

**(2015) 11 KAR CK 0045**

**In the Karnataka High Court**

**Case No :** Criminal Appeal Nos. 2590 and 2582 of 2013

Suresh Dhareppa Mutnal and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

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**Date of Decision :** 17-11-2015

**Acts Referred:**

Arms Act, 1959 — Section 30  
Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 201, 302, 34

**Citation :** (2015) 11 KAR CK 0045

**Hon'ble Judges :** Anand Byrareddy and S. Sujatha, JJ.

**Bench :** Division Bench

**Advocate :** Ravi B. Naik, Senior Advocate for J. Basavaraj, Advocate, for the Appellant; V.M. Banakar, Additional State Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Anand Byrareddy, J.—These appeals are heard and disposed of by this common judgment.

2. The facts of the case, as stated by the prosecution, in the appeal in CrI. A. 2582/2013, arising out of the judgment in sessions case No. SC 378/2011 on the file of the Court of II Additional District and Sessions Judge at Belgaum, are as follows:

The complainant, one Mahadev Siddaram Hulloli, was said to be a resident of Itnal village, Raibag Taluk, Belgaum District. He was living with his family consisting of his wife Lakkava, his sons - Gangappa and Basappa and his daughter Laxmibai. It transpires that two years prior to his complaint - a complaint had been lodged against his sons and his relatives, namely, Basappa Siddappa Dange and Sadashiv Siddappa Dange and others, pursuant to which, they are said to have been arrested in connection with a case registered against them for an assault made on the Raibag Police. It was the case of the prosecution that Gangappa, who was arrested, suspected that one Suresh Mutnal

had informed the Police about him and others. In this regard, it was further stated that one day prior to the complaint by the present complainant, that is on 31.5.2011, one Dhulappa Mutnal is said to have lodged a complaint against Gangappa, Basappa, Sadashiv Dange and others, accusing them of assault.

On 1.6.2011, it transpires that Gangappa had accosted Suresh Mutnal and was abusing him for having informed the Police about him. This was at 6.30 P.M. at Sangolli Rayanna Circle, Itagi. It is said that accused No. 1, Suresh Mutnal (absconding and hence the case was split up against him) and the other accused had retaliated in attacking Gangappa, who is said to have started fleeing and were chased by the accused No. 2 and 3 on their motor cycle. Accused No. 2 is said to have shot at him thrice with a revolver and Gangappa had fallen down. It then transpires that the said accused, bodily picked up Gangappa on to their motor cycle and brought him back to Sangolli Rayanna Circle and there upon Suresh Mutnal borrowing the revolver from the other accused is said to have shot Gangappa in the head, twice, killing him. Then the said Mutnal, along with accused No. 4, are said to have brought petrol from a nearby shop and had poured it on the body of Gangappa and set it on fire. Apparently to destroy the identity of Gangappa. Then the accused are said to have gone away on their motor cycles. It is thereafter the present complaint had been lodged.

The police, after taking further steps, had ultimately arrested the accused, and a charge sheet was submitted against them in due course. The Magistrate having taken cognizance, had enlarged accused Nos. 3 and 4 on bail, while it was refused in respect of accused No. 2. Accused No. 1 had absconded and hence the case against him was split up. The case was eventually committed to the Sessions Court.

After further proceedings, charges were framed against the accused for offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC" for brevity) and Section 30 of the Arms Act, 1959. The accused are said to have pleaded not guilty and claimed to be tried.

The prosecution had then examined 36 witnesses and had got marked several exhibits and material objects in support of its case. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "CrPC", for brevity) having been recorded and after hearing the arguments of both the sides, the trial court had framed the following points for consideration:

"1. Whether prosecution proves beyond all reasonable doubt that on 1.6.2011 the accused along with accused No. 1 Suresh Mutnal who is accused in S.C. No. 72/2012 at 6.30 p.m., in Itnal village in Raibag in furtherance of their common intention to commit the murder chased Gangappa and accused No. 2 Channappa Mutnal fired from his revolver towards Gangappa Hulloli and when he fell on the ground the accused No. 2 and 3 brought him on motor cycle bearing Reg. No. KA-23/EA-6795 and thrown him in Sangolli Rayanna circle wherein the accused

Suresh Mutnal in S.C. No. 72/2012 scathed the revolver from accused No. 2 and fired two rounds from the revolver towards Gangappa Hulloli on his head causing fatal head injury having knowledge that it is likely to cause the death and thereby intentionally caused the death of Gangappa Hulloli in furtherance of their common intention and thereby committed an offence punishable under Section 302 read with Section 34 of Indian Penal Code?

2. Whether the accused further proves that on the above said date, time and place and in the course of same transaction after firing bullet on the head of deceased and causing his death, the accused Suresh Mutnal in S.C. No. 72/2012 and accused No. 4 brought kerosene and petrol poured the same on the body of Gangappa Hulloli and set it fire with an intention to cause the evidence of commission of murder of deceased Gangappa to disappear with an intention to screen themselves from the legal punishment and thereby all the accused have committed an offence punishable under Section 201 read with Section 34 of Indian Penal Code?

3. Whether the accused further proves that on the above said date, time and place and in the course of same transaction and in furtherance of their common intention the accused Channappa Mutnal contravened the conditions of licence of revolver and thereby committed an offence punishable under Section 30 of the Indian Arms Act?"

The above were answered in the affirmative and the accused were convicted and sentenced to life imprisonment and fine for the offence punishable under Section 302 , apart from other lesser sentences for other offences. It is that which is under challenge in Crl. A. 2582/2013.

The appeal in Crl. A. 2590/2013 is filed against the judgment in case No. SC 72/2012, on the file of the Court of the II Additional District and Sessions Judge at Belgaum.

The case relates to the very incident, which is the subject matter of the above appeal in Crl. A. 2582/2013. The second trial was necessary on account of the case having been split-up against Accused No. 1, as he had absconded during the pendency of the case before the court below. The presence of the said accused having been secured after the trial and conviction of Accused No. 2 to 4 in case No. SC 378/2011, a fresh trial was conducted in so far as the appellant was concerned. The evidence is seen to have been reiterated against the said appellant and the court having convicted and imposed identical punishment as in the case against Accused No. 2 to 4, the present appeal is filed.

The findings of the trial court in the first of the cases, namely, SC 378/2011, as against Accused No. 2 to 4, is that of the 36 witnesses. PW-1 to PW-9 were the eye witnesses to the incident. PW-1 to PW-8 had all turned hostile to the case of the prosecution. PW-9 was the complainant and his evidence alone supported the case of the prosecution. PW-10 and PW-11 were the panchanamah witnesses in respect of the spot of the incident and PW-12 and PW-13, who were the inquest

panchanamah witnesses, they had all turned hostile. And so had PW-14 and PW-15, who are said to have been the witnesses to the panchanamah in respect of the clothes found on the dead body of Gangappa. PW-16 and PW-17, witnesses to the seizure of the motor cycles involved, PW-18 and PW-19 witnesses to the seizure of the revolver said to have been used in the commission of the crime, PW-20 and 21 witnesses to the production of the motor cycles before the police by Accused No. 4, PW-22, the owner of one of the motorcycles and PW-23, a relative of accused No. 4 - who had tendered evidence regarding certain circumstances - had all been treated as hostile witnesses by the prosecution.

PW-24 was examined in his capacity as a ballistics expert to speak as regards the ballistic report in the case. PW-25 was the official who had drawn a rough sketch of the scene of crime and PW-26 was the official photographer of the scene of crime. PW-27 had conducted the post-mortem on the dead body. PW-28 to PW-35 were all similar formal official witnesses as aforesaid. PW-36 was the brother of Accused No. 1 from whom the revolver said to have been used in the crime, was seized. He had however, denied the same and pleaded ignorance of the seizure.

In the above situation, the trial court has placed reliance on the sole evidence of PW-9 the complainant - eyewitness, PW-24, the ballistics expert and PW-27, the medical practitioner, who had conducted the autopsy on the body of the deceased victim, apart from the material objects and relevant exhibits in having held that the prosecution had established the case against the accused beyond all reasonable doubt and in convicting them.

In the related case against Accused No. 1, the same witnesses had been examined, though in a different order, but the difference was that many of the eye witnesses who had turned hostile in the earlier instance, had however, chosen to completely support the case of the prosecution. The explanation offered for this volte face on their part, was that they were mortally afraid of Accused No. 1, who was still at large when they were called upon to tender evidence in the first instance and since the said accused was now in custody - they could muster the courage to depose candidly without seeking to dilute their testimony. They had all made categorical statements in this regard before the court. This has weighed with the trial court in accepting their explanation and in reconciling their earlier attitude and the evidence tendered subsequently. In that, the complainant was examined as PW-1 at the second trial. PW-2, PW-3 (examined as PW-6, in the first trial), PW-4 (PW-7 in the first trial) and PW-5 (PW-3 earlier) had fully supported the case of the prosecution. PW-6 had supported the case of the prosecution to the extent that he had deposed as to the accused taking away petrol from his shop to set the body of the victim on fire.

Therefore, the trial court has, with greater support of the evidence tendered, has found it easier to find the accused guilty and has accordingly convicted him.

3. The learned Senior Advocate, Shri Ravi B. Naik appearing for the counsel for the accused in these appeals would point out with reference to the evidence tendered in the first case against Accused Nos. 2 to 4, as the witnesses claimed to be eye witnesses had all turned hostile - there was no eye witness account of the incident. In so far as the evidence of PW-9 the complainant, is concerned - it is evident that the said witness did not know the assailants nor was he in a position to narrate the manner in which the incident is said to have taken place. Even the uncle of the deceased, who is said to have telephonically informed the police of the incident, even before the complaint by PW-9, did not name the assailants. It is also pointed out that PW-33, the Police Sub-Inspector, Raibag had specifically stated that the assailants were not known even after going to the spot where the incident had taken place. It is thus contended that the time, place, manner in which the incident had taken place, nor the identification of the assailants, as put forth by the prosecution can be said to have been proved. Let alone beyond all reasonable doubt.

It is further contended that, as neither PW-1 to PW-8, who were examined as eye witnesses, nor PW-10 to PW-21, the panchanamah witnesses and even PW-22, said to be the owner of a motor cycle used in the commission of the offence and PW-23, who was examined to speak about the parking of the motor cycle and its seizure - having supported the case of the prosecution and all of them having been treated as hostile witnesses. The entire case resting on the testimony of PW-9, which was demonstrably inconsistent and far fetched, there was no evidence whatsoever to bring home the guilt of the accused. It is contended that the evidence of PW-9 ought to be discarded as the said witness was the father of the deceased and was planted as an eye witness and tutored to seemingly suit the case of the prosecution. The testimony of the said witness hardly inspires confidence as being acceptable and was not corroborated even by a single witness and hence the trial court having relied entirely on the same, has resulted in a miscarriage of justice.

In that, it is sought to be pointed out that according to PW-9, he was inside a shop near Sangolli Rayanna Circle when he heard a gun shot and then saw Accused Nos. 2 and 3 chasing the deceased on their motor cycle and then when the deceased had fallen to the ground, they having picked him up bodily on to the motor cycle and having taken him back to the Circle where Accused No. 1 is said to have shot him in the head, thrice. The fact whether PW-9 could immediately fathom the sequence on hearing a gun shot and seeing the incident unravel at a distance of 100 metres is itself not readily believable. If the deceased had been shot several times in the incident, the total lack of blood or blood stains is inexplicable.

It is also pointed out that there is no accusation of there being any previous ill-will between Accused No. 2 to 4 and the deceased, so as to motivate them to commit a cold blooded murder, at a busy town centre. There is no evidence of any such common intention being present.

It is in this vein the learned Senior Advocate seeks to highlight several other infirmities and inconsistencies that would emerge in the light of the total absence of evidence, to clearly establish the sequence of events and the actual involvement of the accused.

4. In so far as the second case, as against Accused No. 1 is concerned, it is pointed out that the only difference in the evidence that is tendered is that some of the witnesses who were said to be eye witnesses had however, chosen to support the case of the prosecution, though they had not supported the case in the first instance. This conduct on the part of the said witnesses rendered their testimony unreliable and not credit worthy and could not have been accepted by the trial court merely on their say that it was out of fear that Accused No. 1, who was absconding at the point of time, would retaliate and harm them - that they had chosen not to support the case of the prosecution and had conducted themselves in the said fashion, is totally opposed to the settled principle as regards the credence to be given to contradictory versions given by witnesses, treated as hostile witnesses.

The learned Senior Advocate places reliance on the following authorities in support of the several contentions touching upon settled principles of law.

1. Mahadeo and Others Vs. State of Maharashtra,
2. Shekappa @ Chandrashekar vs. The State of Karnataka, Criminal Petition No. 7261/2010;
3. Nathi Lal and others vs. State of U.P. and another, 1990 (Supp) SCC 145;
4. Mitthulal and Another Vs. The State of Madhya Pradesh,
5. Central Bureau of Investigation Vs. Abu Salem Ansari and Another,
6. Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra,
5. The learned Additional State Public Prosecutor, on the other hand, seeks to justify the judgments of the court below.

6. On a perusal of the record and in the light of the rival contentions - it is found that the trial court has indeed found Accused No. 2 to 4 guilty of the charges and has convicted them solely on the basis of the evidence of PW-9, the complainant. With the support of the evidence of the forensic expert and that of the medical practitioner who had performed the autopsy on the body of the deceased. In order to appreciate whether the trial court was justified in accepting the testimony of the said witness, PW-9, to support the findings-it is useful to closely examine the said testimony.

The evidence of PW-9 is reproduced below: (English translation)

Examination in Chief:

"The deceased, Gangappa, was my son. I know the accused. I also know the

absconding accused, Suresh Mutnal. In view of a case instituted by the accused against my son Gangappa, there was animosity between them. About 7 months ago, at about 6-30 P.M., I had left my home to go towards the town. My son had left for the fields. When my son had reached Sangolli Rayanna Circle, the accused, Pintu and Chennappa-riding a motor cycle had accosted my son and Chennappa had shot at him with a revolver, as Gangappa was proceeding towards Samsuddhi Road. Gangappa had hence started to flee and fell down in the process. Chennappa had then fired twice at Gangappa and thereafter he was lifted up and placed, prone across the motor cycle by Pintu and Chennappa and carried back to Sangolli Rayanna Circle. Chennappa was riding the motor cycle. Pintu riding pillion, was holding Gangappa between them. The accused had then dumped Gangappa at the said Circle. By then Accused No. 1, Suresh and Accused No. 4, Shrishaila - came on another motor cycle. Accused No. 1 took the pistol from Accused No. 2 Chennappa and shot Gangappa in the head twice. Gangappa started bleeding from the injury. Then Suresh brought a can of petrol from the shop of one Mittal Marapura, splashed the petrol on Gangappa and set him ablaze with a match stick. Thereafter the Accused No. 1 to 3 left on one motor cycle, while Accused No. 4 left on the other motorcycle towards his house. Thereafter I ventured near the body of Gangappa and found he was dead.

Thereafter my brother Shrikanth Raibag informed the police on the phone about the incident. The Raibag police reached the spot at about 11 P.M. My Complaint as dictated by me was recorded on the spot. I affixed my signature to the same. I now see that complaint. It is marked as Exhibit P-9 and my signature thereto is marked as Exhibit. P-9A. The complaint was transcribed by the police while sitting on a platform in front of a medical store, where there was light. I identified the spot where the crime was committed. The police seized two cans at the spot. I see the same produce in court now. The same are marked as Material Objects No. 1 and 2. I now see a revolver produced in court, this is the weapon with which my son was shot by the accused. The same is marked as M.O. 3. I would be able to identify the clothes worn by my son, his ring, bracelet and other affects, if I see the same. I now see the black thread, the brass armlet, finger ring, silver bracelet and a half burnt underwear. I say that the said items belonged to my son Gangappa. The same are marked as M.Os. 4 to 8.

Because of the case filed by the accused against my son, there was animosity as between them and hence he had picked up a quarrel with Suresh, Accused No. 1 and had abused him. On account of the said reason, the accused together had murdered my son. As the police reached the spot belatedly, there was delay in lodging the complaint. As I was grief stricken on account of the death of my son, I did not choose to immediately go to the police station. I now see two motor cycles produced before the court, these are the vehicles used by the accused when they committed the murder. The same are marked as M.Os. 9 and 10, respectively."

Cross Examination:

We have 2 acres of land. I and my son Shrikant have partitioned our property. Shrikanth's house is close to mine. Basappa and Gangappa are my two sons. I have a daughter Lakshmi, who is now married. We cultivate our own lands. We do not have any bullocks. My house is far away from the house of accused No. 1 Suresh Mutnal. He owns a 100 acres of land. He lives jointly with his brothers and they cultivate sugarcane and other crops. Accused No. 1 Suresh and his brother Dholappa take care of their family. Suresh is a lawyer. We used to be engaged as labourers on his land. We had always been on good terms with Suresh. There were untoward incidents in the past. Suresh and his father were respected in the village. My son was also known as Mudukappa. Sadashiv Dange is a relative of ours. He lives at a distance of one kilometre from our village, on a farm. There is a case registered against him and he is accused of dacoity. The police used to search for him in our village. When the police went to take Sadashiv Dange into custody, the police themselves were kept in confinement by his family and they had also severely assaulted the police. My son, Gangappa and I were also the accused in a case registered in that regard. And we along with one Basappa were in custody for about three and a half months. When Dange and his family had kept the police in confinement and had assaulted them, many police personnel had come to their house and rescued them. It is not true that my son and I were also involved in keeping the police in confinement. Sadashiv Dange suspected us of having informed the police about his acts.

After the said incident, a police van was regularly stationed at Itnal village. We were released on bail. We are shepherds (Kurubas) by caste. The majority of the population in Itnal are lingayaths. Dange was suspecting that the Lingayath community was making false allegations against him to the police. There was a general intention to have Dange and my son Gangappa arrested and people were openly declaring this intention. It is true that the people of Itnal were inimically disposed towards us.

My son was killed on a new moon day. There is a temple of Aranya Siddeshwara temple in Yellvaratti village. We are all devotees of the temple. On the day of the incident, my brother and I had visited the temple. It is about 25 kilometres from our village. My sister Bhagavva is married and resides at Koligudda village. My brother Shrikanth and I do not possess cell phones. On the date of the incident, many people from our community and other communities had come to the Aranya Siddeshwara temple. We returned home from the temple at about 3 P.M. Gangappa was at home at that time. We stayed at home till about 6 P.M. I was on the field between 3 P.M. and 6 P.M. and I was tending to the sugarcane crop. The field is close to my home. The nearby lands are all fallow. After I came home I asked my wife to prepare tea, it was 6 P.M. then. We do not have a motor cycle at home. After tea, my son left saying he was going towards our land and went towards Samsudhi Road. We own another piece of land towards Kankanadi village. It is about half a kilometre from home. I did not choose to enquire with my son as to why he was going towards our land at that hour. If we have to go

towards Sangolli Rayana Circle we would have to go towards Gurlapura Road. To reach our land near Kankanadi we would have go via Sangolli Rayanna Circle. The said Circle is about 100 metres from our house. It is a junction of four roads. There are shops all around the circle. Beyond the circle, on Gurlapur road, there are houses on either side.

Soon after my son Gangappa left home, I had also followed him to purchase lubricating oil and went with a can in hand. I reached the provision store around 6 P.M. The shop belonged to one Baalu Hanagandi, it is about 10 metres from Sangolli Rayanna Circle. There were other customers in the shop. There were 10 to 20 persons in the vicinity of the circle. I was casually talking to the shopkeeper while sitting inside the shop. I must have spent 10-15 minutes there when I heard two loud bangs. I immediately looked in the direction of the sound. It must have come from about 20 metres from where I was sitting. I did not notice any one moving towards the sound. The shopkeeper nor I, ventured to go towards the sound. I recognized Gangappa falling to the ground, from where I sat. I did not choose to go to him. It is only after about 10 to 15 minutes I went up to the body and stayed there till the police came. The womenfolk of my family came and sat weeping at the spot, but no other people came there.

From Raibag to Itnal, the distance is about 25 kilometres. My other son Basappa is uneducated. My brother Shrikant is a matriculate. They came to the spot. Our kin were all there. But Sadashiv Dange and his family had not come. It was at about 8-00 P.M. that my brother Shrikanth informed the police about the incident. I did not think about going to the police station on the motor cycle of my brother Shrikanth and of lodging a complaint. It was about 11 P.M. when the police arrived. I had then narrated as to my presence at the place being on account of having come to purchase oil and how I had heard the shots being fired and having recognized the victim as my son and the police had accordingly recorded my complaint and I had signed the same. The police had not recorded any further statement of mine.

It is true that one Yamanappa Kadasali of Sunadoli village has taken the assistance of Sadashiv Dange to cultivate 6 acres of land belonging to him. It is not true that my sons and I were engaged in the said land on a cropsharing basis. No one knows about the whereabouts of Yamanappa. After the disappearance of Yamanappa, the wife of Yamanappa has called upon Dange to hand over possession of the land aforesaid is true. I do not know of any documents evidencing the possession of the land by Dange. Yamanappa's wife is living in Sunadoli village. It is not true that we have denied her claim over the land. It is denied that Dange and I are responsible for Yamanappa's disappearance and it is on this account that his wife has left the village out of fear. Gangappa's wife is from Venkatapura. It is not true that he was ill-treating his wife under the influence of alcohol and had driven her away to her maternal home. But it is true that Gangappa had assaulted his father-in-law and mother-in-law about two years ago and that he and his wife had fallen out and she was

most of the time with her parents.

It is not true that I had not stated in my complaint to the police about Gangappa going towards our lands on Samsuddhi Road or about my going to purchase oil. Similarly, I deny that I have not stated as to Accused No. 2, Chennappa having fired at Gangappa and in trying to flee, having fallen down and thereafter Chennappa having fired two rounds at Gangappa and thereafter having carried him on the motor cycle back to Sangolli Rayanna Circle and having dumped him there and there upon Accused No. 1 taking the revolver from Accused No. 2 and firing thrice at Gangappa. I deny that I had not stated before the Police that the accused brought Gangappa on their motor cycle to the circle and accused No. 1 had shot Gangappa again. I deny that, on the say of my sister Bhagavva that there was a dead body lying at the Sangolli Rayanna Circle, we reached Yellarvatti village at 12 mid night and the Police arrived at the spot around 1.00 P.M. I deny that I had lodged a false complaint, in connivance with my brothers, Sadashiva Dhange and others, in order to implicate the family of Suresh Mutnal. It is false that on the date of the incident I was not present in the village and I had not gone to the shop to bring the lubricating oil and I had not seen the murder of my son by the accused. It is also false that I had lodged a false complaint at the instance of Sadashiva Dhange even though there was no connection between the accused and my son. I deny that I had stayed in the farm house of Sadashiva Dhange for two days and was tutored by him to depose falsely. I deny that on the date of the incident, the accused had not come on MOs. 9 and 10, motor cycles, to the Sangolli Rayanna Circle."

There are a few more such suggestions made, before winding up the cross-examination, which are all denied by the witness.

7. From a plain reading of the evidence by way of examination in chief, coupled with the complaint-there are no glaring inconsistencies. On the other hand, the cross-examination seeking to elicit irrelevant material cannot be cited as diluting the straight forward evidence of the complainant.

There could be no denial of the fact that the victim had been shot in the head and burnt to death in plain view of the general public at a busy junction in broad day light. The complainant, who was said to be an eye witness to the incident having stood the test of cross-examination, cannot be characterized as a got-up witness, merely because he is the father of the deceased victim.

The co-incidence of the complainant being present on the scene cannot be said to be unusual or unlikely-for the incident has occurred in a semi-urban area and a small town. The sequence of events as narrated by the complainant, cannot be dismissed as contrived or false. The fact that several witnesses having been cited as eye witnesses and the said witnesses not having chosen to support the case of the prosecution need not have deterred the trial court in accepting the evidence of the complainant, notwithstanding any minor inconsistencies, even in the absence of corroborating evidence of any other eye witness. There is no bar in

law to arrive at a finding of guilt even on the basis of the evidence of a solitary witness, provided the court justifies such finding from the material on record.

Further, the trial court has found from the evidence of the forensic expert, PW-24, who has deposed to the fact that the bullet which was recovered from the skull of the deceased was found to tally with a test fired bullet from the revolver that was said to have been used, from a comparison of the striation lines on the spent bullets.

The evidence of PW-27, the doctor who performed the autopsy on the body of the deceased Gangappa to also state that a bullet M.O. 13, was recovered from the skull of the deceased and that the bullet wound was an ante-mortem injury and as the body was burnt beyond recognition, the trajectory of the bullet entering the body could not be exactly pinpointed, but it was opined that the burn injuries were post mortem, thereby supporting the case of the prosecution.

In the case on hand, the trial court has disclosed its reasoning and thought process in arriving at a finding of guilt, on the basis of the above evidence, which cannot be faulted.

In the second trial, after the presence of Accused No. 1 was secured, apart from the evidence of the complainant, examined as PW-1, one Hussain Paschapur who was examined as PW-2 at both the trials, and who had flatly denied any knowledge about the incident or the identity of the accused, however, fully corroborated the evidence of the complainant, at the second trial - with an explanation to the effect that he was mortally afraid of retaliation from Accused No. 1 in the event of any candid deposition as to the actual sequence of events and the role of the accused, as at that point of time Accused No. 1 was absconding and had not been taken into custody. Similar was the conduct of PW-3 - Balappa Nagappa Hanagandi (PW-6 earlier) PW-4 Girimala Hanagandi (PW-7 earlier) and PW-5 - Imamsab Paschapur (PW-3 earlier) all of whom now supported the case of the prosecution and corroborated the evidence of the complainant, as eye witnesses.

8. In the above view of the matter, the finding of guilt by the trial court was supported manifold by the testimony of several eye witnesses including the complainant.

Reliance was placed on the decision in Mahadeo and others (supra) by the appellants. In that case, the High Court having placed reliance on the testimony of a sole witness, which was not corroborated, to convict the accused-the apex court had frowned upon the finding, as the witness was one who had not disclosed the incident to any one, for six months. The excuse offered was that the accused had threatened him with dire consequences if he disclosed the incident, which the apex court found to be unacceptable and further it was noticed that the witness had made discrepant statements which were irreconcilable. It was in that circumstance that the said evidence was discarded. This judgment would not support the case of the appellants.

In the case of Shekarappa v. The State of Karnataka, supra, the petitioner was before this court to point out that he was facing trial in a split up case and accused No. 1 to 3, who were facing the same charge as the petitioner, had been acquitted as the witnesses for the prosecution, who were said to be eye witnesses had resiled from their earlier version. It was hence the petitioner's contention that the trial was an exercise in futility as against him if the prosecution should tender the same evidence. It was held by this court as follows:

"Legally speaking, there is no impediment to conduct the trial against him. But the question is whether worth purpose will be served. This is because PW 1 and PW 2 having deposed in favour of accused Nos. 1 to 3 in SC No. 50/2009, may repeat the same version. Even if they change their version and indict the petitioner as the assailant of Shivappa, in such case also, it will be difficult to accept their version, because there will be two versions, one in favour of the prosecution and one in favour of the accused. Besides, if they were to tender such evidence giving version different from what they have already given in SC No. 50/2009, then undoubtedly they will be exposing themselves to perjury because which of the statement is true becomes immaterial. The very fact that there will be two versions will expose them to action.

7. I am sure that the witnesses may not attempt such course. In the result, if the trial is conducted it will be only a formal trial; and the very object of the trial will be lost. Being of this view, I am satisfied that the proceedings, if allowed to culminate in trial, the result will be against the prosecution. Being of this view, to avoid waste of time and money of the State, the best course will be to give quietus to this petition.

8. The petition is allowed."

The circumstances appearing in the above case are not relevant to this case.

Reliance is placed on the following passages from the case of Shivaji Sahabrao Bobade, supra in support of the case of the appellants:

"13. The evidence of Zumber (P.W. 7) is relied upon as that of an eyewitness because he swears to having seen the accused kicking and fisting the deceased. However, his testimony looks tricky and shaky. He had stated in the committal court that he had not seen whether the first accused had a hunter with him and the second accused a knife in his hand. It is also doubtful that a witness who had been declared hostile in the committal court by the prosecution can be so readily accepted at his word. If he had been won over by one party at one stage, as the prosecution seems to suggest, it is difficult to accept his integrity in a grave case of murder when he deposes as an eye-witness. What is more his flagrant contradiction on a crucial point between the committal court and the Sessions Court weakens his veracity, and worse is his conduct when he says that he was able to see the occurrence from an uneven terrain because he went to sow in the field that afternoon although his uncle had died that very day and he had gone

for the funeral The witness admits that he did not ask the accused why they were kicking the man nor did he stop the sowing in the field at least to see what had happened to the victim. Even on his way back when he saw people collected near the dead body, he did not bother to enquire what had happened. To taint his truthfulness he admits that there was a quarrel between the accused's uncle on the one hand and himself and his father on the other. A careful reading of the evidence given by this the place at all that afternoon. We are not able to agree with the easy credence lent by the learned Judges of the High Court to this testimony. In short, there is only a single eyewitness to the occurrence, P.W. 5.

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"19. ....We must observe that even if a witness is not reliable, he need not be false and even if the Police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and un-impeachable evidence making out the guilt of the accused. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between, may be" and "must be" is long and divides vague conjectures from sure conclusions....."

There can be no dispute about the settled principles reiterated above.

Though it is possible, in the circumstances of the case on hand, on the strength of the testimony of the complainant eye witness alone, the peculiar situation where many of the eye witnesses who had not supported the case of the prosecution at the trial of Accused No. 2 to 4, and having been treated as hostile witnesses, however, having decided to support the case of the prosecution in the split up case and subsequent trial against Accused No. 1, could have been permitted to be recorded and relied upon, as the same was irreconcilable with the earlier testimony of those witnesses, is a question that arises for consideration.

It is evident that the case was of a sensational murder committed in full view of the public. In a swift, cold blooded and brutal manner. The several eye witnesses whose reluctant statements may have been recorded by the investigating authorities have developed cold feet at the trial on account of the fact that the main accused was at large and was a man of means capable of certain retaliation, at the relevant point of time, is a factor that explains the conduct of the said witnesses in the first instance. Thereafter, on the conviction of Accused No. 2 to 4 and the subsequent arrest of Accused No. 1, having emboldened the witnesses to testify candidly, cannot be a circumstance that would diminish the credibility of the testimony of the said witnesses, especially since the said evidence consistently corroborated the evidence of the complainant eye witness.

The Supreme Court had, in the case of State of U.P. Vs. Ram Sajivan and Others, , occasion to address a circumstance whereby there were caste related mass murders and a fear psychosis was created by the aggressors and in such a

situation the witnesses having turned hostile was not held to be unnatural. It was observed that the instinct of survival was paramount and that the witnesses could not be faulted for not supporting the prosecution witnesses.

Similarly, the trial court having condoned the conduct of the several eye witnesses who were treated as hostile witnesses, in the circumstances of the present case as stated above, and in proceeding to accept their subsequent testimony contrary to their sworn statements made earlier cannot be termed illegal or unsound. It is certainly in the realm of the discretion of the trial court to address the reality of life and the totally unprotected and exposed state of the eye witnesses who are called upon to depose against cold blooded aggressors. There is no known witness protection programme which comes to the aid of such witnesses.

In the above view of the matter, the appeals lack merit and are dismissed.