the car and followed the deceased and accused No. 1. No material is collected to show that accused No. 2 rejoined accused No. 1 and the deceased subsequently. It is the duty of the prosecution to prove these circumstances beyond reasonable doubt. Thus, evidence of P.Ws. 3 and 5 reveals that accused No. 2 was present in front of the house of the deceased along with accused No. 1 during midnight and that accused No. 2 and accused No. 1 together came to the house of the deceased. However, there is no material to show that accused No. 2 subsequently accompanied accused No. 1 and the deceased either on the scooter or in the car. In view of the same, learned defence counsel are justified in arguing that the prosecution have not proved the circumstance of last seen as against accused No. 2. However, the said circumstance is proved against accused No. 1.

12. Reg: Recovery:

The prosecution has relied upon the evidence of P.Ws. 7 and 8 to prove the circumstance. According to the prosecution, the I.O. conducted recovery of a dragger having wooden handle measuring 3/4 feet marked as MO10 which was subjected to P.F. No. 101/2009 apart from 21 pieces of pant (pant was cut into 21 pieces) of accused No. 1 at the instance of accused No. 1 under panchanama Ex. P22 drawn on 17.07.2009. It is also the case of the prosecution that scooter was seized at the instance of P.W. 1 on 19.7.2009 from his parents place at Ganapathipura under panchanama Ex. P6. Thus, these two recoveries are made at the instance of accused No. 1. P.Ws. 11 and 12-the mahazar witness for Exs. P22 and P6 respectively have deposed in support of the said recovery at the instance of accused No. 1. Recoveries are made from accused No. 1 on the date of his arrest itself i.e., 17.07.2009. As mentioned supra, the incident has occurred during night intervening from 16.07.2009 and 17.7.2009 and the dead body was found at 8.00 a.m. on 17.09.2009. Immediately, accused No. 1 was arrested on the same day itself i.e., 17.09.2009; based on his voluntary statement, the aforementioned recoveries are made at the instance of accused No. 1. Hence, it is clear that the wooden handled knife measuring 3/4 feet (called

as dragger) marked as MO 10 was also recovered from accused No. 1. We find that the evidence of P.Ws. 11 and 12 with regard to recovery of 21 pieces of pant of accused No. 1 and the dragger-MO 10 is not seriously disputed by the defence.

The subsequent recoveries are made only on 26.09.2009 and 27.07.2009 at the instance of accused Nos. 2 and 5. It is the case of the prosecution that accused Nos. 2 to 7 were apprehended in a different crime i.e., Crime No. 384/2009 of the Subramanyapura police station and during the course of interrogation in the said crime, accused Nos. 2 and 5 confessed for having committed the murder in question along with accused No. 1 and other accused; that they have also volunteered to show the place wherein they had hidden the knife-MO 2 and the blood stained clothes worn by them during the relevant point of time. The voluntary statements of accused Nos. 2, 4 and 5 were recorded as per Exs. P39 to P41. Based on the statements, of accused Nos. 2 and 5, recoveries were made at the instance of accused Nos. 2 and 5 only. No recovery was made at the instance of accused No. 4 though his voluntary statement is said to have been recorded by the Investigating Officer. P.Ws. 7 and 8 are the mahazar witness for recovery at the instance of accused Nos. 2 and 5 under panchanama Exs. P19 and P20. Under the panchanama Ex. P19, MO 2 (dragger), M.Os. 3 to 6 blood stained clothes of accused Nos. 2 and 5 were recovered on 26.09.2009 under a bush situated near Hogenekal falls in Tamilnadu. The Register of AMS lodge (Ex. P23) was recovered under panchanama Ex. P20 on 26.09.2009. For both the mahazars-Exs. P19 and 20, P.Ws. 7 and 8 were the witnesses.

It is the case of the prosecution that after commission of the murder, accused Nos. 2 to 7 took injured P.W. 21 with them to AMS Lodge situated at Hogenekal in Tamilnadu in order to hide themselves from the police; they stayed in AMS Lodge on 17.07.2009 from 8.00 a.m. to 9.00 p.m. and left the lodge on 17.07.2009 at 9.00 p.m. While they were in Hogenakal Falls, accused Nos. 2 and 5 had allegedly hidden the dragger/knife (MO 2) and the blood stained clothes-MO 3 to 6 belonging to accused Nos. 2 and 5 in a plastic cover which in turn was hidden under a bush. Though P.W. 7 has deposed that accused Nos. 2 and 5 have led the police to the Hogenakal Falls and showed the place where they have hidden the dragger and blood stained clothes as mentioned supra, he has not stated anything as against accused No. 4; He has also not deposed against accused Nos. 2 and 5 with regard to black coloured car, which was allegedly used during the course of commission of offence. It is also specifically deposed by P.W. 7 that MOs. 4 and 6 contained blood stains.

Whereas P.W. 8 has deposed that accused Nos. 2 and 4 took the police and the panchas to the spot wherein they had hidden MO 2 and MO 3 to 6 as mentioned supra, nothing is stated by P.W. 7 as against accused No. 4. However, P.W. 7 as deposed about the recoveries made from accused Nos. 2 and 5. But, P.W. 8 has deposed that the recoveries of M.Os. 2 to 6 were made at the instance of accused Nos. 2 and 4. Thus, it is clear that P.W. 8 implicates accused No. 4 for the first time and exonerates accused No. 5 whereas P.W. 7 has exonerated

accused No. 4 but has implicated accused No. 5. It is not in dispute that both these witnesses are from Bangalore and they have accompanied the police from Bangalore all the way to Hogenakal in Tamilnadu State. It is also not in dispute that the police out post is situated just opposite to AMS Lodge at Hogenakal. It is admitted by the witnesses that in the month of July (i.e., the month in which the incident took place) is a busy season and number of persons will be visiting Hogenakal falls and therefore the AMS Lodge is always fully occupied. It is not clear as to why P.Ws. 7 and 8 were taken by police all the way from Bangalore to Hogenakal for the purpose of conducting recovery mahazars at the instance of either accused No. 2 or 4 or 5. They could have taken the assistance of the local police available at Hogenakal and the assistance of panchas of the locality.

Be that as it may, looking to the clear admissions given by P.W. 8, we are of the clear opinion that the police have created the panchanamas Exs. P19 and P20 relating to alleged recoveries made at the instance of accused Nos. 2 and 5 or accused Nos. 2 and 4. In the cross-examination, P.W. 8 has admitted that the police had shown MOs. 2 to 6 on 19.09.2009 itself. It is the case of the prosecution that the recoveries of M.Os. 2 to 6 at the instance of accused Nos. 2 and 5 were made on 26.09.2009 and not prior thereto. It is clearly admitted by P.W. 8 on 19.07.2009 itself that MOs. 2 to 6 were shown by the police to P.W. 8. On that very day itself i.e., 19.07.2009 they went in a Tempo Traveller to Hogenakal falls from Subramanyapura Police Station. It is also admitted by P.W. 8 that MOs. 2 to 6 were taken by police along with them in a Tempo Traveller from Bengaluru to Hogenakal falls. It is further admitted by P.W. 8 that the police of Subramanya Police Station had taken number of signatures of P.W. 8 in the police station itself and the signatures found on MOs. 2 to 6 were all made by him in the Subramanyapura police station. This evidence of P.W. 8 completely destroys the case of the prosecution with regard to recovery of MOs. 2 to 6.

Added to it, the Investigation Officers - PW 27 and 28 have not all deposed about the conducting of panchanama-Ex. P19 relating to recovery of MOs. 2 to 6. It is relevant to note that though the Investigating Officer - PW 27 was incharge of investigation from 20.07.2009, he has not whispered anything in his deposition before the Court relating to conducting of panchanama-Ex. P19 relating to recovery of MOs. 2 to 6. It is not in dispute that P.W. 28-Inspector of Police after registration of the crime conducted investigation in part till 20.07.2009. On that day, i.e., 20.07.2009, he handed over investigation to P.W. 27; from that day onwards P.W. 27 has conducted the investigation; despite the same, he has not deposed about the recovery of MOs. 2 to 6 under panchanama-Ex. P19. Curiously P.W. 28 who had handed over the investigation to P.W. 27 on 20.07.2009 itself, has deposed that he went to Hogenakal falls and he drew the recovery panchanama Ex. P19 relating to MOs. 2 to 6 at Hogenakal falls. Be that as it may, having regard to the clear admissions of P.W. 8 that the police were having MOs. 2 to 6 in their possession on 19.07.2009, the alleged recovery under mahazar Ex. P19 on 26.09.2009 at Hogenakal falls cannot be believed at all.

The next recovery made under Ex. P20 is the Register of AMS Lodge, Hoguekal, marked at Ex. P23. As mentioned supra, accused Nos. 2 to 7 had taken P.W. 21 along with them and stayed in AMS Lodge in Hoguekal, from 8.00 a.m. to 9.00 p.m. on 17.07.2009 i.e., on the next day of the incident in question. In that regard, Ex. P23 - the register maintained by AMS Lodge is seized by the police and in support of the same the owner of the Lodge (PW 14) and the room boy of the said Lodge (PW 25) have deposed supporting the case of the prosecution.

We have perused the copy of the Register produced at Ex. P23. The said document nowhere reveals any of the names of the accused. The prosecution relies upon the entry relating to Room No. 104. According to the prosecution, the Room No. 104 was allotted to the accused from 8.00 a.m. to 9.00 p.m. on 17.07.2009 and the number of persons who stayed in the Lodge were four; Ex. P23 reveals that one Mr. Rajesh, resident of No. 102, 6th cross, 30th Main, Mysore, had taken the room and had stayed from 8. a.m. to 9.00 p.m. on 17.07.2009 along with three other persons. Rajesh is not the name of any of the accused, so also there is nothing on record that the accused had taken the room in the name of Rajesh. The Inspectors of Police-P.Ws. 27 and 28 have not made any effort to find out as to whether any person by name Rajesh is living in No. 102, 6th cross, 39th Main in Mysore or not. In that regard, absolutely no investigation is conducted.

In addition to the same, we find lot of inconsistencies in the evidence of P.Ws. 14 and 25 who are the proprietor and room boy of the said lodge. P.W. 14 has deposed that accused Nos. 2, 3, 4 and 7 had come to the lodge and they were allotted room No. 104; among them accused No. 4-Gopi wrote his name and address in the Register of the lodge. Thus, it is the specific version of the proprietor of the lodge that accused Nos. 2, 3, 4 and 7 had come to the lodge and booked the room and among them accused No. 4 made entries in the Register. P.W. 25 also had deposed that four persons had come to the lodge and they had took the room; among them he identified accused No. 2 (Praveen) only. P.W. 25 has admitted in his cross-examination that it may not be possible to recognize the faces of all the persons who had come to his lodge and occupied the room prior to two months.

Though it is deposed by P.W. 14 that accused Nos. 2, 3, 4 and 7 have occupied the room, the same runs contrary to the case of the prosecution itself. As mentioned supra, the recoveries under Ex. P19 and 20 were made at the instance of accused Nos. 2 and 5. The voluntary statement of accused No. 4 was also recorded but no recoveries are made at the instance of accused No. 4. The presence of accused Nos. 3 and 7 also is spoken to by P.W. 14 as the persons who also booked the room along with other accused. No recovery whatsoever is made at the instance of accused Nos. 3 and 7. In this regard, the defence counsel is justified in arguing that since AMS Lodge is busy during the month of July, it may not be possible for P.Ws. 14 and 25 to identify any of the accused. As mentioned supra, the names of any of the accused are not found in the register.

No investigation is conducted by the police as to who is Rajesh, whose name is found in the register. Though P.W. 7 is the witness to seizure of Ex. P23 (Register of the Lodge), under panchanama Ex. P20 he has not deposed about Ex. P20 at all; so also Ex. P23 is not confronted while he was in the witness box. Even P.W. 8 has not deposed about the seizure of Ex. P23 under panchanama Ex. P20 at the instance of accused Nos. 2 and 5. Moreover, it is the case of the prosecution that (as is clear from panchanama-Ex. P20) accused Nos. 2, 5, 6 and P.W. 21 stayed in the room. Thus, the evidence of P.Ws. 14 and 25 is contrary to the case of the prosecution itself as well as the records on hand.

On these materials, it is amply clear that the prosecution has not proved the aspect of recovery also.

13. It is no doubt true that the FSL report supports the case of the prosecution to the maximum extent. However, the vital aspect of the matter is MO 2, allegedly seized at the instance of P.W. 2 was not sent for forensic examination by the Investigation Officer. Only knife (dagger) (MO-10), seized at the instance of accused No. 1, was sent for examination. The said dagger also did not contain blood stains.

14. Even according to the case of the prosecution, the motive as alleged is as against accused Nos. 1 and 2; the last seen circumstance is also against accused Nos. 1 and 2; even the recoveries allegedly made were mainly at the instance of accused Nos. 1 and 2. Hence, it is amply clear that absolutely no material much less the reliable material is found against accused Nos. 3, 4, 5 and 7. As mentioned supra, accused No. 1 has already expired.

15. We have already discussed thoroughly in the aforementioned paragraphs to conclude that neither the circumstance of motive nor the circumstance of last seen or the circumstance of recovery is proved against any of the accused including accused No. 2. We find that the reasons assigned and conclusion arrived at by the Trial Court while convicting accused Nos. 2 to 5 and 7 are improper and incorrect. Though some material is found against accused No. 1, this appeal has abated as against him in view of his death.

16. Be that as it may, since none of the circumstances relied upon by the prosecution are proved beyond reasonable doubt, in our considered opinion, the trial Court is not justified in convicting the accused. On going through the judgment of the trial Court and the evidence on record, we are of the clear opinion that the judgment of the trial Court is based on assumptions. Since the burden is on the prosecution to prove the chain of circumstances against the accused and as we find that none of the circumstances are proved much less beyond reasonable doubt, the benefit of doubt should enure to the accused. It is by now well settled, the chain of circumstances to be proved by the prosecution unerringly should point towards the guilt of the accused and should not leave any doubt in the mind of the Court about the innocence of the accused. Since we find that none of the circumstances are proved by the prosecution to the satisfaction

of the Court, the impugned Judgment and order of conviction dated 29.02.2012/22.03.2012 passed by the trial Court in S.C. No. 18/2010 is liable to be set aside and the same stands set aside. Accordingly, the appeals are allowed.

17. The convicted accused No. 2-R. Praveen @ Pavvi, accused No. 3-M. Ravi, accused No. 4-Gopi, accused No. 5-Manju and accused No. 7-Venu @ Venugopalakrishna are acquitted of all the charges levelled against them. They shall be released forthwith in case if they are not required in any other crime.

The operative portion of this judgment shall be communicated to the concerned prison authorities immediately.