
(2015) 07 KAR CK 0335
In the Karnataka High Court
Case No : Criminal Appeal No. 469/2008(A)

State	Vs	APPELLANT
Prasad and Others		RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 143, 147, 148, 149

Citation : (2015) 07 KAR CK 0335

Hon'ble Judges : Ravi V. Malimath, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : V.M. Banakar, Addl. S.P.P., for the Appellant; Anil Kale, Amicus Curiae, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J—State is in appeal challenging the judgment and order dated 18.01.2008 in S.C. No. 50/2007 on the file of the Sessions Judge, Bagalkot, acquitting accused Nos. 1 to 3 and 6 to 8. Case against respondent No. 4 stood abated at the trial stage only.

2. For the sake of convenience, the parties shall be referred to as per their status in the Trial Court.

3. P.W. 1 filed a complaint Ex. P-2 on 12.08.2004 at 09:30 p.m., stating that his parents were kidnapped by accused No. 1 and his associates. Accordingly, a case in Crime No. 128/2004 was registered in Golgumbaz Police Station, Bijapur. After investigation, the prosecution filed a charge sheet against accused Nos. 1 to 8 for offences punishable under Sections 143, 147, 148, 302, 201, 120(B), 404, 440 read with Section 149 of IPC and Section 25 of Indian Arms Act, 1878.

4. To prove its case, the prosecution examined 42 witnesses and produced 110 documents and 44 material objects. In support of defence, the accused got 3 witnesses examined and produced 13 documents.

5. Case of the prosecution in nutshell is that accused No. 1 entered into an agreement with father of P.W. 1, Dr. Prabhakar Shah, to purchase his property bearing C.T.S. Nos. 207, 208, 209 and 211 situated in Ram Mandi Road, in Municipal Ward No. III, Bijapur for a consideration of Rs. 95,00,000/-; that, got a loan of Rs. 25,00,000/- sanctioned from Union Bank of India, housed in the ground floor of building proposed to be purchased by accused No. 1; and that out of the sanctioned amount, the accused No. 1 drew Rs. 8,00,000/- and deposited the same in his savings bank account maintained with Punjab National Bank, Bijapur on 07.08.2004. Between 8th and 11th of August 2004, the accused met in Room Nos. 114 & 311 of Sanman Lodge, Bijapur, and conspired to knock away the property in question by obtaining signatures of deceased Dr. Prabhakar Shah and his wife Sudhabai without paying consideration. In furtherance of their conspiracy, they invited the couple to the house of accused No. 1 on 11.08.2004. When the couple arrived at about 10:15 a.m. on 11.8.2004 in their Maruti Car bearing No. KA-28/M-2347, accused No. 1 with the help of accused Nos. 2 and 8 using M.O. 29-chopper assaulted deceased Sudhabai wife of Dr. Prabhakar Shah and killed her. Accused No. 5 with the help of accused Nos. 3, 6 and 7 assaulted Dr. Prabhakar Shah with a chopper-M.O. 34 and killed him. Accused packed the dead bodies in plastic sheets and gunny bags and got the house cleaned by accused Nos. 2 and 4. Accused carried the dead bodies to Chikkapadasalagi Bridge at about 09:45 p.m. in the Maruti Car belonging to the deceased driven by accused No. 8. Accused Nos. 1, 2, 3, 5, 6 and 7 also went in the Tempo Trax vehicle. They disposed off the bodies in the Krishna river. After completing the heinous act, they returned to Belgaum and parked the car in front of Kirti Hotel, Belgaum and drove towards Bijapur in the Tempo trax. Accused Nos. 6, 7 and 8 got down at Athani and the remaining proceeded towards Bijapur. Tempo Trax met with an accident dashing against a road side tree near Honawad in which accused Nos. 1, 2, 3 and 5 sustained injuries. Accused No. 1 ran away from the scene of accident.

6. Pursuant to complaint Ex. P-2, Police started investigation. During the course of investigation based on the information given by the accused No. 2, Police were able to recover the body of deceased Dr. Prabhakar Shah near Bidari Village. The keys of the car belonging to deceased Dr. Prabhakar Shah and a country made revolver-M.O. 33 were recovered from accused No. 5. After completion of investigation, a charge sheet was laid against accused Nos. 1 to 8 in C.C. No. 1216/2004. After committal proceedings, case was registered as S.C. No. 8/2005 before the Principal Sessions Judge, Bijapur. While the trial was in progress, accused Nos. 1, 2, 5 and 8 expressed that they had no confidence in the said Court. Though subsequently the accused filed a memo reposing confidence, based on a communication from the Principal Sessions Judge, Bijapur, this Court transferred the case to the Fast Track Court No. 1, Bijapur and subsequently to the Sessions Court at Bagalkot as per directions issued in a Writ Petition filed by accused seeking transfer of case from the Fast Track Court-I.

7. The Trial Court framed following points for its consideration.

"1. Whether prosecution proved beyond all reasonable doubt that, accused No. 1 to 8 holding meetings between 8th and 11 of August 2004 in the room No. 114 of Sanman Lodge, Bijapur and Room No. 114 of Samrat Lodge, Bijapur hatched a plan to cause the murder of Dr. Prabhakar Shah and his wife Sudha to create documents to establish full payment of consideration in relation to the agreement of sale entered into by Dr. Prabhakar with accused No. 1/Vispute in relation to the building comprising of CTS No. 207, 208, 209 and 210 and thereby committed the criminal conspiracy U/sec. 120(B) of Indian Penal Code?

2. Whether the prosecution proved beyond all reasonable doubt that, on 11-08-2004 at about 9-30 a.m., when Dr. Prabhakar Shah accompanied by his wife Sudha came to the house of accused No. 1 as invited by him under the guise of making payment of the amount, all the accused as preplanned by them increasing the volume of Television, accused No. 1 with the assistance of accused No. 2 and accused No. 8 assaulted Smt. Sudha with chopper (M.O. 29) on her neck and other parts of the body and caused her death and accused No. 5 with the assistance of accused No. 3, 6 and 7 assaulting Dr. Prabhakar with chopper (M.O. 34) on his neck, head and all over the body caused his death and then all the accused dragging their dead-bodies and rapping in plastic sheets put in two separate gunny bags and then accused No. 2 and 8 cleaned the floor and thereby committed the offences punishable U/Sec. 148 and 302 R/w. Sec. 149 of Indian Penal Code?

3. Whether the prosecution proved beyond all reasonable doubt that, the accused in furtherance of their common object removing the golden ornaments worn by Smt. Sudha accused No. 6 and 8 sold Mangala sutra and bendole (Mos. 9 and 10) to P.W. 4 Venkatesh Baburao Pawar of Lavenger and accused No. 7/ Babu retained golden bangles making them into 7 pieces (M.O. 11) in the house of Gangu Ramu Rathod/CW. 50 at Ukkali tanda and thereby committed the offence punishable U/sec. 395 of Indian Penal Code?

4. Whether the prosecution proved beyond all reasonable doubt that, the accused who committed the murder of Dr. Prabhakar Shah and his wife Smt. Sudha in the house of accused No. 1 situate at Kkavi plot in Bijapur at about 10-30 a.m., on 11-08-2004 had kept their bodies in the bath room of the house, rapped in plastic sheets and gunny bags got cleaned the house with the assistance of accused No. 4 Bhimaraya and accused No. 1 to 3, 5 to 8 on the same day at about 9-00 p.m., removed the dead-bodies in the Maruti Car belonging to Dr. Prabhakar Shah bearing No. KA-28/M/2347 to Chikkapadasalagi flooded Krishna River at about 9-45 p.m., and then abandoned Dr. Prabhakar's Maruti Car in front of Kriti hotel at Belgaum with an intention to cause disappearance of the evidence of offence committed by them and thereby committed the offence punishable U/sec. 201 R/w. Sec. 149 of Indian Penal Code?

5. Whether the prosecution proved beyond all reasonable doubt that, the accused in furtherance of their common object attempted to obtain the

signatures of Dr. Prabhakar and his wife Sudha on the sale deed created as if the entire consideration of the sale of the property belonging to Dr. Prabhakar has been paid to him with intent to cause damage to him without payment of consideration and when he refused to do so caused his death and thereby attempted to make a false document in proof of payment of full consideration of the sale of the property of Dr. Prabhakar and thereby committed the offence punishable U/sec. 467 R/w. 511 R/w. Sec. 149 of Indian Penal Code?

6. Whether the prosecution proved beyond all reasonable doubt that on : 15-08-2004 when P.W. 33 produced accused No. 5 before Dy.S.P., on his search he was found in possession of Country Revolver (M.O. 33) without permit or licence and thereby he committed the offence punishable U/sec. 25 of the Indian Arms Act?

7. What order?"

8. On appreciation of the material on record, the Sessions Court held that the accused were entitled for acquittal from all offences charged against them. But, in the order portion, it is mentioned that accused Nos. 1 to 3 and 6 to 8 were not found guilty of the offences and they were acquitted. Accused No. 4 died during the trial. In the order of the Sessions Court, there is no mention with regard to accused No. 5. However, the State preferred this appeal against all eight accused. Vide order dated 14.07.2014, respondent Nos. 4 and 5 were deleted, as appeals having been abated against them. Therefore, appeals on behalf of accused Nos. 1 to 3, 6 and 7 are heard in these proceedings.

9. We have heard Shri V.M. Banakar, learned Additional State Public Prosecutor, Shri Anil Kale, Amicus Curiae and Shri B.V. Somapur and perused the records.

10. P.W. 1 in this case is son of the deceased; P.W. 2 is a panch witness for seizure panchnama-Ex. P-3; P.W. 3 is an independent witness; P.W. 4 is purchaser of ornaments allegedly belonging to deceased Sudhabhai; P.W. 5 is a priest; P.W. 6 is a fisherman who had found the body; P.W. 7 is the owner of land where body was found; P.W. 8 is a waiter at Dhaba, where the accused had their lunch on 11.08.2004 at about 02:00 p.m.; P.W. 9 is Manager of Sanman Lodge, Bijapur; P.W. 10 is the Manager of Samrat Hotel, Bijapur; P.W. 11 is the owner of jewellery shop; P.W. 12 is an Engineer who has prepared sketch; P.W. 13 is a resident of house situated in front of the house of accused No. 1; P.W. 14 is a businessman; P.W. 15 is Manager of Petrol Pump, where 30 litres of diesel were allegedly filled to the Tempo Trax on 11.08.2004; P.W. 16 is a key maker; P.W. 17 is a maid servant who had last seen the deceased on 11.08.2004; P.W. 18 is a cloth merchant; P.W. 19 is the Manager of a tyre shop, where the accused are said to have purchased tyre on 11.08.2004; P.W. 20 is owner of a shop which is situated opposite the house of the deceased. P.W. 21 is the compounder cum driver of the deceased. P.W. 22 is a witness to the accident in which the Tempo Trax vehicle carrying accused dashed against a tree. P.W. 23 is a witness to the inquest panchnama, Ex. P-25 and seizure mahazar, Ex. P-26. P.W. 24 is a panch

witness to:

(a) Spot panchnama Ex. P-28 and seizure panchnama, Ex. P-35 whereunder M.Os. 4 to 7 and 27 to 32 were seized;

(b) Ex. P-29 a seizure mahazar whereunder a car key M.O. 38, M.O. 33 and a revolver were seized;

(c) Ex. P-30 seizure mahazar whereunder chopper M.O. 35 was seized from accused No. 5 and M.Os. 35 to 37 a shirt, pant and a plastic cover under Ex. P-31 were seized;

(d) Ex. P-32 seizure mahazar whereunder 7 pieces of "Bilawar" (bangles) were seized from accused No. 7, M.Os. 11 and 38 bangle pieces and a purse on 06.09.2004.

(e) Ex. P-33 whereunder M.Os. 39 and 40 a pant and shirt produced by accused No. 7 were seized.

(f) Ex. P-34 whereunder registers of Samrat and Sanman Hotels were seized from the Manager of the Hotel on 05.10.2004.

11. P.W. 25 is a panch witness for the following six panchnamas:

(a) Ex. P-36 spot panchnama shown by accused No. 2 where the dead bodies were found.

(b) Ex. P-37 seizure panchnama whereunder Rs. 9,50,000/- withdrawn from Punjab National Bank.

(c) Ex. P-38 spot panchnama to the house where M.Os. 9 and 10 were sold.

(d) Ex. P-39 seizure panchnama whereunder cloths M.Os. 41 to 44 produced by accused Nos. 6 and 8 are seized.

(e) Ex. P-40 spot panchnama where the car was parked to affix black film to the wind screens.

(f) Ex. P-41 whereunder blood group in documents and a photograph M.Os. 23 to 25 are seized.

12. P.W. 26 is Police Sub Inspector who seized car M.O. 3 at Belgaum on 14.08.2004. P.W. 27 is Manager of Punjab National Bank; P.W. 28 is a Manager of Union Bank of India; P.Ws. 29, 30, 31, 34 and 35 are Police personnel who have assisted in the investigation. P.W. 32 is Doctor who has conducted postmortem and given report as per Ex. P-70. P.W. 33 is Police Inspector who has registered complaint in Crime No. 128/2004 (Ex. P-2) and conducted part of the investigation. P.W. 36 is a room boy of Samrat Hotel. P.W. 37 is a Sub Register. P.W. 38 is Assistant Director of Forensic Science Laboratory who has issued reports Exs. P-77 and 78. P.W. 39 is Assistant Director of Forensic Science Laboratory and issued report Ex. P-97. P.W. 40 is Investigating Officer who has

laid the charge sheet. P.W. 41 is Deputy Commissioner who has issued sanction for prosecution under the provisions of Arms Act. P.W. 42 is Assistant Director of Forensic Science Laboratory who has issued ballistic certificate.

13. As there are no eyewitnesses, entire case of the prosecution hinges on the circumstantial evidence. Learned Additional State Public Prosecutor submits that the prosecution has brought home the guilt of the accused by proving the following circumstances:

I) Motive

II) Conspiracy

III) Last seen circumstance, i.e., deceased going to the house of A. 1, in their Maruti Car

IV) Recovery of Ornaments & Other belongings of both deceased.

V) Place of Recovery of dead body

VI) Recovery of Car

VII) Scene of Offence i.e., House of A. 1.

VIII) Conduct of accused.

14. Amplifying his contentions, learned Additional SPP submits that the motive of the accused was to make unlawful enrichment by purchasing immovable property belonging to the deceased without actually paying the consideration. He draws our attention to an application form (Ex. P-45) for a term loan of Rs. 40,00,000/- submitted by the accused No. 1 to the Union Bank of India and submits that as per the said application dated 25.06.2004, accused No. 1 had sought a loan of Rs. 40,00,000/- and offered the property belonging to the deceased as security. In the said application, the valuation of the property is mentioned as Rs. 64,00,000/-. He submits that the said loan application was processed by the Bank which is situated in the property belonging to the deceased much prior to the date on which the parties actually entered into an agreement of sale. According to him, the application for loan was submitted on 25.06.2004 and the legal opinion was obtained on 26.06.2004 (Ex. P-51), whereas the accused No. 1 and the deceased have entered into an agreement to sell the property on a much later date i.e., on 23.07.2004. Therefore, he submits that the accused as the mastermind and kingpin had conspired to knock off the property belonging to the deceased by using only Bank funds. He submits that the speed with which the Bank has worked and sanctioned the loan prior to even execution of the agreement of sale shows that the accused No. 1 had managed all fronts to enrich himself unlawfully and in furtherance of this motive, he conspired with his associates to murder the victims, so that he could knock off the property without actually making any payment. He draws our attention to Ex. P-1, agreement to sell, wherein consideration is mentioned as Rs. 95,00,000/- and whereas in the application Ex. P-45, the value of the property is mentioned as Rs. 64,00,000/-.

Learned Addl. SPP submits that the Bank has also acted in aid of furtherance of the hidden agenda by readily sanctioning the loan on 26.04.2004 based on the security of the property which actually belonged to the victim by sanctioning the loan as per Ex. P-58. Accused opened an account on 06.08.2004, as per Ex. P-62 and a sum of Rs. 9,50,000/- was drawn on the very same day as evidenced by Exs. P-63 and 64.

15. Learned Additional SPP submits that a combined reading of P.Ws. 5, 13, and 20 would lead to an irresistible inference that the deceased went in their car to the house of the accused at about 10:00 a.m. Seizure of the jewellery from accused No. 7, as per Ex. P-32 conclusively establishes that the accused had committed the heinous crime of murder for gain. P.W. 8, waiter in Choudhary Dhaba has identified accused Nos. 1 and 5 and fully supported the case. Further, P.Ws. 4 and 11 have also fully supported the case. He further submits that the Maruti Car has been recovered and the car key was seized from the possession of accused No. 5. Deceased were last seen going to the house of accused No. 1. He submits that the chain of circumstances is complete and conclusively establish that the accused have committed heinous crime of double murder of the doctor couple. Assailing the judgment of the Trial Court, he submits that the reasons recorded to acquit the accused by the Trial Court are perverse and therefore, wholly unsustainable in law. Elaborating this point, he submits that the reasons given by the Trial Court to acquit the accused are delay in filing F.I.R., seizure of car before registering the crime and that all panch witnesses are relatives. He submits that these are trivial discrepancies and the Trial Court has misdirected itself and swayed by them. Therefore, he submits that the judgment and order of the Trial Court is liable to be set aside and accordingly prays for allowing the appeal and sentencing the accused with maximum punishment.

16. Per contra, Shri Anil Kale, learned Amicus Curiae for accused Nos. 1 and 2 submits that the only star witness upon whom the prosecution was depending was P.W. 13 and he has turned hostile. Hence, there is no evidence at all. Further, the serology report given by Forensic Science Laboratory cannot be relied upon in the light of the evidence of P.W. 38 Assistant Director, FSL who has admitted in the cross-examination that it is not recorded in the report Ex. P-77 that the blood found is "human blood". He further submits that as per P.W. 21, the car was found in the Police Station on 14.08.2004, whereas according to the prosecution, the car was seized on 15.08.2004. Thus, it is clear case manipulated of records and the accused cannot be held guilty based on such evidence.

17. Learned counsel for the respondent Nos. 3, 6 and 7 submits that there is absolutely no material against the accused. The jewellery said to have been purchased by P.W. 4 are not rare items but of common design which is used by women in this part of the State. He submits that the Police have fabricated panchnamas by using P.Ws. 24 and 25 for 10 panchnamas. It is highly improbable that the very same panch witnesses would be available to the Police at different places and on different dates. On these among other grounds, both

the learned counsel for the defence, while strongly supporting the judgment of the Trial Court pray for dismissal of the appeal.

18. We have bestowed our anxious consideration to the submissions made by learned Additional SPP, defence counsel and perused voluminous records.

19. Admittedly the case of the prosecution is fully based only on the circumstantial evidence. Prosecution has relied on the circumstances mentioned supra to prove its case. Based on the material on record and the submissions of learned counsel, we have examined the case by re-appreciating the evidence on record and following are our findings:

Re : Motive:

20. The theory of motive put forth by the prosecution is that accused No. 1 desired to make an unlawful gain by purchasing the property belonging to the deceased without paying proper consideration and obtain signatures on the documents. In support of this theory, the prosecution relies mainly upon Exs. P44 to 46, the applications submitted by the accused No. 1 to the Bank, loan sanction advise, legal opinion and also correspondence with the Bank and other incidental documents. A careful analysis of these documents would lead us to an inference that the accused No. 1 did make efforts and obtained sanction of loan and drew a sum of Rs. 9,50,000/- on 06.08.2004. No doubt, in the application form (Ex. P-45) and other papers submitted to the Bank, the mode of security is mentioned as mortgage of building bearing Nos. 207, 208, 209 and 2011 situated at Ram Mandir Road, Bijapur which is the property sought to be purchased under Ex. P-1 by the accused No. 1 from the deceased Dr. Prabhakar. On this premise, the prosecution contends that the accused No. 1 had a motive to commit the murder of the deceased. Ex. P-1 is the agreement to sell the property. Accused No. 1 had agreed to purchase the property in question for a sum of Rs. 95 lakhs. The terms of the agreement disclose that the Vendor was required to execute the sale deed and register the same in the office of the Sub-Registrar, Bijapur on receipt of the consideration of Rs. 95 lakhs. Further Vendor was required to deliver the vacant possession of the first and second floors after the registration of the sale deed. Vendor was also required to inform the Union Bank of India a branch of which was situated in the ground floor with regard to transfer of ownership and payment of rents to the accused No. 1 after the transfer of ownership. This agreement does not disclose the date on which it was executed. It is contended on behalf of prosecution that the sanction advice at Ex. P-61 is dated 06.08.2004 wherein it is mentioned that the loan is sanctioned based on the mortgage of property sought to be purchased by the accused No. 1. It is further contended that even prior to the execution of sale deed, the accused No. 1 had managed to get the loan sanctioned on the strength of mortgage of property which was yet to be acquired. We are of the view that the theory of the motive put forth by the prosecution is extremely weak inasmuch as obtaining a sanction of a loan by the accused has no nexus with the crime. Offering to mortgage the property, which was yet to be acquired, is not a sufficient

circumstance to establish the motive to commit the murder of the owner of the property. At best, the sequence of events, more particularly, sanction of loan and disbursement of Rs. 9.50 lakhs prior to the date of execution and registration of sale deed would indicate that the accused No. 1 was influential in the banking sector or bank officials had deviated from banking norm for undisclosed reasons. The evidence of PW-28, the Senior Manager of Union Bank of India reveals that even prior to the date of opening of the bank account of accused No. 1 on 08.07.2004, Dr. Prabhakar had given the background of accused No. 1 to the Bank on 25.06.2004. Despite searching cross-examination, nothing much is elicited from this witness by the prosecution. Therefore, the circumstance of "motive" is held against the prosecution.

Re : Conspiracy:

21. So far as the conspiracy theory is concerned, the prosecution heavily relies on a circumstance that accused had stayed in Sanman Lodge, Bijapur on 8th and 9th of August, 2004 and in Samrat Hotel, Bijapur on 10th August 2004. In support of this theory, prosecution has examined PW-9, Manager of Sanman Lodge, Bijapur and PW-10, the Manager of Samrat Hotel, Bijapur. Both have turned hostile when cross-examined by the Public Prosecutor. Nothing worthwhile is elicited by the prosecution in their cross-examination.

Re : Last seen:

22. In support of this circumstance, it is argued on behalf of the prosecution that at about 09:30 a.m. on 11.08.2004, both deceased had informed their maidservant, PW-17 that they were going to the house of accused No. 1 to finalise the deal. PW-20, owner of a shop in front of the house of the deceased has stated in his examination-in-chief that he saw both deceased going out on 11.08.2004 at 9.30 a.m. PW-21, the Driver cum Compounder has stated that the deceased went out of their house on 12.08.2004 and not on 11.08.2004. PW-5, a priest has stated that the deceased had come to the temple on 11.08.2004 at 9.45 a.m. and Dr. Prabhakar had mentioned to him that he was going to the house of the accused No. 1 to finalise the deal. Nothing much is elicited in his cross-examination. Analysis of version these witnesses only shows that the deceased may have left their house in the morning of 11.08.2004. There is no evidence to suggest that victims and accused were seen together.

Recovery of golden ornaments and other articles belonging to the deceased:

23. To prove the circumstance of recovery of ornaments, the prosecution has relied upon the evidence of PW-4 who has purchased M.Os-9 and 10, Mangalasutra and Bendole (ear studs) allegedly belonging to the deceased Sudha. P.W. 4 has stated that he had purchased the golden articles from accused. In the cross-examination, he has admitted that the Mangalasutra, M.O.-9 and ear studs, M.O.-10 are available openly in the market. The evidence of PW-4 that he had purchased the said jewelry which are available in the market does not lead the case of the prosecution any further to establish that the

jewelry belonged to the deceased in the absence of other corroborative evidence. Therefore, we hold that the prosecution has failed to prove this circumstance also.

Re : Place of recovery of dead bodies:

24. According to the prosecution, the dead bodies were thrown near Chikkapadasalagi in the Krishna River and one of them was found on the banks of the same river which co-relates with the voluntary statements made by the accused Nos. 1 and 2. In this appeal, the prosecution has made a faint attempt to rely upon the evidence of PW-25 and Ex. P-36, the spot panchnama. As mentioned above, PW-25 is the panch witness for all six panchnamas, which are drawn on 14.08.2004, 21.08.2004, 06.09.2008, 08.09.2004 and 13.10.2004. The spot panchnama, Ex. P-36 is said to have been drawn on 14.08.2004. However, in the said panchnama, both the panchas have mentioned the date as 21.08.2004 below their signatures. In the cross-examination, it is stated that the said panchnama was drawn on 14.08.2004 but by oversight, they had written the date as 21.08.2004. Witness has also admitted in the cross-examination that the co-pancha had also mentioned the date as 21.08.2004. This is a serious discrepancy. Further, this witness is a common witness to six other panchnamas. We are therefore compelled us to infer that the testimony of this witness is not credible. Accordingly, hold this circumstance also against the prosecution.

Re. Recovery of car:

25. According to the prosecution, Maruti car, MO-3 belonging to the deceased bearing registration No. KA-28/M-2347 has been seized at Belgavi, near Keerthi Hotel under seizure panchnama at Ex. P-3. PW-2 has deposed with regard to Ex. P-3 and stated that the car was seized on 14.08.2004. He has also stated that there were some bloodstains on the hind seat of the car. It is argued on behalf of the prosecution that the car was seized at the instance of voluntary statement of accused No. 3.

26. In the cross-examination, when confronted with Ex. P-3, the seizure panchnama, PW 2 has admitted that the panchnama bears the date 15.08.2004. The prosecution is placing reliance on such palpably weak circumstantial evidence and the hence cannot be relied upon.

Re. Scene of offence:

27. This circumstances is sought to be established by the prosecution on the strength of seizure of M.O.-28, a blood stained curtain seized under seizure panchnama Ex. P-28. PW-24, one of the panch witnesses has deposed with regard to M.O.-28. He is a common witness in four panchnamas. In paragraph No. 21 of his cross-examination, he has admitted that there is interpolation with regard to the date of the panchnama, Ex. P-28(a) which according to the defence is a correction of date from 18.08.2004 to 14.08.2004. Yet another interpolation.

Re. Conduct of accused:

28. According to the learned Addl. SPP, this circumstance is established by the fact that accused No. 5 purchased a tyre on 11.08.2004 from the shop of PW-19 and filled diesel in the petrol pump belonging to PW-15 and purchased black windshield film which was used to laminate the glass screens of the Maruti car belonging to the deceased. He submits that accused No. 5 is a habitual offender and involved in more than one murder case. Therefore, he had high propensity to commit crime and the conduct of the accused viewed in the light of evidence of P.W. 15 proves this circumstance.

29. In our view, purchase of tyre and filling of fuel would not further the case of prosecution to prove this circumstance. So far as purchase of film from PW-14 is concerned, the said witness has turned hostile. In the examination-in-chief itself he has stated that he cannot identify the accused No. 5 and in the cross-examination, he has stated that large number of people purchase films from his shop and he cannot keep an account of the persons who come to his shop and purchase the film.

30. The argument on behalf of the prosecution that accused No. 5 is involved in more than one crime and therefore, it must be presumed that he has committed the instant crime also is equally fallacious. Involvement of an accused in any other case is no yardstick to hold him guilty of an offence alleged in another case.

31. This is a case involving death of a doctor and his lady in the city of Bijapur. According to the prosecution, body of husband alone was found and body of the wife has remained untraced. It is a general rule not to convict unless "corpus delicti" was established by the prosecution. In the instant case, prosecution has failed to establish corpus delicti vis-à-vis wife of the doctor.

32. Adverting to the submissions of the learned Additional State Public Prosecutor that the judgment and order of the Trial Court is perverse, we notice that the Trial Court has given cogent reasons while answering the points framed for consideration. In this appeal, the prosecution has reiterated its case and contended that the circumstances upon which the prosecution rests its case are proved. In our view also the points raised for consideration by the Trial Court need to be satisfactorily proved beyond reasonable doubt. This is a case depending only on circumstantial evidence and the star witness, on behalf of prosecution PW-13 has turned hostile. What is required to be proved by the prosecution in a case depending entirely on circumstantial evidence is complete chain of circumstances so well fastened that there should be no scope for any break and all circumstances must be consistent with guilt. On re-appreciation of the evidence on record, we are unable to persuade ourselves by the prosecution that it has proved its case beyond reasonable doubt. We are also conscious of the fact that an Appellate Court is required to be slow in reversing an order of acquittal and if two views are possible, unless the view taken by the Trial Court is so perverse as to shock the conscience of this Court, the order of acquittal should remain undisturbed.

33. We may usefully refer to the judgment of Hon''ble Supreme Court in the case of Ghurey Lal Vs. State of U.P., (2008) 10 JT 324 : (2008) 10 SCALE 616 : (2008) 10 SCC 450 : (2008) 2 UJ 991 : (2008) AIRSCW 1487 , wherein it is held as follows:

"75. On careful analysis of the entire evidence on record, we are of the view that the reasons given by the High Court for reversing the judgment of acquittal is unsustainable and contrary to settled principles of law. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

34. In view of our discussion on each circumstance and the principles laid down by the Hon''ble Supreme Court, we are of considered view that there is no error or perversity in the judgment of the Trial Court and this appeal against acquittal does not merit consideration. Consequently, the appeal fails and stands dismissed.

We place on record our appreciation for the assistance rendered by the learned Amicus curiae.