

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4<sup>TH</sup> DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA

**CRIMINAL APPEAL NO.118 OF 2021**  
**CONNECTED WITH**  
**CRIMINAL APPEAL NO.53 OF 2021,**  
**CRIMINAL APPEAL NO.54 OF 2021 AND**  
**CRIMINAL APPEAL NO.1068 OF 2020**

**IN CRL.A.118 OF 2021:**

**BETWEEN:**

1. Sri. Rangaswamy @ Ranga  
S/o Ramakrishnappa  
Aged about 31 years  
R/at Rangaswamy Provision Store  
13<sup>th</sup> Cross, Near Mullakatamma Temple  
Mayura Nagara, Andrahalli Main Road  
Peenya 2<sup>nd</sup> Stage  
Bengaluru – 560 058.
2. Sri. R. Shankar  
S/o. Ramaiah  
Aged about 29 years  
R/at No.106, 2<sup>nd</sup> Cross  
1<sup>st</sup> Main, Sanjeevini Nagar  
Hegganahalli, Peenya 2<sup>nd</sup> Stage  
Bengaluru – 560 058.

3. Sri. Raghavendra @ Raghu  
S/o. Jayaram  
Aged about 29 years  
R/at Om Shakthi Temple Road  
Hegganahalli, Peenya 2<sup>nd</sup> Stage  
Bengaluru – 560 058.

...Appellants

(By Sri. B.V. Acharya – Sr. Counsel for  
Sri. Vishnumurthy - Advocate)

**AND:**

State of Karnataka  
By Chamarajpet Police Station  
Rep. by Special Public Prosecutor  
Dr. Ambedkar Veedhi  
Bengaluru -- 560 001.

...Respondent

(By Sri. Ashok N. Naik – Spl. P.P)

This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment and order of conviction orders on sentence dated 28.10.2020 and sentence dated 29.10.2020 passed in S.C.No.428/2013 on the file of the LVII-Addl. City Civil & Session Judge, Bangalore and acquit the appellants who are convicted for offences sentenced Appellants No. 1 to 11 to undergo rigorous imprisonment for two years for the offence punishable under Sections 120(B) r/w 149 of IPC and to pay fine of Rs.2,000/- each and in default of payment of fine further undergo simple imprisonment for three months. Appellants No. 1 to 11 to undergo simple imprisonment for six months for the offence punishable under Sections 143 r/w 149 of IPC and to pay fine of

Rs.2,000/- each, and in default of payment of fine further undergo simple imprisonment for two months, appellants No.1 to 11 to undergo simple imprisonment for one year for the offence punishable under Sections 147 r/w 149 of IPC and to pay fine of Rs.1000/- each and in default of payment of fine further undergo simple imprisonment for one month, appellants No.1 to 11 to undergo simple imprisonment for two years for the offence punishable under Section 148 r/w 149 of IPC and to pay fine of Rs.3,000/- each and in default of payment of fine further undergo simple imprisonment for two months, appellants No.4, 5, 7, 8 & 12 are sentenced to undergo rigorous imprisonment for six months for the offence punishable under Sections 109 r/w 149 of IPC and to pay fine of Rs.3,000/- each, and in default of payment of fine further undergo simple imprisonment for three months, appellant Nos.1, 4, 5, 7, 8, 9 & 11 are sentenced to undergo simple imprisonment for six months for the offence punishable under Sections 150 r/w 149 of IPC and to pay fine of Rs.2,000/- each, and in default of payment of fine further undergo simple imprisonment for one month. The appellant No.3 is sentenced to undergo simple imprisonment for 3 months for the offences punishable under Section 506(B) r/w 149 IPC and to pay fine of Rs.1,000/- and in default of payment of fine further undergo simple imprisonment for 15 days. The appellants No.1 to 12 are sentenced to undergo rigorous imprisonment for life for the offence punishable under Sections 302 r/w 149 of IPC and to pay fine of Rs.25,000/- each and in default of payment of fine further undergo simple imprisonment for six months

**IN CRL.A.53 OF 2021:****BETWEEN:**

1. Sri. Chandra  
S/o. Nataraj  
Aged about 32 years  
R/at Maramma Temple  
Compound, 1<sup>st</sup> Main  
3<sup>rd</sup> Cross, Goripalya  
Bengaluru – 560 018.
2. Shankar @ Gunda  
S/o Late Sunar  
Aged about 32 years  
R/at No.278, 6<sup>th</sup> Cross  
K.P. Agrahara, Nethajinagar  
Bengaluru – 560 018.
3. Sri. Umashankara @ Bhavani  
S/o. Late Ashvathraman  
Aged about 45 years  
R/at NO.206, 1<sup>st</sup> Main  
2<sup>nd</sup> Cross, Binnepet New Layout  
Bengaluru – 560 018.
4. Sri. Velu  
S/o. Late Dhanpal  
Aged about 41 years  
R/at No.111, 3<sup>rd</sup> Cross  
Anandapura, Mysore Road  
Bengaluru – 560 036.
5. Sri. Loganatha  
S/o. Channappa  
Aged about 50 years  
R/at No.17, 2<sup>nd</sup> Main Road

Nanjamba Agrahara  
Chamarajpet  
Bengaluru – 560 018.

6. Sri. Jaheer  
S/o. Rehamathulla  
Aged about 31 years  
R/at No.18/A, “C” Street  
J.J. Nagar  
Bengaluru – 560 026.
7. Sri. Suresh @ Suri @ Surya  
S/o. Venkataramu  
Aged about 29 years  
R/at Hosapete Circle  
Huliyur Durga, Kunigal Taluk  
Tumkur District – 572123.

...Appellants

(By Sri. Ajith Anand Shetty – Advocate for Appellant – 1;  
Sri. Sathyanarayana S. Chalke – Advocate for  
Appellants No.2 to 4;  
Sri. M. Devaraja – Advocate for Appellants No. 5 & 6;  
Sri. Vishnumurthy - Advocate for Appellant No.7)

**AND:**

The State of Karnataka  
By Chamarajapete Police Station  
Rep: by Spl. PP  
Ashok N. Naik  
High Court of Karnataka  
Bangalore – 560 001.

...Respondent

(By Sri. Ashok N. Naik – Spl. PP for Respondent)

This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment of conviction passed by LVIII-Addl. City Civil and Sessions Judge, Bengaluru City, in S.C.No.428/2013 dated 28/10/2020 and 29.10.2020 convicting Appellant Nos. 1 to 11 to undergo rigorous imprisonment for two years for the offence punishable under Sections 120(B) r/w 149 of IPC and to pay fine of Rs.2,000/- and in default of payment of fine further undergo simple imprisonment for three months. Appellant Nos. 1 to 11 to undergo simple imprisonment for six months for the offence punishable under Sections 143 r/w 149 of IPC and to pay fine of Rs.2,000/-, and in default of payment of fine further undergo simple imprisonment for two months, appellants No.1 to 11 to undergo simple imprisonment for one year for the offence punishable under Sections 147 r/w 149 of IPC and to pay fine of Rs.1000/- and in default of payment of fine further undergo simple imprisonment for one month, appellants No.1 to 11 to undergo simple imprisonment for two years for the offence punishable under Section 148 r/w 149 of IPC and to pay fine of Rs.3,000/- and in default of payment of fine further undergo simple imprisonment for two months, appellants No.4, 5, 7, 8 & 12 are sentenced to undergo rigorous imprisonment for six months for the offence punishable under Sections 109 r/w 149 of IPC and to pay fine of Rs.3,000/-, and in default of payment of fine further undergo simple imprisonment for three months, appellant Nos.1, 4, 5, 7, 8, 9 & 11 are sentenced to undergo simple imprisonment for six months for the offence punishable under Sections 150 r/w 149 of IPC and to pay fine of Rs.2,000/-, and in default of payment of fine further undergo simple imprisonment for one month, appellants No.1 to 12 are sentenced to undergo rigorous imprisonment for life for

the offence punishable under Sections 302 r/w 149 of IPC and to pay fine of Rs.25,000/- each and in default of payment of fine further undergo simple imprisonment for six months and acquit him.

**IN CRL.A.54 OF 2021:**

**BETWEEN:**

Sri. C. Govindaraju  
S/o Channappa  
Aged about 50 years  
R/at No.17, 2<sup>nd</sup> Main Raod  
Nanjamba Agrahara  
Chamarajpet  
Bengaluru – 560 018.

...Appellant

(By Sri. C.V. Nagesh – Sr. Counsel for  
Sri. Raghavendra K – Advocate for Appellant)

**AND:**

The State of Karnataka  
By Chamarajapete Police Station  
Rep. by Spl. PP  
Ashok N. Naik  
High Court of Karnataka  
Bangalore – 560 001.

...Respondent

(By Sri. Ashok N. Naik – Spl. PP for Respondent)

This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment of conviction passed by LVIII-Addl. City Civil and Sessions Judge, Bengaluru City, in S.C.No.428/2013 dated 28/10/2020 and 29.10.2020 convicting him to undergo

rigorous imprisonment for two years for the offence punishable under Sections 120(B) r/w 149 of IPC and to pay fine of Rs.2,000/- and in default of payment of fine further undergo simple imprisonment for three months, to undergo simple imprisonment for six months for the offence punishable under Sections 143 r/w 149 of IPC and to pay fine of Rs.2,000/-, and in default of payment of fine further undergo simple imprisonment for two months, to undergo simple imprisonment for one year for the offence punishable under Sections 147 r/w 149 of IPC and to pay fine of Rs.1000/- and in default of payment of fine further undergo simple imprisonment for one month, to undergo simple imprisonment for two years for the offence punishable under Section 148 r/w 149 of IPC and to pay fine of Rs.3,000/- and in default of payment of fine further undergo simple imprisonment for two months, to undergo rigorous imprisonment for six months for the offence punishable under Sections 109 r/w 149 of IPC and to pay fine of Rs.3,000/-, and in default of payment of fine further undergo simple imprisonment for three months, to undergo simple imprisonment for six months for the offence punishable under Sections 150 r/w 149 of IPC and to pay fine of Rs.2,000/-, and in default of payment of fine further undergo simple imprisonment for one month, to undergo rigorous imprisonment for life for the offence punishable under Sections 302 r/w 149 of IPC and to pay fine of Rs.25,000/- and in default of payment of fine further undergo simple imprisonment for six months and acquit him.

**IN CRL.A.1068 OF 2020:**

**BETWEEN:**

Gowramma

W/o C. Govindaraju

Aged about 50 years  
R/at No.17, 2<sup>nd</sup> Main Road  
Nanjamba Agrahara  
Shankar Layout, Chamarajpet  
Bangalore – 560 018  
Ex-Corporater  
Judicial Custody Under going  
Sentence at Central Prison  
Parappana agrahara  
Bangalore.

...Appellant

(By Sri. C.V.Nagesh – Sr. Counsel for  
Sri. Raghavendra K – Advocate for Appellant)

**AND:**

State of Karnataka  
By Chamarajpet Police  
Rep. by SPP  
High Court Building  
Bangalore – 560 001.

...Respondent

(By Sri. Ashok N. Naik – Spl. PP for Respondent)

This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the judgment of conviction dated 28.10.2020 and sentence dated 29.10.2020 passed in S.C.No.428/2013 before the 58<sup>TH</sup> Addl. City Civil and Sessions Judge at Bangalore of Chamarajpet Police Station for the offence punishable under Section 302, 109 r/w 149 of IPC and appellant may be acquitted.

These criminal appeals having been heard and reserved for judgment, coming on for pronouncement this day, **K. SOMASHEKAR .J.**, delivered the following:

### **J U D G M E N T**

All these Criminal Appeals have been filed by the accused / appellant in the respective appeals, seeking to set aside the judgment of conviction rendered by the LVIII Addl. City Civil and Sessions Judge (CCH-59), Bengaluru City, in S.C.No.428/2013 dated 28.10.2020 and to thereby acquit the accused / appellant in the respective appeals of the offences leveled against them. Since all these appeals arising out of the same judgment in S.C.No.428/2013, they are heard together and are disposed of by this common judgment.

2. The appeal in CrI.A.No.118/2021 has been preferred by appellants / Accused Nos.1 to 3 namely, Rangaswamy @ Ranga / Accused No.1, R. Shankar / Accused No.2 and Raghavendra @ Raghu / Accused No.3, challenging the judgment of conviction dated 28.10.2020 and order of sentence dated 29.10.2020

rendered by the Trial Court in S.C.No.428/2013. By the said judgment, the Trial Court has convicted the present appellants / Accused Nos.1 to 3 for offences punishable under Sections 120-B, 143, 147, 148, 302 and read with Section 149 of the IPC. Apart from the same, Accused No.1 has been convicted for offences punishable under Section 150 read with Section 149 of the IPC. Further, Accused No.3 has been convicted also for offences punishable under Section 506-B read with Section 149 of the IPC. They have been sentenced to undergo rigorous imprisonment for two years for the offences punishable under Section 120-B read with Section 149 IPC and to pay a fine of Rs.2,000/- each along with default clause; further to undergo simple imprisonment for six months for the offence punishable under Section 143 read with Section 149 of the IPC and to pay a fine of Rs.2,000/- each along with default clause; further to undergo simple imprisonment for one year for the offence punishable under Section 147 read

with Section 149 of the IPC and to pay a fine of Rs.1,000/- each along with default clause; further to undergo simple imprisonment for two years for the offence punishable under Section 148 read with Section 149 of the IPC and to pay a fine of Rs.3,000/- each with default clause; Accused No.1 was sentenced to undergo simple imprisonment for six months for the offence punishable under Section 150 read with Section 149 of the IPC and to pay a fine of Rs.2,000/- along with default clause; Accused No.3 was sentenced to undergo simple imprisonment for three months for the offence punishable under Section 506-B read with Section 149 IPC and to pay a fine of Rs.1,000/- along with default clause; and Accused Nos.1 to 3 were sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the IPC and to pay a fine of Rs.25,000/- along with default clause. All the sentences of imprisonment were

to run concurrently with a further direction that the entire fine amount was to be remitted to the State.

3. The appeal in CrI.A.No.53/2021 is preferred by appellants / Accused Nos.4, 5, 6, 7, 9, 10 and 11 challenging the judgment of conviction dated 28.10.2020 and order of sentence dated 29.10.2020 rendered by the Trial Court in S.C.No.428/2013. By the said judgment, the Trial Court has convicted all the appellants / Accused Nos.4, 5, 6, 7, 9, 10 and 11 for offences punishable under Sections 120-B, 143, 147, 148, 302 read with Section 149 of the IPC. Apart from these, Accused Nos.4, 5 and 7 were also convicted for offences under Section 109 read with Section 149 IPC and Accused Nos.4, 5, 7, 9 and 11 were further convicted for offences punishable under Section 150 read with Section 149 of the IPC. All the said accused have been sentenced to undergo imprisonment for the aforesaid offences and to pay fine as stated in the

operative portion of the judgment in S.C.No.428/2013 along with default clause. All the sentences of imprisonment were to run concurrently with a further direction that the entire fine amount was to be remitted to the State.

4. The appeal in CrI.A.No.54/2021 pertains to one C. Govindaraju / Accused No.8 challenging the judgment of conviction dated 28.10.2020 and order of sentence dated 29.10.2020 rendered by the Trial Court in S.C.No.428/2013. By the said judgment, the Trial Court has convicted the present appellant / Accused No.8 for offences punishable under Sections 120-B, 143, 147, 148, 150, 302 and 109 read with Section 149 of the IPC. He has been sentenced to undergo rigorous imprisonment for two years for the offences punishable under Section 120-B read with Section 149 IPC and to pay a fine of Rs.2,000/- along with default clause; further to undergo simple imprisonment for six months for the offence punishable under Section 143 read with

Section 149 of the IPC and to pay a fine of Rs.2,000/- along with default clause; further to undergo simple imprisonment for one year for the offence punishable under Section 147 read with Section 149 of the IPC and to pay a fine of Rs.1,000/- along with default clause; further to undergo simple imprisonment for two years for the offence punishable under Section 148 read with Section 149 of the IPC and to pay a fine of Rs.3,000/- with default clause; further to undergo rigorous imprisonment for six months for the offence punishable under Section 109 read with Section 149 of the IPC and to pay a fine of Rs.3,000/- along with default clause; further to undergo simple imprisonment for six months for the offence punishable under Section 150 read with Section 149 of the IPC and to pay a fine of Rs.2,000/- along with default clause; and to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the IPC and to pay a fine of Rs.25,000/- along with default clause. All the

sentences of imprisonment were to run concurrently with a further direction that the entire fine amount was to be remitted to the State.

5. The appeal in CrI.A.No.1068/2020 pertains to one Gowramma, W/o. C. Govindaraju / Accused No.12 challenging the judgment of conviction dated 28.10.2020 and order of sentence dated 29.10.2020 rendered by the Trial Court in S.C.No.428/2013. By the said judgment, the Trial Court has convicted the present appellant / Accused No.12 for offences punishable under Sections 109, 302 read with Section 149 of the IPC. She has been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 109 read with Section 149 of the IPC and to pay a fine of Rs.3,000/- along with default clause; and to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the IPC and to pay a fine of

Rs.25,000/- along with default clause. Both the sentences of imprisonment were to run concurrently with a further direction that the entire fine amount was to be remitted to the State.

6. We have heard the arguments advanced by the learned Senior Counsel Shri C.V. Nagesh who had appeared on behalf of the counsel on record Shri Raghavendra K for appellant in CrI.A.No.54/2021 / Accused No.8 and for the appellant in CrI.A.No.1068/2020 / Accused No.12.

In respect of the appeal in CrI.A.No.53/2021, we have heard the arguments of Sri.Ajith Anand Shetty, learned counsel for appellant No.1 / Accused No.4, Sri.Sathyanarayana S Chalke, learned counsel for appellant Nos.2 to 4 / Accused Nos.5, 6 and 7, Shri M Devaraja, learned counsel for appellant Nos.5 and 6 / Accused Nos.9 and 10 and Sri.Vishnu Murthy, learned counsel for appellant No.7 / Accused No.11.

In respect of the appeal in CrI.A.No.118/2021, we have heard the arguments of the learned Senior Counsel Shri B.V. Acharya who had argued for Sri.Vishnumurthy, the counsel on record for appellant Nos.1 to 3 / Accused Nos.1 to 3.

We have also heard the counter arguments addressed extensively by the learned Spl.PP Sri.Ashok N Naik for the respondent / State in these matters and perused the common judgment of conviction rendered by the Trial Court in S.C.No.428/2013 dated 28.10.2020 inclusive of the evidence of PW-1 to PW-90, Exhibits P1 to P401, Material Objects namely MO-1 to MO-54 inclusive of Exhibits C1 and C2 and Exhibits D1 and D2.

7. The factual matrix of these appeals are as under:

It transpires from the case of the prosecution that as on 20.11.2012, a case in Cr.No.238/2012 was

registered on the complaint filed by one Uma Devi / PW-1, before the Chamarajpet Police as per Exhibit P1. Based upon her complaint, the said case in Cr.No.238/2012 was registered against unknown persons for offences punishable under Section 302 read with Section 34 of the IPC, 1860. In her complaint, the informant Uma Devi had stated that she was residing along with her husband Lingaraju and also her children and her mother at B.M.K Layout, Bengaluru. Lingaraju was doing real estate business. In addition to that, he was also an Editor of a newspaper "Maha Prachanda". On 20.11.2012, at around 6.45 a.m., her husband deceased Lingaraju was drawing water from the public tap near their house and his wife Smt. Uma Devi also went to fetch water from the public tap. In the meanwhile, three unknown persons had come running holding sickles and knife, who are said to have assaulted her husband Lingaraju with the aforesaid weapons. When she tried to rescue her husband from

their clutches, she was also chased by the said unknown persons. When she came back, she found that three persons had assaulted her husband Lingaraju and done him to death. They had fled away from there towards Valmiki Nagar. It is further alleged that she can identify the assailants. Further, she has stated that she suspected the involvement of Govindaraju who is arraigned as Accused No.8 in the murder of her husband as he had a grinding axe against her husband suspecting that Lingaraju was responsible for the raid conducted by the Lokayuktha police on his house. It is further alleged that her husband was also called on his mobile and was threatened, in respect of which she had suspected the role of Govindaraju. Hence, she had sought for initiation of criminal case against the offenders. Based upon her complaint, criminal law was set into motion by registering a case in Cr.No.238/2012 by recording an FIR.

8. Subsequent to registration of the crime, the Investigating Agency had taken up the case for investigation and thoroughly investigated the case and laid a charge-sheet against the accused persons, 12 in number, before the Committal Court wherein 137 witnesses were cited in the charge-sheet.

9. Subsequent to filing of a charge-sheet by the I.O., the Committal Court passed an order under Section 209 of the Cr.P.C. committing the case to the Court of Sessions for trial in respect of the offences punishable under Sections 120B, 109, 143, 147, 148, 150, 506B and 302 read with Section 149 of the IPC, 1860. Thereafter, the Trial Court heard the arguments of the learned Spl. Public Prosecutor and so also the arguments advanced by the learned counsel for the accused and on finding a *prima facie* case against them, framed charges against the accused for the aforesaid offences. However, the accused persons did not plead

guilty but claimed to be tried. Accordingly, plea of the accused were recorded separately.

10. Subsequent to framing of charges against the accused, the prosecution had let in evidence by subjecting to examination PW-1 to PW-90 and got marked several documents at Exhibits P1 to P401 and marked material objects namely MO-1 to MO-54. On the part of the defence side, it got marked Exhibits D1 and D2 and also got marked Exhibits C1 and C2. Subsequent to closure of the evidence on the part of the prosecution, the accused were subjected to examination as contemplated under Section 313 of the Cr.P.C. for enabling them to answer as regards the incriminating evidence appearing against them. But the accused had denied the truth of the evidence of the prosecution witnesses and they did not come forward to adduce any defence evidence as contemplated under Section 233 Cr.P.C. On closure of the entire evidence on the part of the prosecution as well as the defence side, the Trial

Court had heard the arguments advanced by the learned Spl. PP and so also the counter arguments advanced by the learned Defence counsel respectively. The Trial Court on appreciating the evidence of witnesses PW-1 to PW-90 including the documents for the prosecution at Exhibits P1 to P401 including the list of documents at Exhibits C1, C2, D1 and D2 exhibited for the accused and on an examination of the material objects marked namely MO-1 to MO-54, proceeded to convict the accused / appellants and sentenced them to undergo imprisonment for the offences as reflected in the operative portion of the order.

11. PW-1 / Uma Devi, is none other than the wife of the deceased Lingaraju. She had given her statement under Section 164 Cr.P.C. She is also a panch witness to the spot mahazar at Exhibit P2, to the seizure mahazar for seizure of weapons in the spot, panch witness to the seizure of cloths of herself and her son

Karthik and she had also participated in the Test Identification Parade and she is also a panch witness to the photo identification of the accused persons.

12. PW-2 / Karthik is none other than the son of the deceased and PW-1 / Uma Devi. PW-2 is an alleged eye-witness and panch witness to the inquest at Exhibit P-73. He has stated in his evidence that he knew Accused Nos.8 and 12 and heard the news of the death of his father telecasted in many T.V channels.

13. PW-3 / Neeru was working as an Assistant Director, Cyber and Audio Video Forensic Truth Lab. She has stated that the hard disk was received at Truth Lab requesting her to examine the videos in the CCTV, DVR concerning this case and also requesting for facial comparison. Further, an envelope containing 7 photographs of suspected persons and the hard disk was sent to PW-3 by the I.O. being the Dy.SP., Narcotic Drug Cell, CID, Bengaluru. The said PW-3 / Neeru, on

comparing the faces of the persons seen in the video files with the seven photographs of the suspects using morphological and anthropometric analysis, found that 5 faces seen in video were matching with 5 suspects namely Accused Nos.1 to 5.

14. PW-4 / Arun is said to be the eye-witness to the alleged crime. He has stated that he knew Accused Nos.8 and 12.

15. PW-5 / Lokesh and PW-6 / Renuka Aradhya are said to be eye-witnesses to the incident narrated in the complaint at Exhibit P1 who had given their statements as per Exhibits P85 to 87 and 88 to 90 respectively.

16. PW-7 / Prakash had given his statement at Exhibit P92 as regards criminal conspiracy and he has stated that he knew Accused Nos.8 and 12.

17. PW-8 / Arjun being the son of the deceased and PW-1 / Uma Devi had given statement as per Exhibit P12 as regards motive factor.

18. PW-9 / Balakrishna had given statement as per Exhibit P94 as regards motive and seizure of mobile at the instance of Accused No.8 and had identified Accused Nos.8 and 12.

19. PW-10 / Pratap had given his statement as per Exhibit P95 relating to the place of conspiracy.

20. PW-11 / Chandre Gowda had given his statement as per Exhibit P96 and PW-12 / Chikkamadegowda had given his statement as per Exhibit P97 as regards motive factor.

21. PW-13 / Ramesh was working as an In-charge Manager of Bengaluru City Co-operative Bank. He had stated that Accused No.8 / Govindaraju was one of the Directors of the said bank. He has further stated that one Revanna and Hemanth had borrowed Rs.10,00,000/- gold loan each from the said bank. One Lakshminarayana had sanctioned the said loan after pledging 500 grams of gold.

22. PW-14 / Lakshminarayana also has spoken on the same lines as that of PW-13 / Ramesh.

23. PW-15 / Revanna is the brother of Accused No.12. He has stated that Accused No.12 and Accused No.8, himself and his son have borrowed a loan of Rs.10 lakh each for construction of house, by pledging gold weighing 1 kg and 50 grams as security.

24. PW-16 / L. Krishnamurthy is alleged to be the panch witness to the seizure of mobile at the instance of Accused No.12.

25. PW-17 / Lokesh is also a panch witness who has stated about the place of conspiracy i.e., Ranganath Hotel.

26. PW-18 / Nagaraj was an employee on daily wage basis in Gopinatham Mistry Trial Camp who had stated that on 20.11.2012 at about 10.00 p.m., 10 persons had come near the Dormitory in Tata Sumo white colour vehicle and stayed in the dormitory and he gave the room for rent of Rs.400/- each.

27. PW-19 / Soundaraj was also an employee in the said Dormitory who was working as a cook in the said camp. He had stated that 8 male members and 2 female members had come in a Tata Sumo vehicle and stayed in the room and he had given them the room key and went to his house.

28. PW-20 / Sumitra was the Manager of the Bengaluru City Co-operative Bank who had identified the cash bundles which are marked as MO-25 to MO-28.

29. PW-21 / Nagaraj had given his statement to the I.O. as per Exhibit P-112 and stated that he knew Accused Nos.8 and 12.

30. PW-22 / N.K. Lakshman is the Notary who had stated that he knew one Druvakumar Advocate and he had identified the signature of the deceased on the notarized Affidavit of stamp paper of Rs.20/- which is marked as Exhibit P26.

31. PW-23 / Chennakeshava has stated in his evidence that he knew Accused No.8 and that he had undertaken catering work in respect of the marriage of daughter of Accused No.8. PW-23 had stated that he received Rs.15 lakhs as advance for the said catering work and also that Accused No.8 had attended the wedding of his daughter from judicial custody.

32. PW-24 / Shivakumar had also jointly worked along with PW-23 as a contractor of catering work.

33. PW-25 / K. Boraiah is the one who had lodged a complaint as against the deceased Lingaraju. The said PW-25 had stated that he and others were running Power Looms at Bhakthamarkandaiah Layout and Lingaraju was opposing them in this regard, due to which PW-25 had lodged a complaint against Lingaraju.

34. PW-26 / L. Gopal is said to have lodged a complaint before the BBMP against the deceased Lingaraju regarding encroachment of lake.

35. PW-27 / Bomma Linga and PW-28 / Ravi, both had stated that Accused Nos.1 to 4 had concealed their clothes near the dhaba.

36. PW-29 / Chand Pasha had stated in his evidence that appellants / Accused Nos.1 to 3 had purchased six T-shirts, 3 pants and one handkerchief from him.

37. PW-30 / Beluraiah being the driver of the Tata Sumo vehicle bearing No KA-41/3600 and also a panch witness to the seizure of the said Tata sumo vehicle.

38. PW-31 / Syed Ali had stated that he had seen the bloodstained cloths of the appellants who had gone to Hoganaikal Falls along with other co-accused persons.

39. PW-32 / Prasanna is alleged to be the panch witness to the inquest mahazar, spot mahazar, seizure of knife cover, seizure of mobile at the instance of Accused Nos.6 and 7, seizure of another mobile at the instance of Accused Nos.4 and 5 and to the seizure of

bloodstained mud and sample mud in the place of occurrence which are marked as Exhibits P2, P127 to P130 respectively.

40. PW-33 / M. Deepak had given statement as regards seizure of nighty, nikker, auto, two choppers, Rs.15,000/- at the instance of Accused No.7 and a panch witness to the seizure of motorcycle and Rs.1,000/- at the instance of Accused No.6, which are marked as Exhibits P17, P131 and P132.

41. PW-34 / Smt. Laxmi is the mother of Appellant No.3 / Accused No.3 who has given statement that her son, namely Accused No.3 had given her Rs.10,000/- as on 21.11.2012.

42. PW-35 / Manikantan is the son of Accused No.9 had stated that the mobile used by Accused No.9 belonged to him.

43. PW-36 / Uttham Kumar is a panch witness to the spot mahazar at Exhibit P2 and seizure of knife cover.

44. PW-37 / Shiva Prasad is said to be a panch witness to six mahazars namely, seizure of Rs.1,000/- at the instance of Accused No.5, seizure of chopper at the instance of Accused No.3, seizure at the instance of Accused No.2, to the seizure of three shirts at the instance of Accused Nos.1 to 3, to the seizure of Rs.1,25,000/- at the instance of Accused No.4, seizure of two mobiles and Rs.5,000/- at the instance of Accused No.10, which mahazars were marked as Exhibits P147 to P152.

45. PW-38 / Ramesh Y had given his statement as per PW-27.

46. PW-39 / S. Shankar who was a panch witness to the seizure of the Tata Sumo, seizure of Rs.7,000/- at the instance of Accused No.1 marked as Exhibit P156.

47. PW-40 / Keerthi has stated as per the evidence of PW-39 / Shankar.

48. PW-41 / Pavan Kumar is a panch witness to the search of the house of Accused No.8 and panch

witness to the seizure of mobile at the instance of Accused No.1.

49. PW-42 / Saravana is a panch witness to the seizure of two mobiles at the instance of Accused No.12 which is marked at Exhibit P-161.

50. PW-43 / Kondaiah is a panch witness to the Palace Lodge at Ramanagar Town, which mahazar is marked as Exhibit P-163.

51. PW-44 has also spoken on the same lines as of PW-43, who is also said to have turned hostile. PW-45 / Dr. J. Kantharaju of Victoria Hospital has certified the blood group of the deceased to be O+ve.

52. PW-46 / Dr. Pradeep Kumar is the Doctor who had held autopsy on the dead body of Lingaraju and certified few injuries which were found on the dead body of the deceased.

53. PW-47 / Shivaraj is a panch witness to the seizure of mobile in the house of Accused No.8, which mahazar is marked as Exhibit P-159.

54. PW-48 / C.M. Sathish is a panch witness to the seizure of mobile at the instance of Accused No.12, which mahazar is marked as Exhibit P-106.

55. PW-49 / Shiva Kumar @ Kumar is a witness who has spoken in line with the evidence of PW-48.

56. PW-50 / K.R. Ashok is a panch witness to the seizure of marriage invitation to the daughter of Accused Nos.8 and 12 and also a panch witness to the photos of Accused Nos.8 and 9 and a panch witness for receiving mobile number from PW-52 / C. Ramaiah.

57. PW-51 / Venkata Malavaiah is a Junior Engineer of PWD Department who had prepared the spot sketch which is marked as Exhibit P-178.

58. PW-52 / R. Suma is the Taluk Executive Magistrate who has stated that as on 26.12.2012 she received information to conduct the TIP in Cr.No.238/2012 of Chamarajapet P.S. As per the said directions, she is said to have conducted TIP on 07.01.2013 in respect of Rangaswamy, Shankara,

Raghavendra, Chandra, Shankara @ Gunda and Velu. Thereafter, PW-1 and PW-2 were secured and they are said to have identified three accused persons by name Raghavendra, Chandra and Shankara @ Gunda.

59. PW-53 / Malathi is the FSL Scientific Officer who had stated that as on 11.12.2012 she received 15 materials in the laboratory and examined the said materials and had given her report as per Exhibit P-182.

60. PW-54 / Manoj M. Huvale is the Police Inspector and an I.O. in part who is said to have collected the CDRs through e-main in respect of Cr.No.238/2012 of Chamarajpet P.S.

61. PW-55 / Uma Devi is the sister of Accused No.1. The said accused is said to have used the mobile of his sister, namely PW-55.

62. PW-56 / Partha Sarathy is a panch witness to the seizure of mobile said to have been used by Accused No.1.

63. PW-57 / Tarun Kumar is from the Mines and Geology Department who was a panch witness to the Photo Test Identification in respect of Accused Nos.5, 9, 10 and 12.

64. PW-58 / Ganesh is a panch witness to the seizure of mobile said to have been used by Accused No.1, which mahazar is marked as Exhibit P-90.

65. PW-59 / B.S. Siddaraju is a panch witness to the place of conspiracy at Ranganatha Hotel, Mysuru.

66. PW-60 / Bala Sundaram was said to be the owner of the auto rickshaw bearing No.KA-05/AA-2742 who had sold the said autorickshaw to one Dhananjaya and the said Dhananjaya had sold it to one Shivashankar in the year 2013 wherein the Chamarajapete Police seized the said autorickshaw.

67. PW-61 / Sandeep Raj is a panch witness to the seizure of mobile photos taken from the mobile of Ramaiah, the father of Accused No.2.

68. PW-62 / Dilip Kumar is the one who had paid a loan of Rs.50,000/- to buy the autorickshaw.

69. PW-63 / N. Vijay is the owner of Zen car bearing No.KA-04/MA-0224 who had stated that Accused No.4 had taken the said car.

70. PW-64 / Ramesh N.R. is the panch witness to the seizure of mobile belonging to Accused Nos.5, 9 and 12.

71. PW-65 / D. Ramakrishna Rao is the Assistant Revenue Inspector who issued residential certification of Accused No.9.

72. PW-66 / Dhananjay is the Assistant Revenue Inspector who issued residential certificate in respect of Accused No.2.

73. PW-67 / Smt. Uma is the Assistant Revenue Inspector who had given the details of the hotel.

74. PW-68 / Smt. Chandamma is the mother of Accused No.2 who had stated that her son Shankar had called her through mobile.

75. PW-69 / Ashwini, is the Dy.S.P., Lokayuktha who has spoken relating to the Lokayuktha case in respect of Accused Nos.8 and 12.

76. PW-70 / Byrojirao is the Head Constable who has stated that he had carried the FIR to the Court on 20.11.2012.

77. PW-71 / K. Rajesh is the Nodal Officer of Idea Cellular Limited who has stated that he had given the CDR, customer application form and location details of the customers to Manoj N. Huvale, Police Inspector, CID as per his request.

78. PW-72 / S.N. Murthy is the Nodal Officer of Vodafone Company who had stated that as per the requisition given by Shankarpuram Police, he had provided the call details of mobile Nos.9742774249, 9986374834 and 9742867217 through e-mail, as per Exhibit P-240.

79. PW-73 / Stanley is the Nodal Officer of Bharti Airtel who had stated that as on 30.01.2013, the CID

police had given requisition through e-mail to provide call details of mobile numbers namely 9008687866, 9632933599, 9738606022, 9972133896, 9980046187, 9591717159 and 9945850261 and customers' application forms. Accordingly, PW-73 is said to have provided all the details as per Exhibit P-248.

80. PW-74 / Rathnakar Nayak is a Nodal Officer of BSNL Company who has stated that as on 28.01.2013, Police Inspector, CID had given requisition letter to provide the call details of mobile no.9449815395 for the period 01.08.2012 to 21.01.2013 and customer application form. Accordingly, he is said to have provided all the details as per Exhibit P-238.

81. PW-75 / Nagarajaiah is a panch witness to name boards and photographer who took photos of place of occurrence, knife, knife cover.

82. PW-76 / Gopalakrishna is the Head Constable who has stated that as on 02.12.2012 he had arrested

Jaheer and produced before the I.O. along with his report as per Exhibit P-296.

83. PW-77 / Muniraju is the Head Constable who took the dead body from the place of occurrence to Victoria Hospital and after the postmortem, he had handed over the dead body to the brother of the deceased.

84. PW-78 / Eshwarappa had brought the post-mortem report and cloths of the deceased from Victoria Hospital and had given it to the I.O.

85. PW-79 / Balappa Nasannavar is the Police Constable who brought the CD from T.V. channel office and had given it to the I.O.

86. PW-80 / Venkateshappa is the Police Inspector who, on 20.11.2012 at about 8.00 a.m. had gone to the place of incident as per the instructions of Inspector Shivamallaiah. Police Inspector took shara on the complaint given by Smt. Uma Devi and instructed PW-80 to register the case. Accordingly, PW-80 went to the

Police Station and had registered the case in Cr.No.238/2012 as per Exhibit P1. The FIR is marked as Exhibit P-300. He had visited Ramanagara Palace Lodge along with Accused No.10 and had drawn the mahazar which is marked as Exhibit P-163. He also went to Gopinatham Mistry Trial Camp along with Accused No.10 where Accused No.10 had showed the place where they stayed there on 20.11.2012 and thereafter, PW-80 recorded the statements of Nagaraju, Assistant Manager of Mistry Trial Camp of Soundara Raju, care taker of the said camp. On 12.12.2012, he took Y.S. Adinarayana, CCTV Technician and his staff visited Ramanagara Palace Lodge and secured panchas and saw the CCTV clipping and as on 19.11.2012 he saw the footage of Accused Nos.1 to 6 entering the lodge and collected the hard disk in respect of CCTV and DVR from the technician.

87. PW-81 / Shivamalavaiah, Police Inspector had stated that on receiving the information of death, he

visited the place at 7.15 a.m. wherein the police staff were there and on seeing the dead body, he had collected the complaint from PW-1 / Uma Devi. PW-81 had secured dog squad, fingerprint experts and handed over the complaint to the Police Inspector and directed him to register the case. He had recorded statement of witnesses, drawn the inquest mahazar, seized the dragger cover at the place of occurrence and sent the dead body to Victoria Hospital. Further, he had taken photos on the spot, had prepared the sketch, recorded the statements of eye-witnesses, on the same day received the bloodstained clothes of the deceased, wife and his son Karthik and seized the same. He had arrested Accused Nos.6 and 7 and seized two mobiles from Accused No.7 and one mobile from Accused No.6. Further, he arrested Accused No.8 on 22.11.2012 and recorded the voluntary statement of Accused No.8. Further, he arrested Accused Nos.1 to 5, seized mobiles. Further, on 24.11.2012 on the basis of the voluntary

statement of Accused No.7, he seized the auto-rickshaw and recovered Rs.7,000/- from the house of Accused No.7. Further, he recorded the voluntary statement of Accused No.6 and seized the two-wheeler Honda bearing No.KA-01/ER-6249. Further, PW-81 had recorded the voluntary statement of Accused Nos.1 to 8 and they had shown the bloodstained cloths. On 24.11.2012 he further recorded the voluntary statement of Accused Nos.2 to 4 and seized Zen car at the instance of Accused No.4 and some cash. On 25.11.2013, he took Accused No.3 and seized a chopper produced by Accused No.3. At the instance of Accused No.2, PW-81 further seized one chopper and a shirt. Further, he went along with Accused No.5 to his house and seized Rs.1,00,000/- from his house. After investigating the case, PW-81 / Shivamalavaiah filed the charge sheet against Accused Nos.1 to 7 for offences punishable under Sections 109, 120B, 143, 147, 148, 150, 302, 506-B read with Section 149 of the IPC.

88. PW-82 / Narsaiah, Manager of Palace Lodge of Ramanagara had stated that 7 persons had come to their lodge from Bengaluru in a white Zen car at about 2.30 p.m. and they booked room nos.16 and 17 and stayed therein.

89. PW-83 / Ramaiah is said to be the supplier in the said Palace Lodge, Ramanagara who has stated that he had supplied drinks and non-vegetarian food to the occupants of the room nos.16 and 17.

90. PW-84 / S. Adinarayana is the CCTV Servicing Technician who has stated that about 7 to 8 years back, the Chamarajapet Police had taken him to Ramanagara Palace Lodge and on instructions of the police, he had opened the DVR and removed its hard disk and had handed over the same to the police.

91. PW-85 / Umesh is a panch witness to the seizure of hard disk at Palace Lodge, Ramanagara.

92. PW-86 / Shivanna is the room boy of Palace Lodge, Ramanagara.

93. PW-87 / Druvakumar is the one who had identified the signatures of the deceased Lingaraju in an affidavit and also stated that there was a rivalry between deceased and Accused No.8.

94. PW-88 / G.C. Manjunath, is the Police Inspector in CID Office and is an I.O. in part. He has stated that on 08.02.2013, PW-90 K. Tilak Chandra issued a memo to conduct photo identification parade of appellants and others and sent the photographs of five accused persons with a covering letter containing 30 photographs.

95. PW-89 / Srikanth was working as a Technical Head in TV9 Private Limited who had stated that about 6 to 7 years back, their channel had telecasted a program called "Yuddha Kanda". It is stated that there was sting operation conducted by their channel with regard to the murder of Lingaraju.

96. PW-90 / K. Tilak Chandra is also an I.O. in part who was appointed as I.O. in the Special

Investigating Team as on 18.12.2012, after 28 days from the date of the crime. Major portion of the investigation was over even prior to his arrival in Cr.No.238/2012. He had sent requisition to the Jurisdictional Magistrate to record the statements of PW-1 and PW-2 under Section 164 of the Cr.P.C. Further, on 27.12.2012 he had sent a requisition of the Medical Officer of Victoria Hospital to examine the weapons and give an opinion. On 29.12.2012, he wrote a letter to the Director of Truth Lab, Bengaluru to examine the hard disk said to have been seized at Palace Lodge, Ramanagara. He had collected the revenue documents in respect of Ranganatha Hotel to know the name of the owner. These are all the evidence let in by the prosecution to prove the guilt against the accused whereby the Trial Court had appreciated the evidence of those witnesses in respect of the role of each one of the accused and arrived at a conclusion that the prosecution has proved the guilt against the accused relating to the motive

factor, conspiratorial meetings to do away with the life of deceased Lingappa who is none other than the husband of PW-1 / Uma Devi. Though several witnesses were subjected to examination, the prosecution witnesses have turned hostile. But the Trial Court has given more credentiality to the evidence of those witnesses and considered certain portions and had arrived at a conclusion that the prosecution has proved the guilt of the accused persons relating to the offences reflected in the operative portion of the order in S.C.No.428/2013. It is this common judgment which is under challenge in these appeals by urging various grounds.

97. Learned Senior Counsel Shri B.V. Acharya for Accused Nos.1 to 3 / appellants in CrI.A.No.118/2021 has contended that PW-1 / Uma Devi is the complainant who had filed her complaint as per Exhibit P1. She being an eye-witness to the incident narrated in her complaint, had given a statement under Section

164 of the Cr.P.C. before the Magistrate having jurisdiction to deal the matters. It is further contended that PW-1 / Uma Devi is the panch witness relating to drawing of the spot mahazar and so also a panch witness to the seizure of weapons which were found in the scene of crime and a panch witness to the seizure of cloths of herself and her son Karthik. PW-1 and PW-2 had participated in the Test Identification Parade and is also a panch witness to the photo identification of accused persons who are said to have committed the murder of her husband namely deceased Lingaraju who was an RTI Activist and also an Editor of "Mahaprachanda" newspaper. But before he became an Editor of "Mahaprachanda" local newspaper, he was working as a 'D' Group employee in Canara Bank. However, he resigned from his services as 'D' Group employee of Bank and then he was an RTI Activist and press reporter so also Editor of "Mahaprachanda" local newspaper. This is the nutshell in her evidence. But in

the cross-examination, she has given a go-by to the versions. Otherwise to say, she has given a go-by to the contents of the complaint at Exhibit P1 and so also the contents in her statements made under the relevant provisions of Section 164 of the Cr.P.C. in addition to the contents of the seizure mahazar said to be conducted by the I.O. during the course of investigation. Apart from that, she has stated that she had not identified any of the accused before the Court. Even she has stated that she did not participate in the TIP conducted by the responsible Taluk Executive Magistrate and that she has not seen the appellants / Accused Nos.1 to 3 in the place of occurrence or elsewhere. Therefore, her evidence has no legal sanctity or value under the relevant provisions of the Indian Evidence Act relating to appreciation of evidence to prove the guilt against the accused which is an important domain vested with the prosecution to prove

the guilt of the accused as regards the charges framed against the accused persons by the Trial Court.

98. Learned counsel Sri Vishnumurthy for Accused Nos.1 to 3 has submitted synopsis and also taken contentions by referring to the evidence of each one of the witness and so also the role of accused. It is contended that the incident took place on 20.11.2012 at about 6.45 a.m. to 7 a.m. Thereafter, PW.81 – I.O visited the spot around 7.15 a.m. and the case was registered by PSI – PW.80 around 8.10 a.m. in Crime No.238/2012 on the basis of complaint at Ex.P1 lodged by PW.1 at the spot for offence under Section 302 r/w 34 of IPC against three unknown persons and Govindaraju as per Ex.P.300. The inquest was held 9.45 a.m to 12.15 p.m. as per Ex.P.12 by PW.81. The spot mahazar as per Ex.P2 was dawn on 20.11.2012 in the presence of PWs.1 and 32 but they have not supported the case of the prosecution. Near the dead

body, handle of dragger was found and seized in PF No.144/2012. The case of the prosecution is based on the following circumstances:

- Eye witness
- Seizure of mobile phones and SIM cards
- Seizure of cash and blood stained cloths
- Statement of PW.1 and 2 u/s 164 of Cr.P.C.
- Test identification parade
- Photo identification parade
- CCTV footage
- Visiting and staying in Mistri trial camp, Gopinatham village.
- Blood stains in the clothes
- Conspiracy and motive

99. As regards eye witnesses PW.1 – Umadevi, PW.2 – Karthick, PW.4 – Arun Kumar, PW.5 – S.G.Lokesh, PW.6 – Renukaradhya were examined on the part of prosecution but they did not support the case of prosecution. Further,

it is contended that whatever the mobile phones and sim cards seized by the police in respect of these appellants does not belong to them as the same does not stand in their names. There is no evidence placed by the prosecution to show that these accused persons had used the said mobile phones or SIM cards. Mere call details are not sufficient to establish that they conspired each other for committal of the offence unless there is specific conversation between them and there is no evidence for the same.

100. It is the further contention of learned counsel that a sum of Rs.7,000/- was seized from accused No.1. The voluntary statement of accused No.1 was recorded on 22.11.2012 as per Ex.P315, on 25.11.2012 as per Mahazar Ex.P.149, MO.33 - full arm shirt was seized in the presence of PW.37 and 38, but they did not support the case of the prosecution. Further, the statement of accused No.1 was recorded and seized Rs.7,000/- as per MO.51

under Ex.P156 in the presence of PWs.39 and 40. But they did not support the case of prosecution.

101. Accused No.2 was arrested on 22.11.2012 and his voluntary statement was recorded as per Ex.P314 and on 25.11.2012, one chopper – MO.29 and white colored full arm shirt – MO.32 were seized under mahazar Ex.P148 in the presence of PWs.37 and 38 but however, they did not support the case of prosecution.

102. Accused No.3 was arrested on 22.11.2012 and his voluntary was recorded as per Ex.P313 and on 25.11.2012 seized one chopper – MO.30 and one grey colored full arm shirt – MO.31 was seized under the mahazar Ex.P147 in the presence of PWs.37 and 38. But however, they did not support the case of the prosecution.

103. It is further contended that there is no incriminating evidence appearing against these appellants / Accused Nos.1 to 3. But based upon the evidence facilitated by the prosecution and even though

there was no cogent evidence rendered by the prosecution to prove the guilt against the accused, the Trial Court rendered a conviction judgment relating to these accused Nos.1, 2 and 3. The Trial Court has committed a grave error in observing that nothing is elicited in the cross-examination and there is no incriminating evidence appearing against these accused persons though they stood for cross-examination. Nothing but the precious time of the Court has been taken away by recording the examination-in-chief even though this witness has given a go-by to the statements given by her under Section 164 Cr.P.C and the complaint at Exhibit P1 given by her relating to the death of her husband Lingaraju.

104. PW-2 / Karthik who is the son of the deceased Lingaraju was also the son of PW-1 / Uma Devi wherein he is also an eye-witness to the incident and so also is a panch witness to the inquest mahazar held over the dead body at Exhibit P73. He has stated

in his evidence that he knew Accused No.8 / C. Govindaraju and Accused No.12 / Gowramna who was the Corporator in the particular ward and that he also heard the news of the death of his father Lingaraju being telecasted in many TV channels. But he has stated nothing in his evidence about Accused Nos.1, 2 and 3 who are appellants in this appeal. No incriminating evidence or circumstantial evidence has been stated against these accused persons. Therefore, it is not warranted to dwell in detail about the evidence of this witness PW-2 / Karthik who is the son of the deceased Lingaraju.

105. It is further contended that the Trial Court has committed a grave error in relying upon the evidence of PW-3 / Neeru by avocation as an Assistant Director, Cyber and Audio Forensic Truth Lab. She has stated in her evidence on the part of the prosecution that the hard disk was received as on 02.01.2013 at Truth Lab requesting her to examine the videos in the

CCTV, DVR concerning the case and requesting for facial comparison. The same was sent by the I.O. namely Dy.S.P. Narcotic Drug Cell, CID, Bengaluru. On comparing the faces using morphological and anthropometric analysis, she found that 5 images seen in the video were matching with 5 suspects namely Accused Nos.1 to 5. However, in her cross-examination, she has stated that she is not competent to declare herself as an expert to analyze and give evidence on digital documents under the IT Act and further she has also admitted that with the help of video editing technology, currently available professional can easily remove any object from a video sequence and insert an object from a different video source or even insert an object created by computer graphic software. Further she has stated that she cannot say the authenticity of the video recordings whether they were edited or unedited since the hard disk was not wrapped in an antistatic cover. Therefore, she has stated that the

chances of the same getting infected cannot be ruled out. It is hence contended that the evidence of PW-3 is also not reliable and acceptable and therefore, requires to be rejected *in toto*.

106. It is further contended that PW-4 / Arun has also not supported the case of the prosecution and has denied his statement given before the police as per Exhibit P-84. Further, PW-5 / Lokesh and PW-6 / Renuka Aradhya being eye-witnesses to the occurrence, have denied the statements given by them as per Exhibits P85 to 87 and 88 to 90 and have turned hostile to the case of the prosecution. Hence, it is contended that their evidence does not support the case of the prosecution.

107. Further, PW-7 / Prakash has denied the statements made by him as per Exhibit P92 and hence his evidence is also not helpful to the case of the prosecution. PW-8 / Arjun is the son of deceased and PW-1. He has denied the statement made by him as per

Exhibit P-12 and has turned hostile to the case of the prosecution. Further, PW-9 / Balakrishna who had given his statement as per Exhibit P94, has denied the same and has resiled from his statements and has not supported the case of the prosecution except identifying Accused Nos.8 and 12.

108. PW-10 / Pratap who was supposed to speak about the place of conspiracy has not stated anything about the same and has turned hostile to his statements. Hence, it is contended that his evidence is also of no use to the case of the prosecution. PW-11 / Chandre Gowda and PW-12 / Chikkamadegowda have also denied their statements made as regards motive factor and have turned hostile to the case of the prosecution.

109. It is further contended that the learned Sessions Judge had committed a grave error in relying upon the evidence of PW-13 / Ramesh who was working as an in-charge Manager of the Bangalore City Co-

operative Bank. Though he had stated that Accused No.8 / Govindaraju was one of the Directors of the Bank, he has not produced any incriminating evidence against the appellants / accused in order to convict them. Hence, his evidence is also of no use to the case of the prosecution.

110. Evidence of PW-14 / Lakshminarayana as well as the evidence of PW-13 / Ramesh which are on the same lines, are also in no way useful to the case of the prosecution. Further, the evidence of PW-15 / Revanna being the brother of Accused No.12 is also in no way helpful to the case of the prosecution. PW-16 / L. Krishnamurthy, a panch witness to the seizure of mobile at the instance of Accused No.12 has denied the same. Further, PW-17 / Lokesh being a panch witness to the place of conspiracy in Ranganath Hotel has also turned hostile to the same. Hence, it is contended that their evidence also do not support the case of the prosecution.

111. It is further contended that the learned Sessions Judge had committed a grave error in relying upon the evidence of PW-18 / Nagaraj, a daily wages employee in Gopinatham Mistry Trial Camp. Though he had stated that on 20.11.2012 at about 10 p.m., 10 persons had come to the Dormitory in a Tata Sumo white colour vehicle and stayed in the same for a rent of Rs.400/- for each room, he has identified only Accused No.10 / Jaheer and has not identified the appellants 1 to 3 and hence, his evidence also does not aid the case of the prosecution.

112. PW-19 / Soundaraj, also an employee in the said Dormitory who was working as a cook in the said camp though had stated that 8 male members and 2 female members came in a Tata Sumo and stayed in the room, he identified only Raghavendra / Accused No.3. However, PW-19 was not subjected to TIP and also there is an inordinate delay in recording his statement and there is no document on record to show that Accused

No.3 had in fact stayed in the said dormitory. Therefore, it is contended that the evidence of the said witness is not helpful to the case of the prosecution.

113. PW-20 / Sumitra, Manager of Bangalore City Co-op Bank though had identified cash bundles marked as MO-25 to 28, there is no incriminating evidence brought on record to prove the charges leveled against the appellants. PW-21 / Nagaraj who had stated in his evidence that he knew Accused Nos.8 and 12, has admitted that he had not given any statement to the I.O. as per Exhibit P-112 and has turned hostile to his statements.

114. Further, PW-22 / N.K. Lakshman, Notary has stated that he knew Druvakumar, Advocate and though he had identified the signature of the deceased on the notarized Affidavit which is marked as Exhibit P26, however, there is no iota of evidence against the appellants.

115. Though PW-23 / Chennakeshava has stated that he knew Accused No.8 in view of the fact that he had undertaken catering work in respect of the marriage of the daughter of Accused No.8 and further that Accused No.8 attended the marriage of daughter from judicial custody, however, no incriminating evidence is found against the appellants in order to convict the accused persons. PW-24 / Shivakumar who had also worked jointly with PW-23 as a contractor of catering work, has also turned hostile and has not supported the case of the prosecution.

116. PW-25 / K. Boraiah who lodged the complaint against the deceased Lingaraju, has stated that he and others were running Power Looms at Bhakthamarkandaiah Layout and deceased Lingaraju was a quarrelsome man and many cases were pending against him and chances of somebody committing his murder, cannot be ruled out. It is contended that the

Trial Court has committed a grave error in not relying on his evidence while convicting the accused persons.

117. PW-26 / L. Gopal had lodged a complaint before the BBMP against the deceased regarding encroachment of lake. He has stated that Accused Nos.8 and 12 had advised the deceased not to quarrel with each other. In his cross-examination, PW-26 has admitted that deceased Lingaraju had lodged a false complaint against power loom owners and has stated that he was torturing the neighbours in that area, which showed that there was a prior enmity between the deceased and others. It also revealed that deceased had many enemies in and around the society. However, the said evidence of PW-26 has not been properly appreciated by the Trial Court while convicting the accused persons.

118. PW-27 / Bomma Linga who had stated in his examination-in-chief that Accused Nos.1 to 4 had concealed their clothes near the dhaba, in the cross-

examination has turned hostile to his statement. Further, PW-28 / Ravi who has spoken on the same lines as of PW-27, has also turned hostile to his statement. PW-29 / Chand Pasha who had stated that accused nos.1 to 3 had purchased six T-shirts, 3 pants and one kerchief from him, has also turned hostile and has not supported the case of the prosecution. PW-30 / Beluraiah being the driver of Tata Sumo vehicle bearing No.Ka-41/3600 and a panch witness to the seizure of the said vehicle, has also turned hostile. Further, PW-31 / Syed Ali who had stated that he saw the bloodstained cloths of accused nos.1 to 3 and that he went along with other co-accused persons to Hoganaikal falls, has also denied his statements and has turned hostile to the case of the prosecution.

119. PW-32 / Prasanna, a panch witness to the inquest mahazar, spot mahazar, seizure of knife cover, seizure of mobile at the instance of Accused Nos.6 and 7 and panch witness to the seizure of mobile at the

instance of Accused Nos.4 and 5 and panch witness to the seizure of bloodstained mud and sample mud in the place of occurrence which were marked as Exhibits P2, P127 to P130, has also turned hostile. Hence, his evidence is also of no use to the case of the prosecution.

120. PW-33 / M. Deepak who had spoken about the seizure of nighty, nikker, auto, two choppers, Rs.15,000/- at the instance of Accused No.7 and panch witness to the seizure of motorcycle and Rs.1,000/- at the instance of Accused No.6 which were marked as Exhibits P17, 131 and 132, has also denied his statements and has turned hostile to the case of the prosecution.

121. PW-34 / Smt. Laxmi, mother of Accused No.3 who when subjected to examination had stated that accused No.3 gave her Rs.10,000/- as on 21.11.2012, has also turned hostile to her statement and has denied that she has given any statement to the I.O.

122. PW-35 / Manikantan, son of Accused No.9 who had stated that the mobile used by Accused No.9 actually belonged to him, has also turned around and has denied his statement. PW-36 / Utthan Kumar, a panch witness to the spot mahazar at Exhibit P2 and seizure of knife cover has also denied the same and has turned hostile to the case of the prosecution. PW-37 / Shiva Prasad, a panch witness to six mahazars namely seizure of Rs.1,000/- at the instance of Accused No.5, panch witness to seizure of chopper at the instance of Accused No.3, panch witness to the seizure at the instance of Accused No.2, panch witness to the seizure of three shirts at the instance of accused nos.1 to 3, panch witness to the seizure of Rs.1,25,000/- at the instance of Accused No.4 and panch witness to the seizure of two mobiles and Rs.5,000/- at the instance of Accused No.10 which mahazars are marked as Exhibits P-147 to 152, has also turned hostile to the case of the prosecution.

123. PW-38 / Ramesh Y who has also spoken as per PW-27 has also turned hostile to his statements. PW-39 / S. Shankar, a panch witness of the seizure of Tata Sumo, seizure of Rs.7,000/- at the instance of accused No.1 as per Exhibit P-156, has also turned hostile to the case of the prosecution. Further, PW-40 / Keerthi who had given evidence on the same lines as per PW-39 has also turned hostile to the case of the prosecution.

124. It is further contended that PW-41 / Pavan Kumar being a panch witness to the search of the house of Accused No.8 and punch witness to the seizure of mobile at the instance of Accused No.1. PW-42/ Saravana is alleged to be a panch witness to the seizure of two mobiles at the instance of Accused No.12 which is marked as Exhibit P-161. PW-43 / Kondaiyah is a panch witness to the Palace Lodge at Ramanagara Town, which mahazar is marked as Exhibit P-143. PW-44 also has spoken on the same lines as of PW-43. However, it is

contended that the evidence of the above witnesses namely PW-41 to PW-44 is in no way helpful to the case of the prosecution.

125. It is further contended that the Trial Court has committed a grave error in relying upon the evidence of PW-45 / Dr. J. Kantharaju, Victoria Hospital, who has certified the blood group of the deceased to be O+ve, which is in no way helpful to the case of the prosecution, since the appellants are not at all disputing the homicidal death of Lingaraju. PW-46 / Dr. Pradeep Kumar is the Doctor who conducted autopsy over the dead body of Lingaraju. However, the evidence of this witness regarding injuries is inconsistent with the weapons said to be seized by the I.O. Hence, it is contended that the evidence of PW-46 requires to be rejected, in toto.

126. PW-47 / Shivaraj though a panch witness to the seizure of mobile in the house of Accused No.8 namely Exhibit P-159, he has turned hostile to the said

seizure. PW-48 / C.M. Sathish though a panch witness to the seizure of mobile at the instance of Accused No.12 namely Exhibit P-106, he has turned hostile to the said seizure. PW-48 who has spoken on the same lines of PW-48 as well, has turned hostile to his statements. Hence, it is contended that the evidence of these witnesses is in no way helpful to prove the charges leveled against the appellants. PW-49 / Shiva Kumar @ Kumar who has spoken on the same lines as of PW-48 has also turned hostile to the case of the prosecution. Hence, it is contended that the evidence of these witnesses is in no way helpful to the case of the prosecution to prove the charges leveled against the appellants.

127. PW-50 K.R. Ashok, is a panch witness to the seizure of marriage invitation of the daughter of Accused Nos.8 and 12, panch witness to photos of Accused Nos.8 and 9, and panch witness for receiving the mobile number from PW-52 / C. Ramaiah. However, there is

no incriminating evidence against the accused in order to convict them. PW-51 / Venkata Malavaiah is the Junior Engineer of the PWD Department who prepared the spot sketch which is marked as Exhibit P-178. However, he has not shown the places of the alleged eye-witnesses and also the place where the knife and knife cover was found in the place of occurrence. Hence, his evidence also does not help the case of the prosecution to prove the guilt of the accused.

128. It is further contended that the learned Sessions Judge has committed a grave error in relying upon the evidence of PW-52 / R. Suma who is a Taluk Executive Magistrate who has stated that on 26.12.2012 she received the information to conduct the TIP in Cr.No.238/2012 of Chamarajpet P.S. Accordingly, she is said to have conducted TIP on 07.01.2013 in respect of Rangaswamy, Shankara, Raghavendra, Chandra, Shankara @ Gunda and Velu. Thereafter, witnesses PW-1 / Umadevi and PW-2 / Karthik were secured and

they are said to have identified three accused persons namely Raghavendra, Chandra and Shankara @ Gunda. However, it is contended that there is an inordinate delay in conducting the TIP. It is stated that prior to the TIP, the accused persons were produced before the Court without putting face mask and also their photos were displayed in newspapers and also in television. Therefore, it is contended that there is no legal sanctity or value attached to the TIP and hence the evidence of this witness is required to be rejected *in toto*.

129. It is further contended that the Trial Court has committed a grave error in relying upon the evidence of PW-53 / Malathi who is the FSL Scientific Officer. She has deposed that as on 11.12.2012, she received 15 materials in the laboratory and examined the said materials. She has given her opinion as follows:

- 1) Presence of blood detected in Article Nos.1, 2, 5 to 15.

- 2) Presence of blood not detected in Article Nos.4 and 3.
- 3) Blood clots in Item 3 was disintegrated and hence their origin could not be determined.
- 4) Items 1, 2, 5 to 15 were stained with human blood.
- 5) Items 1, 5 to 15 were stained with "O" blood group. The blood grouping of the blood stains in item 2 would not be determined as the results of the tests were inconclusive.

After examination of the materials 1 to 15, they were packed and sealed in the laboratory and were sent to the police station. In this regard, she has given the report which is marked as Exhibit P-182. Those material objects include knives, chopper, nighty, bloodstained mud, sample mud, underwear, grey colour shirt, white colour shirt, checks shirts, white shirt. In

her cross-examination, she has admitted that she has not given the blood group which is said to have been found on material objects. It is contended that since the other witnesses have not supported the case of the prosecution, there is no legal value attached to the evidence of the said witness PW-53.

130. PW-54 / Manoj M. Huvale is the Police Inspector who is the I.O. in part who is said to have collected the CDRs through e-mail in respect of Crime No.238/2012 of Chamarajpet P.S. It pertained to different companies. It is elicited from the cross-examination that the I.O. has given the mobile numbers of accused persons but he did not know whether the I.O. had recorded the voluntary statements of the appellants / accused. Further, it is stated that he had not enquired in whose name the mobiles stood. PW-54 has admitted that none of the mobiles stood in the name of these appellants / accused. Any document has not been produced as regards the owner of the mobile, the

user of the mobile and place of tower is also not mentioned. PW-54 has also not obtained the external and internal flash memory cards and he also did not know the source of these CDRs. Hence, it is contended that the evidence of this witness does not disclose any incriminating evidence against these appellants and hence it is required to be discarded.

131. PW-55 / Uma Devi is said to be the sister of Accused No.1 who had stated that Accused No.1 was using her mobile. However, in her cross-examination, she has denied the same and has turned hostile. PW-56 / Partha Sarathy is a panch witness to the seizure of mobile said to be used by Appellant No.1. This witness has also not supported the case of the prosecution. Hence, it is contended that the evidence of these witnesses is in no way helpful to prove the charges against the accused persons.

132. PW-57 / Tarun Kumar is a witness from the Mines and Geology Department. He is said to be a

panch witness to the Photo Test Identification in respect of Accused Nos.5, 9, 10 and 12. He has admitted in his examination that he had not applied leave to the office at the time of drawing the mahazar and also had not obtained permission from his higher officers. He has further admitted that prior to TIP, photos of the accused persons were displayed in newspapers, televisions and also the accused were produced before the Court without wearing face mask. It is therefore contended that the photo TIP has no legal significance for consideration in this matter.

133. PW-58 / Ganesh though was a panch witness to the seizure mahazar at Exhibit P-90 in respect of seizure of mobile used by Accused No.1, he has turned hostile to the said seizure and hence his evidence also does not help the case of the prosecution.

134. It is further contended that PW-59 / B.S. Siddaraju, a panch witness to the place of conspiracy at Ranganatha Hotel Mysore, has also resiled from the

contents of the mahazar. Further, the evidence of PW-60 / Bala Sundaram who was the ex-owner of the autorickshaw No.KA-05/AA-2742 is to the effect that he sold the said autorickshaw to one Shivashankar in the year 2013 and thereafter Chamarajpet Police had seized the said auto. However, though he had signed and given the documents to change the ownership of the vehicle, the person who had purchased had not changed the ownership of the autorickshaw to their name. Hence, he was secured by the CID Police and he had identified the auto permit. However, his evidence is also in no way helpful to the case of the prosecution.

135. PW-61 / Sandeep Raj is a panch witness to the seizure of mobile photos at Exhibit P-186 taken from the mobile of Ramaiah, the father of Accused No.2. In his cross-examination, PW-60 has stated he working in Drugs Control office and that the police used to summon him frequently to act as a panch witness in several cases and that he is a stock witness to the

police. Hence, it is contended that his evidence also would be of no significance to prove the guilt of the accused.

136. PW-62 / Dilip Kumar has deposed to the effect that he had provided a loan of Rs.50,000/- to buy the autorickshaw bearing No.KA-05/AA-2742, but that he did not know who was the owner of the said vehicle and further that he had not seen any of the accused persons in Court prior to giving evidence. Thus, it is contended that his evidence would also not be helpful to prove the guilt of the accused.

137. PW-63 / N. Vijay, being the owner of the Zen car bearing No.KA-04/MA-0224 had given statement to the effect that Accused No.4 had taken the said car from him. However, he has denied the same in the cross-examination and has turned hostile to the case of the prosecution. Further, PW-64 / Ramesh N.R. who was the panch witness to the seizure of mobiles belonging to Accused Nos.5, 9 and 12 has also not provided any

incriminating evidence to convict the accused persons. PW-65 / D. Ramakrishna Rao being the Assistant Revenue Inspector who issued residential certification to accused No.9. But he has not given any evidence against the accused persons. PW-66 / Dhananjay, Assistant Revenue Inspector issued residential certificate in respect of Accused No.2 and has stated that his residence was not in dispute. PW-67 / Uma, Assistant Revenue Inspector had given the details of the hotel but has not stated in respect of whose house the certificate was issued. Hence, it is contended that her evidence is in no way helpful to the case of the prosecution to prove the guilt of the accused persons. PW-68 / Smt. Chandramma being the mother of Accused No.2 though had stated in her examination that her son Shankar had called her through mobile, however, she had denied it in her cross-examination and has turned hostile to the case of the prosecution.

138. The evidence of PW-69 / Ashwini, Dy.S.P., Lokayuktha is only in respect of Accused Nos.8 and 12 in respect of the Lokayuktha case. However, no evidence has been put forth against all the accused persons and hence it is contended that her evidence also would not aid the case of the prosecution.

139. PW-70 / Byrojirao, Head Constable had stated that he had carried the FIR and handed it over to the Jurisdictional Magistrate at 2.00 p.m. on 20.11.2012. However, it is stated that there is an unexplained delay of 6 hours in reaching the FIR to the said court. The distance between the police station and Jurisdictional Magistrate being only 3 to 4 kms., it is contended that the delay in reaching the FIR to the Court is fatal to the case of the prosecution.

140. It is further contended that the Trial Court has committed a grave error in relying upon the evidence of PW-71 / K. Rajesh who is the Nodal Officer of Idea Cellular Limited. He had stated in his

examination that he had handed over the CDR, customer application form and location details of the customers to Shri Manoj N. Huvale, Police Inspector, CID as per his request. He had also given his declaration certificate under Section 65(B) of the Indian Evidence Act through e-mail which is marked as Exhibit P-230. Further, the hard copy is marked as Exhibit P-284. However, in his cross-examination, it is elicited that in the said CDR, the tower location is not mentioned and he had not mentioned the tower code number and has also not collected mobile voice recording. He has further stated that if the number is not used for 90 days, the said mobile number will be deactivated and allotted to another person. He has further stated that required permission to share the CDR details with the Police Inspector was not obtained. Hence, it is contended that the procedure followed by this witness is contrary to law and also to Section

65(B)(4) of the Indian Evidence Act and his evidence is required to be discarded.

141. The further contention is that the learned Sessions Judge had committed a grave error in relying upon the evidence of PW-72 / S.N. Murthy, the Nodal Officer of Vodafone Company. It is stated that on 22.01.2013, the Shankarapuram police had requested PW-72 through e-mail to provide call details of mobile nos.9742774249, 9986374834 and 9742867217 and customer application forms. Thus, PW-72 is said to have provided all the details through e-mail and also declaration certificate under Section 65(B) of the Indian Evidence Act. However, in his cross-examination, he has admitted that he has not studied any course relating to electronic records and also that he has not mentioned the location of the towers in the said 3 mobile CDRs. He has further admitted that though there is voice recording system in Vodafone Ltd., the I.O. had not collected the same. Hence, it is contended that

the I.O. has not made any attempt to collect better evidence to prove the charges leveled against the accused persons, which is against the law laid down by the Supreme Court that prosecution must always collect better evidence to establish the guilt of the accused.

142. It is further contended that PW-73 / Stanley, Nodal Officer of Bharti Airtel has stated in his evidence that on 30.01.2013, the CID police had given requisition through e-mail to provide call details of mobile numbers namely 9008687866, 9632933599, 9738606022, 9972133896, 9980046187, 9591717159 and 9945850261 and customers' application forms. Accordingly, PW-73 is said to have provided all the details as per Exhibit P-248. However, the cross-examination of the said witness reveals that PW-73 had not furnished the copy of the customers' applications and call details. The said mobile numbers did not belong to the accused persons and the details regarding the owner of the mobile and as to who was the user of

the same has also not been stated by the said witness. Hence, it is contended that the evidence of this witness being vague and general, is not useful to the case of the prosecution.

143. PW-74 / Rathnakar Nayak being the Nodal Officer of BSNL Company has stated that as on 28.01.2013, Police Inspector, CID had given requisition letter to provide the call details of mobile no.9449815395 for the period 01.08.2012 to 21.01.2013 and customer application form. Accordingly, he is said to have provided all the details as per Exhibit P-238. However, from his cross-examination, it is elicited that he did not know who had extracted the hard copy and where and how. He also did not know as to when Exhibit P-271 soft copy was retrieved and also did not know as to which software he had used to retrieve the details. Hence it is contended by the learned counsel that the evidence of this witness is also required to be rejected in toto.

144. PW-75 / Nagarajaiah is a panch witness to name boards and photographer who took photos of place of occurrence, knife, knife cover. He has stated that he did not observe any foot prints on blood in the place of occurrence. However, in his cross-examination, he has admitted that when he went to the place of occurrence at 7.00 a.m., the police were already present there. Though as per the case of the prosecution the complaint was lodged at 8.00 a.m. on 20.11/2012, the circumstance that police were present even at 7.00 a.m. indicates that investigation had started before lodging of the complaint itself, which is contrary to Section 154 of the Cr.P.C. Hence, it is contended that the investigation having started even before registration of the complaint, the entire trial is vitiated.

145. PW-76 / Gopalakrishna is the Head Constable who has stated that as on 02.12.2012 he had arrested Jaheer and produced before the I.O. along with his report as per Exhibit P-296. However, in

his cross-examination, he has admitted that the I.O. had not given requisition to arrest him in writing and I.O. had also not furnished the photograph of accused persons. Hence it is contended that procedure aspects have not been followed at the time of arrest of the accused.

146. PW-77 / Muniraju is the Head Constable who took the dead body from the place of occurrence to Victoria Hospital and after the postmortem, he had handed over the dead body to the brother of the deceased. However, his evidence is of no use to the case of the prosecution.

147. PW-78 / Eshwarappa had brought the post-mortem report and cloths of the deceased from Victoria Hospital and had given it to the I.O and the same is not disputed.

148. PW-79 / Balappa Nasannavar is the Police Constable who brought the CD from T.V. channel office

and had given it to the I.O, which is not admissible in law.

149. PW-80 / Venkateshappa is the Police Inspector who, on 20.11.2012 at about 8.00 a.m. had gone to the place of incident as per the instructions of Inspector Shivamallaiah. Police Inspector took shara on the complaint given by Smt. Uma Devi and instructed PW-80 to register the case. Accordingly, PW-80 went to the Police Station and had registered the case in Cr.No.238/2012 as per Exhibit P1. The FIR is marked as Exhibit P-300. He had visited Ramanagara Palace Lodge along with Accused No.10 and had drawn the mahazar which is marked as Exhibit P-163. He also went to Gopinatham mistry along with Accused No.10 where Accused No.10 had showed the place where they stayed there on 20.11.2012 and thereafter, PW-80 recorded the statements of Nagaraju, Assistant Manager of Mistry Trial Camp of Soundara Raju, care taker of the said camp. On 12.12.2012, he took Y.S. Adinarayana,

CCTV Technician and his staff visited Ramanagara Palace Lodge and secured panchas and saw the CCTV clipping and as on 19.11.2012 he saw the footage of Accused Nos.1 to 6 entering the lodge and collected the hard disk in respect of CCTV and DVR from the technician and seized the same under a seizure mahazar. He had recorded the statements of PWs 82, 83 and 86. However, in the cross-examination, it is elicited that he did not obtain the signature of the complainant in the FIR. He has stated that he did not know at what time police received information regarding the death of Lingaraju. He has further admitted that soon after receipt of credible information regarding cognizable offence, they have to make an entry in the station house diary. When he reached the scene of occurrence he saw that the police were enquiring regarding the culprits and he has stated that he did not know as to who wrote the complaint. Further he has stated that identity of the culprits is not mentioned in

the complaint and none of the eye-witnesses had come to the place of occurrence to give any information. Further, that PW-80 had not collected photos to prove that there was a CCTV in front of the aforesaid lodge. Hence, it is contended that the oral evidence of this witness PW-80 creates grave suspicion regarding the genesis of the prosecution case.

150. PW-81 / Shivamalavaiah, Police Inspector had stated that on receiving the information of death, he visited the place at 7.15 a.m. wherein the police staff were there and on seeing the dead body, he had collected the complaint from PW-1 / Uma Devi. PW-81 had secured dog squad, fingerprint experts and handed over the complaint to the Police Inspector and directed him to register the case. He had recorded statement of witnesses, drawn the inquest mahazar, seized the dragger cover at the place of occurrence and sent the dead body to Victoria Hospital. Further, he had taken photos on the spot, had prepared the sketch, recorded

the statements of eye-witnesses, on the same day received the bloodstained clothes of the deceased, wife and his son Karthik and seized the same. He had arrested Accused Nos.6 and 7 and seized two mobiles from Accused No.7 and one mobile from Accused No.6. Further, he arrested Accused No.8 on 22.11.2012 and recorded the voluntary statement of Accused No.8. Further, he arrested Accused Nos.1 to 5, seized mobiles. Further, on 24.11.2012 on the basis of the voluntary statement of Accused No.7, he seized the auto-rickshaw and recovered Rs.7,000/- from the house of Accused No.7. Further, he recorded the voluntary statement of Accused No.6 and seized the two-wheeler Honda bearing No.KA-01/ER-6249. Further, PW-81 had recorded the voluntary statement of Accused Nos.1 to 8 and they had shown the bloodstained cloths. On 24.11.2012 he further recorded the voluntary statement of Accused Nos.2 to 4 and seized Zen car at the instance of Accused No.4 and some cash. On 25.11.2013, he took Accused

No.3 and seized a chopper produced by Accused No.3. At the instance of Accused No.2, PW-81 further seized one chopper and a shirt. Further, he went along with Accused No.5 to his house and seized Rs.1,00,000/- from his house. After investigating the case, PW-81 / Shivamalavaiah filed the charge sheet against Accused Nos.1 to 7 for offences punishable under Sections 109, 120B, 143, 147, 148, 150, 302, 506-B read with Section 149 of the IPC.

151. However, in the cross-examination of PW-81, it is elicited that dagger type chopper was recovered from the spot between 12.20 to 1.20 p.m. Though PW-81 had gone to the spot at 7.15 a.m., it is contended that there is no reason as to why the said chopper was not seized at the earliest point of time. It is further contended that though finger print experts and dog squad had come to the spot between 8.30 a.m.and 9.30 a.m., they did not take the finger prints on MO-3, which showed that MO-3 was planted one. Further, MO-29

and MO-30 were not sent to FSL, which created more doubt as regards the genesis of the prosecution case. Though 40 to 50 persons were standing near the place of occurrence when 7 to 8 police staff including the Police Sub-Inspector and ASI visited the spot, it is not known as to why the police personnel had not recorded the statements of any of the witnesses who were present at the spot. Also they had not enquired about the details of the weapons used by the assailants and though so many people were present, none of them had come forward to lodge a complaint till 7.45 a.m. Further, the physical features of the assailants also has not been mentioned and even there is no video or photo to evidence the recovery of weapons. Further, there are no names of the accused indicated in the FIR and also no individual overt act has been attributed to any of the accused persons. He had also admitted in his cross-examination that three teams were formed to investigate the case and the police had got desperate to arrest the

accused persons within 22.11.2012. He has also admitted that the news of the incident was telecasted in all the news channels and print media as on 20.11.2012 and 21.11.2012. He has further admitted that he had not made any investigation as regards the mobile details of MO-38, MO-39, MO-44 and MO-45 used by accused persons. He has also admitted that none of the accused persons were the RC owner of the vehicle KA-41-3600. He has also admitted that accused persons were produced in open court without mask wherein all public present would have seen them. Hence, there is no legal sanctity to the TIP conducted. Further, that the blood in the spot and on the weapons was not properly preserved and hence there were chances of disintegration. Further, the bloodstained cloths were also kept in the police station for 20 days and only thereafter were sent to FSL and therefore the chances of disintegration cannot be ruled out. Further he had no knowledge whether CCTV was present in Palace Lodge,

Ramanagara. Further, in the voluntary statements of Accused Nos.1 to 5, there is no reference to the name of palace lodge, CCTV, etc. He has also admitted that CWs 56 to 59 were attesting witnesses to more than 3 to 4 mahazars and CWs 62 and 63 were attesting witnesses to more than five members and they are stock witnesses. He has also admitted in his cross-examination that deceased Lingaraju had many enemies in and around the society and therefore chances of his enemies having killed Lingaraju cannot be ruled out and there are chances that appellants / accused have been roped in without any incriminating evidence.

152. PW-82 / Narsaiah, Manager of Palace Lodge of Ramanagara had stated that 7 persons had come to their lodge from Bengaluru in a white Zen car at about 2.30 p.m. and they booked room nos.16 and 17 and stayed therein. However, he has not supported the case of the prosecution and has turned hostile.

153. PW-83 / Ramaiah is said to be the supplier in the said Palace Lodge, Ramanagara who has stated that he had supplied drinks and non-vegetarian food to the occupants of the room nos.16 and 17. However, he has also turned hostile and has stated that he did not give any statement to the police as per Exhibit P-359.

154. PW-84 / S. Adinarayana is the CCTV Servicing Technician who has stated that about 7 to 8 years back, the Chamarajapet Police had taken him to Ramanagara Palace Lodge and on instructions of the police, he had opened the DVR and removed its hard disk and had handed over the same to the police. However, his cross-examination reveals that he has not undergone any course regarding software and had no special knowledge in the same. He has admitted that he had not seen the CCTV footages and did not know the contents of Exhibit P-306. Hence, his evidence is not helpful to the case of the prosecution.

155. PW-85 / Umesh is a panch witness to the seizure of hard disk at Palace Lodge, Ramanagara. However, he has turned hostile and has not supported the case of the prosecution.

156. PW-86 / Shivanna is the room boy of Palace Lodge, Ramanagara who has also not supported the case of the prosecution and has turned hostile.

157. PW-87 / Druvakumar is the one who had identified the signatures of the deceased Lingaraju in an affidavit and also stated that there was a rivalry between deceased and Accused No.8. However, no evidence is forthcoming against the appellants / accused.

158. PW-88 / G.C. Manjunath, is the Police Inspector in CID Office and is an I.O. in part. He has stated that on 08.02.2013, PW-90 K. Tilak Chandra issued a memo to conduct photo identification parade of appellants and others and sent the photographs of five accused persons with a covering letter containing 30 photographs. In this regard, he had summoned PW-1/

Umadevi to identify photos. Accordingly, she identified the photographs of Raghavendra, R. Shankar (A-2), Rangaswamy (A-1), Shankar (A-5) and Chandra (A-4). PW-2 / Karthik also had identified the said persons. However, in her cross-examination, she has admitted that before TIP, the photographs of accused persons were published in newspapers and other electronic visual medias. Hence, it is contended that it is well settled legal position that prior to photo TIP if the witnesses have already seen the accused persons, there is no value to the photo TIP. Further, PW-1 and PW-2 have not supported the case of the prosecution. Hence, the evidence of PW-88 is in no way helpful to the case of the prosecution.

159. PW-89 / Srikanth was working as a Technical Head in TV9 Private Limited who had stated that about 6 to 7 years back, their channel had telecasted a program called "Yuddha Kanda". It is stated that there was sting operation conducted by their channel with

regard to the murder of Lingaraju. However, in his cross-examination he has stated that he did not know when the master copy of Exhibit P-357 was generated. He has further admitted that in Exhibit P-365, the date of storing and date of processing the data has not been mentioned. He has also admitted that while copying from one system to another, there are chances of adding, deleting, altering of program, etc. He has further submitted that there are cases against their channel and the Hon'ble Supreme Court has directed them that no sting operation could be conducted without permission of the Court under the circumstances that it is a fraud channel. Hence, it is contended that his evidence also is of no significance.

160. PW-90 / K. Tilak Chandra is also an I.O. in part who was appointed as I.O. in the Special Investigating Team as on 18.12.2012, after 28 days from the date of the crime. Major portion of the investigation

was over even prior to his arrival in Cr.No.238/2012. He had sent requisition to the Jurisdictional Magistrate to record the statements of PW-1 and PW-2 under Section 164 of the Cr.P.C. Further, on 27.12.2012 he had sent a requisition of the Medical Officer of Victoria Hospital to examine the weapons and give an opinion. On 29.12.2012, he wrote a letter to the Director of Truth Lab, Bengaluru to examine the hard disk said to have been seized at Palace Lodge, Ramanagara. He had collected the revenue documents in respect of Ranganatha Hotel to know the name of the owner. He had recorded the statements of PWs 15, 16 and 18 and collected the CD of news published in Suvarna TV regarding Lokayuktha raid conducted on the house of Accused No.12. Frequently he recorded the statements of witnesses and residential certificates of accused persons After collecting all the documents and after completion of investigation, he submitted the charge sheet against the accused persons as on 15.02.2013.

161. However, it is elicited in the cross-examination of PW-90 that he had not collected the source of mobiles and from where the mobiles were purchased and who were the holders, users and owners. He had not collected any application forms in respect of the CDRs which stood in the name of the appellants / accused.

162. It is further contended that PWs.1 and 2 have not supported their statement which was recorded under Section 164 of Cr.P.C. as per Exs.P19 and P30. They had stated that whatever told by the police to them as per the same they had given statement and PW.1 says that she do not know what are the questions asked by Magistrate and what answers she has given. The statement recorded is not substantive evidence unless it is corroborated by the witnesses during their evidence. The statements under Section 164 of Cr.P.C. of PWs.1 and 2 were recorded under

the pressure of police. In this regard, reliance is placed upon the following judgments:

- (i) 1972 SCC Cr1.493  
Ram Kisan Singh vs. Harmit Kaur and another
- (ii) (2010) 6 SCC 736  
Baijanath Sah vs. State of Bihar
- (iii) 1999 Cr1.L.J. 1936 (Bombay High Court)  
Audumbar Digambar Jagdane Vs. State of Maharashtra

163. The test identification parade was conducted by PW.52 as per Ex.P20 and P75. PWs.1 and 2 have not supported the case of prosecution regarding test identification parade and it is only substantive evidence unless it is corroborated in their evidence before the Court. In the parade PWs.1 and 2 did not identify accused Nos.1 and 2. PW.1 identified only Accused Nos.3, 4 and 5 and PW.2 identified only Accused Nos.4 and 5. But PW.1 and PW.2 did not identify who are the assailants. The evidence of PW.52 is not sufficient under Section 9 of the Evidence Act, as the conducting of the test identification parade is

not in proper form as elicited in the cross-examination. Even the identification of accused No.3 during TIP is not sufficient because left eye of accused No.3 is defective and in TIP, similar persons are not placed along with accused No.3 for proper identification. The TIP was conducted after lapse of 45 days of arrest of accused persons.

164. It is further contended that the photograph identification was conducted by PW.88 on 8.2.20213. That is after lapse of 78 days from the date of arrest. It is important to note that PWs.1 and 2 have not supported the case of prosecution regarding photo identification and more over identification conducted by the police inspector is hit under Section 162 of Cr.P.C. The CCTV footages as per MC.13 and the CD as per Ex.P81 is not sufficient to prove the guilt of accused persons, mere stating that the accused persons stayed at Palace Lodge at Ramanagar is not sufficient to say that they have committed the murder and as the incident took place at Bangalore around 6.45

a.m. to 7 a.m. there is no CCTV footage nor any evidence to show or to establish that these accused persons had left the lodge on the day of incident early in the morning to reach the place of incident. On the other hand PW.3 who is an expert had deposed in her cross examination has admitted that it is true to suggest that there is possibility to change the date and time in the CCTV cameras.

165. Further, the accused visiting and staying in Mistri trial camp, Gopinatham Village is also not proved by the prosecution beyond all reasonable doubt. The blood of deceased was not collected and it is not established that the same blood group was found on the cloths of accused persons and the witnesses to the seizure mahazar also did not supported the case of prosecution to prove the case beyond all reasonable doubt against these accused persons. Even there is no motive factor against accused Nos.1 to 3 and 11 to commit the murder of deceased Lingaraju. Mere motive against Accused Nos.8 and 12 is

not sufficient to establish that these accused Nos.1 to 3 and 11 had conspired with accused Nos.8 and 12 and in pursuance of that they committed the murder of the deceased. But there is no material placed by the prosecution to establish the conspiracy between these accused persons with accused No.8. It is pertinent to note that according to the case of prosecution accused No.11 accompanied accused Nos.4, 5 and 8 and gave the marriage invitation card of daughter of accused No.8 to deceased Lingaraju four to five days prior to the incident. Further, it is relevant to note that the investigation officer himself produced Ex.P.378 wherein it is mentioned that accused No.11 is a convicted person and he is in incarceration and prosecution had not established that accused No.11 was on bail during the said period. The investigating officer – PW.81 had filed an application before the Magistrate to issue body warrant against accused No.11 / Suresh @ Suri. Therefore, the conspiracy

is not proved by the prosecution beyond all reasonable doubt.

166. In support of his contentions, learned counsel has relied on the following decisions:

**(i) Budhsen and another vs. State of UP (AIR 1970 SC 1321)**

In this judgment the Hon'ble Apex Court has observed as under:

*“Facts which establish the identity of an accused person are relevant under Section 9. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test*

identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some

*other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognize as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by S.162, Cr. P.C. It is held on facts that the test identification in the case could not be considered to provide safe and trustworthy evidence on which the conviction of accused could be sustained.”*

**(ii) Iqbal and another vs. State of UP  
(2015) 6 SCC 523**

Criminal trial – identification – test identification parade – identification of miscreants in TIP – evidentiary value of – conviction cannot be based solely on identification of accused in TIP – necessity of adducing reliable substantive evidence to prove offence beyond reasonable doubt – occurrence taking place in pitch darkness – relevance – case of dacoity with murder. It is held that evidence of identification in TIP is not

substantive evidence and conviction cannot be based solely on identification of accused by witnesses in TIP but the prosecution has to adduce reliable substantive evidence connecting accused with crime to prove offence beyond reasonable doubt.

**(iii) Ram Kishan Singh vs. Harmit Kaur and another  
1972 SCC (Cri) 493**

In this judgment the Hon'ble Apex Court held as under:

- (i) A statement under Section 164 of Cr.P.C is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness.
- (ii) The High Court as an appellate court can set aside an order of acquittal. In doing so, the High Court has to review the evidence upon which the order of acquittal is founded. The High Court is to consider the views of the trial judge as to the credibility of the witnesses. The High Court is also to keep in view the presumption of innocence in favour of the accused and the right of the accused to the benefit of doubt. Finally, the High

Court is to give reasons that the acquittal was not justified.

**(iv) Baij Nath Sah vs. State of Bihar (2010) 6 SCC 736**

Section 164 – Applicability – prosecutrix giving statement only under Section 164 – prosecutrix not giving any evidence in court – during alleged crime other accused bringing prosecutrix to appellant's house but nothing on record to show appellant's involvement – effect – mere Section 164 Cr.P.C. statement of prosecutrix, held, is not enough to convict appellant – Section 164 Cr.P.C. statement is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-à-vis statement made in court.

**(v) 1999 Cr.L.J.1936 – Audumbar Digambar Jagdane vs. State of Maharashtra.**

Criminal Procedure Code ( 2 of 1974), Section 164 – Statement under – witness turning hostile – statement even if proved, cannot be used as substantive evidence.

It is contended by the learned Senior counsel Shri B.V. Acharya as well as Shri Vishnumurthy for Accused Nos.1 to 3 that though as many as 90 witnesses have been subjected to examination and cross-examination to prove the guilt of the accused, the major witnesses have turned hostile and they did not withstand their statements including the panch witnesses to the spot mahazar, seizure mahazar and other seizure mahazar of weapons including the TIP proceedings, motive factor, conspiracy, CCTV footage. Even other independent witnesses did not withstand the versions of their statements to prove the guilt of the accused. Except the public service police personnel who conducted the investigation, nobody else has supported the case of the prosecution, despite which the Trial Court has rendered a conviction judgment only on the basis of surmises and conjectures without properly appreciating the evidence on the part of the prosecution in a proper perspective. Therefore, the findings of the Trial Court are perverse

and the Trial Court has misdirected and misinterpreted the evidence despite all witnesses having turned around in the cross-examination. Therefore, these appeals require intervention. If not interfered, the accused persons would be the sufferers and it would result in a substantial miscarriage of justice.

167. In continuation of the arguments advanced by the learned Senior Counsel Shri B.V. Acharya for Accused Nos.1 to 3, learned Senior Counsel Shri C.V. Nagesh has addressed his arguments in respect of Accused No.8 / C. Govindaraju who is the appellant in CrI.A.No.54/2021 and in support of Accused No.12 / Gowramma who is the appellant in CrI.A.No.1068/2020. Accused No.8 and Accused No.12 are spouses who have been arraigned as accused relating to the murder of deceased Lingaraju. Learned Senior Counsel Shri C.V. Nagesh has contended that the Trial Court has gravely erred in convicting Accused Nos.8 and 12 inclusive of

other accused relating to offences under Section 109, 302 read with Section 149 of the IPC. In the impugned judgment of conviction rendered by the Trial Court in paragraph 228 at page 223, it is observed that all the material witnesses have turned around and have given a go-by to the versions of their statements and it is held that there is no direct evidence regarding the charges. Further it is held whether circumstantial evidence is sufficient to hold the accused guilty of the offences punishable under Sections 148, 109, 150, 506(B), 302 read with Section 149 of the IPC.

168. Further, the Trial Court has erred in holding Accused No.12 / Gowramma who was the Corporator of BBMP Ward No.141 in the year 2010, guilty of the offences in view of the fact that on behalf of her, Accused No.8 / C. Govindaraju was attending all the works and was also using her mobile. The prosecution case is that mobile belonging to accused No.12 was exclusively used by Accused No.8. There is absolutely

no evidence as such proved by the prosecution that at any point of time Accused No.12 / Gowramma had conversation with Accused Nos.4, 5, 7 or that she had abetted Accused Nos.4, 5, 7 in committing the offences. Hence, the Trial Court having convicted this accused in spite of this inconsistent evidence is without any basis and is bad in law.

169. PW-81 who is the I.O. in part who came to the spot at around 11.45 a.m. had asked PW-1 / Uma Devi whether she would give an oral or a written complaint to which she replied that she would give a written complaint got written by somebody. Accordingly, PW-81 received the complaint at the spot and set the criminal law into motion by recording an FIR. However, the scribe of Exhibit P1 was not examined or was not identified or his signature was not attested in Exhibit P1. Hence, it is contended that this aspect goes to show that the contents of Exhibit P1 was

not known to PW-1 / Uma Devi and hence she has turned hostile before the Court. Further, it is contended that PW-1 had not dictated the contents of Exhibit P1 but only with an intent to implicate Accused No.8, Exhibit P1 complaint has been created by the prosecution. Further, the name of Accused No.8 is not mentioned in Exhibit P1, which aspect has been completely ignored by the Trial Court.

170. It is further contended that that Trial Court has erred in holding that Exhibit P1 was prepared after the arrival of PW-81 and PW-80. However, it is contended that PW-80 and PW-81 were already present near the spot and investigation was already commenced even before lodging of the complaint at Exhibit P1. Further, the name of PW-2 is also not mentioned in Exhibit P1 or the name of the appellant / accused also was not mentioned. PW-1/Uma Devi is the only solitary eye-witness to the incident. This aspect is corroborated

with Exhibit P127 inquest in Column Nos.3 and 4 as the person who had last seen the deceased alive. Further, in the entire contents of the complaint or in Exhibit P127, the name of the appellant / Accused No.8 has not been mentioned and this important aspect has been brushed aside by the Trial Court in convicting the accused.

171. It is further contended that the Trial Court has gravely erred in holding that Accused Nos.8 and 12 had a strong motive against deceased in view of the fact that the deceased Lingaraju had filed PCR No.65/2012 before the Hon'ble Lokayuktha Court and a case was registered at the instance of the deceased against Accused No.12 in Cr.No.82/2012 as per Exhibit P220. However, it is contended by the learned Senior counsel that Cr.No.82/2012 was not registered at the instance of the deceased Lingaraju but it was registered on a suo moto complaint by one Ravishankar, Inspector of Police,

Lokayuktha. Further, the said case was stated before this Court in CrI.P.No.1076/2018 by order dated 10.07.2019. Further, the said Ravishankar as well has not been examined to prove the said Exhibit P220. Further, there is no whisper in respect of PCR No.65/2012 as per Exhibit P349 which was registered as against Accused No.8 as well. It is contended that there is no action taken against the said PCR No.65/2012 filed by the deceased against Accused No.8. In spite of the same, the Trial Court having convicted Accused No.8, is unsustainable in law.

172. Even the documents relating to Accused No.8 is absolutely not pertaining to the role of these accused and further, even at a cursory glance of Exhibit P223, 382, 387 relating to motive factor of the deceased to commit the murder, it is contended that none of these documents got marked shows that there was motive for Accused Nos.8 and 12 to commit the murder of the

deceased. Moreover, motive is not essential for Section 302 of the IPC, despite of which the Trial Court has rendered a conviction judgment against the accused. Therefore, it requires intervention in these appeals by re-appreciating the evidence and scrutinizing the evidence analytically.

173. It is further contended that the Trial Court has gravely erred in holding as per the affidavit dated 18.06.2010 at Exhibit P26, Accused No.8 and others have threatened deceased Lingaraju. Deceased Lingaraju was an RTI activist who was complaining against so many persons and has filed various affidavits in this regard against various persons. Hence, the Trial Court has erred in holding that there was a serious threat to deceased Lingaraju by Accused No.8 which had continued till his death and hence that Exhibits P26, 27, 29, 116, 220, 223, 349, 385, 391 and PW-87 evidence were proved as per Section 32(1) of the Indian

Evidence Act. However, in order to attract Section 32(1) of the Indian Evidence Act, the proximity of time is very essential and more particularly, no allegation against this fact has been made, which has been completely ignored by the Trial Court.

174. It is further contended that PW-87 / K. Druvakumar though had stated that on 20.11.2012 the deceased Lingaraju receiving threatening calls from various persons, PW-87 has not revealed the names of those persons. Further, no documents are produced to show that the deceased Lingaraju had received any threatening calls. Section 32(1) of the Indian Evidence Act clearly states that by anticipating one's death, if a person declares such statement, the said declaration made by the deceased will be admissible. However, in the instant case, there is a proximity of time to be considered namely Exhibit P26 dated 20.06.2010, Exhibit P27 dated 12.06.2012, Exhibit P28 dated

31.07.2012, Exhibit P29 dated 31.07.2012, Exhibit P116 dated 22.06.2010, Exhibit P285 dated 23.06.2012, Exhibit P391 dated 06.09.2010, Exhibit P349 dated 13.07.2012, Exhibit P220 dated 08.11.2010, Exhibit P223 dated 09.11.2012 and Exhibit P400 dated 09.11.2012. However, these documents even though have been got marked, but it does not attract Section 32(1) of the Indian Evidence Act. Exhibit P391 is a letter submitted by PW-90 to investigate as to who made the threatening call, which is in no way concerned with Accused Nos.8 and 12. This important aspect of the matter has been completely ignored by the Trial Court which has erroneously arrived at a conclusion that the prosecution has proved the guilt of the accused.

175. Learned Senior counsel Sri C.V.Nagesh for Accused Nos.8 and 12 in CrI.A.No.54/2021 and CrI.A.No.1068/2020 has also filed synopsis in support of his case. It is contended that on the complaint filed

by PW-1 / Smt. Uma Devi who is none other than the wife of the deceased Lingaraju that on the morning of 20.11.2012, at about 6.45 a.m. at a point of time when Lingaraju was collecting water from a road-side tap for the purpose of cleaning the stair-case, PW-1 / Smt. Uma Devi, the wife of the deceased saw three persons who were in the age group of 30 to 35 years coming running from Vittal Nagar side and thereafter, assaulting her husband Lingaraju all over his body with the weapons which they were holding and that when she made an attempt to rescue her husband from their clutches, one among them chased her and she ran towards the flour mill and by the time she came back to the place where her husband was assaulted, he was found dead and that she also saw a knife and a handle lying over the place of offence and that she can identify the assailants of her husband and that she has every reason to suspect the hand of accused No.8 in the incident of assault on the person of her husband for the

reason that under a misconception that her husband Lingaraju was the one who was responsible for a raid which came to be conducted on his residential premises by the Lokayukta police and action needed be taken against the assailants of her husband. Thereafter, the case in Crime No.238/2012 which came to be registered on the strength of the complaint filed by PW-1 / Smt. Uma Devi, for an offence which is made penal under Section 302 read with Section 34 of IPC came to be investigated and upon completion of the investigation of the crime, the Investigator submitted a charge sheet against 12 named in the final report including the appellant for offences under Sections 120-B, 109, 143, 147, 148, 150, 302 read with Section 149 of IPC.

176. It is his contention that accused Nos.8 and 12 are lugged into the case only with the aid and assistance of Section 120-B of the IPC on the that he had conspired with his companion accused in the case

to do away with the life of the deceased Lingaraju. Upon the accused against whom the final report is filed, pleading not guilty to the charges leveled against them, the matter went up for trial . During the trial, the prosecution examined in all 90 witnesses and marked several documents as exhibits in addition to several material objects including the weapons said to have been used by the assailants to assault the deceased. The evidence led by the prosecution during the trial of the case is divided into five categories – (i) motive and conspiracy to commit the crime (ii) eye-testimony (iii) recovery of certain material objects (iv) some other circumstances that are pressed into service by the prosecution to lend credence to its case against the accused and (v) scientific, medical and electronic evidence.

177. With regard to motive and conspiracy to commit the crime, learned counsel for accused No.8

contended that to bring on record in the case that appellant / accused No.8 entered into a conspiracy with his other companion accused in the case to do away with the life of deceased Lingaraju, the prosecution the trial of the case examined the witnesses. PW.1 – Umadevi who is none other than the wife of deceased, PW.2 – Karthik being son of deceased, PW.5 – Lokesh who is the neighbour, PW.7 – Prakash, PW.8 – Arun who is the son of deceased, PW.9 – Balakrishna, PW.10 – Pratap, PW.11 – Chandregowda and PW.12 – Chikkamahadeva Gowda, their evidence has been treated hostile by the prosecution.

178. In respect of eye-testimony the prosecution during the trial of the case as eye-witnesses to the incident of assault on the person of the deceased Lingaraju, PW.1, PW.2, PW.4, PW.5 and PW.6 who were examined on the part of the prosecution have turned hostile to the case of the prosecution.

179. In order to establish the recovery of certain material objects including the weapons alleged to have been used by the assailants of the deceased under different panchanamas, the prosecution has examined the following witnesses as the one in whose presence the recoveries are said to have been made. PW.32 – Prasanna was examined in respect of spot and inquest panchanama marked as Exs.P2 and P.127. PW.33 – Deepak was examined in respect of clothes, cash and vehicle under Ex.P17. PW.35 – Manikantan was examined in respect of seizure of mobile phone under Exs.P.137 and 138. PW.16 – L.Krishna Murthy was examined to speak to Ex.P.106 under which mobile phone is said to have been recovered. PW.36 – Uttar Kumar was examined to speak to spot and inquest panchanama drawn and marked as Ex.P2 and Ex.P127. PW.37 – Shivaprasad was examined to speak to recovery of weapons under Exs.P147 and 152. PW.38 – Ramesh

was examined as panch witness in respect of recovery of weapons, cash and mobile phone under Exs.P147, 152 and 154. PW.39 – Shankar and PW.40 - Keerthi are the panch witnesses for seizure of car and cash under Exs.P124, 156 and 157. PW. 41 – Pawan Kumar is the panch witness for seizure of mobile phone under Ex.P159. PW.42 – Saravana is the panch witness for Exs.P161 under which mobile phone is said to have been seized. PW.43 – Kondaiah is the examined for the panchanama drawn and marked as Ex.P163 with regard to the place where some of the accused said to have stayed. PW.44 – Prasanna is the supplier in a Bar and was examined to speak to Ex.P163. PW.47 – Shivaraj was examined to speak to Ex.P159 regarding seizure of mobile phone. PW.48 – Satish was examined in respect of Ex.P.106 seizure of mobile phone. PW.49 – Shivakumar was examined in respect of Ex.P106. PW.58 – Ganesh is the Revenue Inspector who was examined to speak in respect of Ex.P190. PW.85 –

Umesh was examined to speak in respect of Ex.P306 drawn by palace lodge. But all these witnesses who are examined on the part of the prosecution did not withstand their versions and accordingly, they were treated hostile by the prosecution.

180. PW.13 – Ramesh is an employee of the co-operative bank who was examined to speak regarding loan borrowed from a banking institution and its repayment. PW.15 – Revanna was examined in respect of bank borrowings. PW.17 – Lokesh was examined to speak about he having lent money to the accused. PW.20 – Sumithra is the employee of the City Co-operative Bank who was examined with regard to money transaction. PW.21 – Nagaraj is an Advocate who was examined to speak to he having worked as an office assistant in the office of accused No.8. PW.23 – Channakeshwara is the caterer who service is said to have been taken as catering contractor in the marriage

of the daughter of accused No.8. PW.24 – Shivakumar was examined to having joined hands with PW.23 in the catering work. PW.27 – Bommalinga is the employee in a Daba who was examined to speak to the presence of some of the accused in the Daba. PW.28 – Ravi is the employee in a Daba who was examined to speak to the presence of some of the accused in the Daba. PW.29 – Chand Pasha is the foot-path vendor who was examined to speak to some of the accused buying cloth from him. PW.30 – Belurajah is the Car Driver was examined to speak to he having driven the car in which some of the accused had gone to Hogenakal. PW.31 – Syed Ali was examined to speak to some of the accused having gone to Hogenakal which fact is said to be within his knowledge. PW.59 – Siddaraju is the owner of the car in which some of the accused are said to have gone to Hogenakal. PW.62 – Dilip Kumar was examined to speak of he having financed for the purchase of an autorickshaw. PW.63 – A.Vijay was examined to speak

to certain financial transactions in relation to Maruti Zen Car. PW.68 – Smt.Chandramma was examined to speak to certain mobile calls. PW.82 – Narasaiah and PW.83 – Ramaiah are the employees of Palace Lodge who was examined to speak to some of the accused having stayed in the Lodge. PW.84 – Adinarayana is the Technician who removed hard disk from DVR and collected CCTV footage of the Lodge. PW.86 – Shivanna is the Room Boy of Palace Lodge who was examined to speak to some of the accused having stayed in the Lodge. The evidence of all these witnesses were treated hostile by the prosecution since nothing worthwhile was forthcoming in the case of the prosecution. PW.52 – Smt.R.Suma is the Tahsildar and Executive Magistrate, Bangalore North Taluk who conducted the Test Identification Parade at the Central Prison, Bengaluru and her evidence with regard to the test identification of the assailants of the deceased by PW.1 – Uma Devi and PW.2 Karthik the wife and son respectively of the

deceased is of no consequence for the reason that PWs.1 and 2 have not identified the assailants of the deceased during the trial of the case when they came to be examined by the prosecution.

181. In respect of electronic, scientific and medical evidence the following witnesses were examined by the prosecution during the trial to connect the accused inter se in the case vis-à-vis the calls interse alleged to have been made by using certain mobile phones. PW.71 – Rajesh.K. is the Nodal Officer, Vodafone who did not say anything against the accused other than furnishing to the investigating officer the chart said to contain the out-going calls made from mobile phone bearing No.8722805803. Further the evidence of PW.74 – Ratnakar Naik who is the Nodal Officer of BSNL he did not say anything against the accused other than furnishing to the investigating officer the chart said to contain the out-going calls made from mobile phone

bearing No.9449815395. Further the evidence of PW.72 – S.N.Murthy who is the Nodal Officer of Vodafone he did not say anything against the accused other than furnishing to the investigating officer the chart said to contain the out-going calls made from mobile phone bearing No.9742774249, 9986374834, 9742867217. PW.73 – Stanley is the Nodal Officer of Bharti Airtel and in his evidence he did not say anything against the accused other than furnishing to the investigating officer the chart said to contain the out-going calls made from mobile phone bearing No.9008687866, 9632933599, 9738606022, 9972133896, 9980046187, 9591717159 and 9945850261. It is contended that the admissions given by these witnesses during the course of his cross-examination do not even remotely indicate that any calls were made by the appellant / accused No.8 to anyone at any point of time, let alone, to his other companion accused in the case.

182. It is the further contention of learned counsel for accused No.8 that the only witness who is examined by the prosecution from the Forensic Science Laboratory is Smt.Malathi as PW.53. This witness is examined to speak to the blood-stains said to have been found on certain material objects recovered/collected during the course of the investigation of the crime. In categorical terms this witness has stated that the investigator had not sent to her the blood sample of the deceased. She is not in a position to state as to whether the blood-stains found the material objects are that of a male or a female, she has not assessed the characteristics of the blood-stains and she is not in a position to state as to whether the blood-stains that were found on the material objects examined by her were of the same day or of different dates. PW.45 – Dr.Kantha Raj was attached to Victoria Hospital, Bangalore and through him, the prosecution has brought on record in the case that he was verified the

records maintained in the Hospital relating to the deceased Lingaraju having taken treatment in the Hospital as Indoor Patient few years ago and the records maintained in the Hospital disclosed that Lingaraju's blood group was 'O' positive and he has issued the certificate as per Ex.P165 on the basis of the records maintained in the hospital. The original records maintained in the Hospital is said to be the one relating to the deceased in which the entry to the effect that the blood group of the deceased was 'O' positive is not placed on record for being read as evidence in the case. But the evidence of Dr.Malathi, the official attached to the FSL who is said to have been examined the stains of blood found in certain material objects do not even remotely indicate that the blood group of the stains found on the material objects so examined by her is of 'O' positive, instead, she only says that it belonged to "O" group.

183. PW.46 – Dr. Pradeep Kumar who was examined on the part of the prosecution conducted the autopsy over the dead body of the deceased and the post mortem report is marked as Ex.P166 in addition to the opinion given by him with regard to the possibility of the injuries found on the person of the deceased having been caused with the weapons said to have been seized at the instance of the assailants of the deceased. It is contended that the testimony of this witness could be used by the prosecution only for the limited purpose of establishing that the death of Lingaraju was a homicidal one and nothing more or less. It is so for the reason that the witnesses who were examined to speak to the recovery said to have been effected at the instance of the accused by the Investigator, have not chosen to support the case of the prosecution. That apart, the admissions which this witness has given during the course of his cross-examination would belie the contentions of the prosecution that the deceased came to be assaulted by

using the weapons said to have been recovered at the instance of the assailants of the deceased. Even otherwise, this may not much importance for the simple reason that none of the eye-witnesses to the incident of assault would speak against the accused who were before the Court as assailants of the deceased.

184. PW.65 – D.Ramakrishna Rao, PW.66 – Dhananjay and PW.67 – Smt.Uma are the Assistant Revenue Officers of BBMP who were examined on the part of the prosecution. Their testimony relate to they having given copies of certain documents as sought for by the investigating agency.

185. PW.75- Nagarajaiah is the Police constable who took certain photographs of the scene of offence. PW.76 – Gopala Krishna is the Head Constable who apprehended some of the accused in the case and produced them before the IO. PW.77 – Muni Raju B.R. is the Police Constable who kept a watch over the dead

body of the deceased. PW.78 – Eshwarappa is the Police Constable who carried certain articles to FSL and to the Doctor who conducted the autopsy over the dead body of the deceased as instructed by the IO. PW.79 – Balappa Narasannanavar is the Head Constable who performed certain duties as instructed by the IO in the matter of bringing the compact disk from a television channel. PW.80 – T.Venkateshappa is the PSI who registered the crime, apprehended the accused and partial investigation was done by him. PW.81 – Shiva Mahadevaiah is the Police Inspector who conducted partial investigation of the case. PW.88 – Manjunath is the Police Inspector who is the investigating officer of the case. PW.90 – K. Tilak Chandra is the Deputy Superintendent of Police. These are all the witnesses who were examined on the part of the prosecution to prove the guilt against the accused. It is contended that the prosecution did not adduce any evidence to the connect accused No.8 with the case and the trial Court

has erroneously convicted the accused taking the materials from the charge sheet which is inadmissible in evidence. The prosecution failed to bring any iota of evidence to hold that the accused persons are guilty of the alleged offence. The impugned judgment rendered by the trial Court is illegal, perverse and opposed to the principles of criminal justice delivery system. Therefore, sought for allowing the appeals by setting aside the impugned judgment of conviction rendered by the trial Court.

186. In support of his arguments, the following reliances have been placed by the learned senior counsel:

**(i) Ram Kishan Singh vs. Harmit Kaur and another (1972) 3 SCC 280**

In this judgment, the Hon'ble Supreme Court has held that "a statement under Section 164 of the Cr.P.C is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to

contradict a witness. The first information report was considered by the Sessions Judge. Any special consideration of the statement of Hazura Singh under Section 164 of the Cr.P.C could not have produced a different result by reason of the conclusions of the Sessions Judge as to rejecting the oral evidence of Nihal Kaur, Harmit Kaur and Hazura Singh as unreliable, untruthful and unworthy of credence”

**(ii) Narsinbhai Haribhai Prajapati vs. Chhatrasinh and others AIR 1977 SC 1753**

In this judgment, it is held that “we are prepared to assume in favour of the prosecution that the evidence in regard to the incident of the 23rd near the pond and the evidence in regard to the incident which took place near the Ota of the Pir shows that the respondents had some motive for committing the crime. We may also accept that blood-stained shirt and dhoti were seized from the person of respondent 1 and dharias were

seized from the houses of respondents 1 and 3. But these circumstances are in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused.”

**(iii) Anjan Kumar Sarma vs. State of Assam  
AIR 2017 SC 2617**

In this judgment at para 20 and 21 it is held as under:

20. Mr. R. Venkataramani relied upon Deonandan Mishra v. State of Bihar, (1955) 2 SCR 570 at p.582 to buttress his submission that the circumstance of last seen together coupled with lack of any satisfactory explanation by the accused is a very strong circumstance on the basis of which the accused can be convicted. It was held by this Court in the above judgment as follows:-

*“It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the*

*probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”*

21. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in *State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 in support of his submission that the circumstance of last seen

together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period.

**(iv) Satye Singh and another vs. State of Uttarakhand (2022) 5 SCC 438**

In this judgment it is observed that “at this juncture, let us regurgitate, the golden principles laid down by this Court in Sharad Birdhichand Sarda vs. State of Maharashtra reported in 1984 (4) SCC 116. This court while drawing the distinction between “must be” and “may be” observed as under in para 153:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra

where the observations were made : (SCC p.807, para 19)

*19...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.*

*(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

*(3) the circumstances should be of a conclusive nature and tendency,*

*(4) they should exclude every possible hypothesis except the one to be proved, and*

*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

It was further observed in Para-158 to 160 as under:

“158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in Deonandan Mishra v. State of Bihar AIR at pp.806-807, SCR at p.582 to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus: (AIR pp 806-07, para 9 )

*“9. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation,. . . such absence of explanation or false explanation would itself be an additional link which completes the chain.”*

187. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this

Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,*
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation.*

188. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in *Shankarlal* case, SCC at p.39, SCC (Cri) at pp.318-19 where this court observed thus: [SCC para 30, p.43 : SCC (Cri) p.322]:

“Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused.”

The said principles have been restated in catena of decisions. In *State of U.P. vs. Ashok Kumar Srivastava* (1992) 2 SCC 86, it has been observed in para 9 that:

*“9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and*

*fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”*

Applying the said principles to the facts of the present case, the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused.

189. In Shambu Nath Mehra vs. State of Ajmer, this court had aptly explained the scope of Section 106

of the Evidence Act in criminal trial. It was held in para 11: (AIR p.406)

*“11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor and Seneviratne v. R.*

**(v) Ravinder Singh v. State of Punjab (AIR 2022 SC 2726)**

In this judgment, at para 10 it is held as under:

10. *The conviction of A2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [See Hukam Singh v. State of Rajasthan AIR 1977 SC 1063]; Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa @ Krishnappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh @ Dalbir Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890)] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down*

*that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.*

**(vi) C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193**, wherein it has been observed that:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”.

**(vii) T.Diwakara and others vs. State of Karnataka by its SPP (ILR 2006 KAR 4632)**

In this judgment, this Court has held that “the statement of PW.10 was recorded before the Magistrate. After the lodging of the complaint, PW.10 has turned hostile. But the trial Court convicted the accused on

the strength of statement of PW.10 recorded under Section 164 of Cr.P.C. The trial Court grossly erred in placing reliance on the statement recorded under Section 164 of Cr.P.C. as substantive evidence. While convicting the accused the statement recorded under Section 164 of Cr.P.C. does not have any better legal status than the one recorded under Section 161(3) of Cr.P.C. At the most, if the deponent whose statement is recorded under Section 164 turns hostile, he/she could be prosecuted for perjury but on the strength of such statement no conviction can be placed”.

190. As regards the involvement of Accused Nos.8 and 12, it is contended that the Trial Court has erroneously given a finding by rendering a conviction judgment as there is no individual charge framed against the accused. However, the deceased Lingaraju gave a complaint to Lokayuktha against Accused No.8 / Govindaraju and Accused No.12/ Gowramma in relation

to power loom workers and asking for information under the RTI Act and it is stated that Accused No.8 had instigated and abetted other accused persons to commit the murder of Lingaraju. However, as regards the said charge No.5, absolutely there is no linking circumstance to prove that Accused No.8 had got any connection directly or indirectly with Accused Nos.4, 5 and 7 and hence the question of convicting Accused no.8 with the aid of Section 109 read with Section 149 of the IPC, does not arise.

191. PWs 1, 2 and 8 who are the wife and sons of the deceased had not made any allegations against Accused No.12. Even when deceased filed a complaint against Accused No.12, no such documents were produced and the deceased filed PCR No.65/2012 against Accused No.8. However, no action was taken and only it was a suo moto case registered by the Lokayuktha Police as per Exhibit P220. Deceased

Lingaraju was not even a pancha to the seizure mahazar in the said case. Therefore, the question of enmity between the Accused No.12 and the deceased Lingaraju does not arise at all. Further, it cannot be expected that Accused No.8 and remaining accused were unknown to Accused No.12 and even that it cannot be assumed that there was any connecting incriminating circumstances established against Accused No.12. When the case stands on circumstantial evidence, it is essential to prove that the accused and accused alone are responsible for the act in view of the law laid down by the Hon'ble Apex Court in 2020 CrI.J. 173. Each circumstances is to be established to connect the accused to the incident and even a single missing chain would lead to the benefit of doubt going in favour of the accused. In the instant case, it is contended that the prosecution has failed to prove the case beyond all reasonable doubt since none of the circumstances is incriminating towards the accused in spite of which the

Trial Court has convicted the accused, which is bad in law.

192. Lastly it is contended that the Trial Court has gravely erred while recording the statement under Section 313 Cr.P.C. Though there were about 462 questions while were put, all the incriminating questions have been denied by the appealant / Accused No.12 and even in page 442 of the judgment it is observed that the Lokayuktha police had raided the house of Accused Nos.8 and 12 and seized gold ornaments and thereafter handed over the same to Accused No.12. Accused Nos.8 and 12 had hatched a criminal conspiracy with other persons and have hired Accused Nos.1 to 3 to murder Lingaraju. In order to hire supari killers, Accused No.12 had pledged her gold ornaments through PW-15 and his son Hemanth with the Bangalore City Co-operative Bank, Avalahalli and had drawn Rs.10 lakhs. When PW-13, PW-14 and PW-20 were examined as regards the same, they had not

stated that Accused No.12 and Accused No.8 having come to the Bank and receiving the amount ncr PW-15 had also not stated that he had handed over the amount to Accused No.8 and Accused No.12. This important material incriminating circumstances have not been put in the 313 statement to the appellant / Accused No.12. Even then, the Trial Court having convicted the accused, is unsustainable in law. This is against the law laid down by the Hon'ble Supreme Court in the case of ***Ashraj Ali vs. State of Assam (2008 (16) SCC 228)*** which states that every circumstances appearing against the accused must be put to him specifically, and failure to do so, would vitiate the trial if accused is shown to be prejudiced which has resulted in a miscarriage of justice.

192. These are the contentions made by the learned Senior Counsel Shri C.V. Nagesh relating to Accused Nos.8 and 12 who are the appellants in

CrI.A.No.54/2021 and CrI.A.1068/2020. Learned Senior counsel has referred to the judgment of conviction rendered by the Trial Court in S.C.No.428/2013 dated 28.10.2020 as well as certain circumstances as to how the Trial Court has convicted the accused giving credentiality to circumstantial evidence. But in the instant case though several witnesses have been subjected to examination, but those witnesses have given a go-by to the versions of their statements. PW-1 / Uma Devi is the complainant at Exhibit P1. In her presence, Exhibit P2 / spot mahazar was drawn by the I.O. PW-2 / Karthik is the son of the deceased and even PW-8 / Arjun are material witnesses on the part of the prosecution have been subjected to examination, but they did not withstand the versions of their statements in respect of the versions made at Exhibit P1. Despite of which, the Trial Court has rendered a conviction judgment. PW-12 who has been subjected to examination and got marked

portions of the statements at Exhibits P32(a) to P32(p). PW-2 / Karthik had given statement under Section 164 of the Cr.P.C. and when he was subjected to examination, he has given a go-by to the versions of his statements given to the I.O. Contradictory part of the statement has been marked at Exhibits P76, P76(a) to P76(e) and P77, P77(a) to P77(j). Further statements of one Renukaradhya and further statements of Karthik inclusive of Prakash K and declaratory part of their statements have been got marked at Exhibits P89 to 92 and 92(a) to 92(f). Part Statements of Arjun, Balakrishna, Prathap, Chandregowda and Chikkamadegowda inclusive of the declaratory statements of Sumithra, L. Krishnamurthy, Lokesh, Nagaraj have also been got marked at various exhibits. Several witnesses have turned hostile to the case of the prosecution, despite of which the Trial Court has given credentiality to the evidence of the witnesses and rendered a conviction judgment. Therefore, in these

appeals, in requires to re-appreciate the evidence in respect of the accused / gravamen of the accusation made against them and similarly the complainant / the gravamen of narration of the complaint. PW-1 / Uma Devi had turned hostile to the entire statement made by her at Exhibit P164. If the evidence facilitated by the prosecution is not re-appreciated in these appeals respectively, certainly the accused would be the sufferer and it would result in a miscarriage of justice. On all these premise, learned Senior counsel for Accused Nos.8 and 12 seeks to set aside the judgment of conviction rendered by the Trial Court in S.C.No.428/2013 and consequenti to acquit the accused persons.

194. Similar contentions as that of learned Senior counsel Shri C.V. Nagesh, are made by the Learned counsel Shri Ajith Anand Shetty for Accused No.4 and Shri Satyanarayana S. Chalke for Accused Nos.5 to 7 and learned counsel Shri M Devaraja for Accused Nos.9

and 10 are contended by referring the evidence let in by the prosecution to prove the guilt mainly the evidence of PW-1, PW-2, PW-8 and PW-46, PW-53, PW-80, PW-81. Lastly, learned counsel have submitted that the prosecution has failed to prove the guilt against the accused persons in respect of eliminating the deceased Lingaraju, none other than the husband of PW-1 / Uma Devi who is the author of the complaint. PW-1 / Uma Devi has not withstood the versions of her statement made under Section 164 Cr.P.C. inclusive of the contents at Exhibit P1 complaint. Further, PW-2 / Karthik, son of deceased Lingaraju also has not withstood his statement made under Section 164 Cr.P.C.

195. It is specifically contended that it is relevant to refer to the evidence of PW-1 / Uma Devi and similarly PW-2 / Karthik and PW-4 / Arun. PW-4 is the son of PW-1 / Uma Devi and so also the son of

Lingaraju, an RTI activist and Editor of 'Mahaprachanda' daily local newspaper. PW-5 / Lokesh and PW-6 / Renuka Aradhya are said to be eye-witnesses to the incident narrated in the complaint at Exhibit P1. But all these witnesses have turned hostile to the versions of the incident narrated in the complaint at Exhibit P1. PW-1 / Uma Devi and PW-2 / Karthik have given their statements under Section 164 of the Cr.P.C. which have been recorded by the Judicial Magistrate, but have disowned their statements relating to the incident narrated. PW-1 in her evidence has specifically stated that the relationship between her husband deceased Lingaraju and Accused No.8 / C. Govindaraju and Accused No.12 / Gowramma was cordial in nature. PW-1 has further stated that she did not scribe the FIR and as instructed by the police, she affixed her signature at the police station. Further, she has also stated that she did not know the contents of the mahazar and that she has also told that Accused are

not the persons said to have assaulted her husband. Further, she did not identify any of the accused persons present before Court. During the course of cross-examination, nothing was elicited in identifying the accused though she was very much with the deceased when the assailants had assaulted her husband Lingaraju. PW-2 / Karthik who is none other than the son of the deceased Lingaraju has given his evidence that he did not identify the accused and reiterated the same when he was subjected to cross-examination by the Special Public Prosecutor after being treated hostile. PW-4, PW-5 and PW-6 were also subjected to examination on the part of the prosecution to prove the incident relating to the murder of the deceased Lingaraju. But they have turned hostile to the versions of the prosecution relating to their statements and they have categorically stated in their evidence that the accused are not the assailants. Insofar as the statements made by PW-1 and PW-2 under Section 164

Cr.P.C., the same cannot be treated as substantive evidence unless it is corroborated by the witnesses on the part of the prosecution to prove the guilt against the accused. PW-1 and PW-2 who are material witnesses and so also eye-witnesses, have not supported the case of the prosecution.

196. PW-80 / T. Venkateshappa, being a Police Inspector has stated in his evidence to the effect that on 20.11.2012 at about 8.00 a.m. had gone to the scene of crime and he has spoken about the receipt of a complaint at Exhibit P1. He has spoken that as per Exhibit P1, some unknown persons had committed the murder of Lingaraju. He has admitted that at the time of registering the FIR, he did not know the whereabouts of PW-1 / Uma Devi.

197. PW-81 / I.O. had admitted that he did not investigate regarding the incoming / outgoing calls, whatsapp messages, etc., connected to MOs 38, 39 and

40 and he did not make any investigation to find out the sources of the mobile. PW-81, PW-90 and PW-54 are the Investigating Officers who had accessed the various mobile numbers and analyzed CDRs, CAFs and they have categorically admitted that no mobile handsets or SIM numbers stood in the names of any of the accused persons.

198. The prosecution has though has marked Exhibits P109, 110 to prove that the accused persons stayed at the Guest House in Tamil Nadu, both the said documents are scribed in Kannada language, which *prima facie* indicates that both the said documents were forged, for the purpose of the case.

199. Hence, it is contended that according to the prosecution, none of the accused persons had stayed at Palace Lodge on 20.11.2012, the date of the incident. Further, there is no connecting material to point out that the accused were staying at Palace Lodge,

Ramanagar on 19.11.2012 and 21.11.2012. CCTV footage is not proved beyond all shadow of doubt. That apart, the prosecution has also not adduced any iota of evidence that Accused Nos.1 to 6 were present in Bengaluru or at the place of occurrence at the relevant date as on 20.11.2012. Further, though so many recoveries were made vide various PF numbers, the said PF numbers are in no way connected to the appellants. Viewed from any angle, it is contended that the prosecution did not adduce any evidence to connect accused Nos.4 to 7 in the case. The Trial Court has erroneously convicted the accused taking the materials from the charge-sheet, which is inadmissible in evidence. Law is well-settled that in order to prove the case, the prosecution needs to adduce evidence. However, the prosecution has failed to bring any iota of evidence to bring out any iota of evidence to prove the guilt of the accused.

200. Learned counsel Shri Satyanarayana S. Chalke for Accused Nos.5, 6 and 7 in support of his arguments has relied on the following decisions:

**(i) Chandrapal vs. State of Chattisgarh (2022 5 Supreme 404)**

In this judgment, the Hon'ble Supreme Court has held as under:

*Circumstantial evidence - The circumstances concerned "must or should be" established and not "may be" established - Accused "must be" Shivaji Sahabrao Bobade & Anr. Vs. State of Maharashtra<sup>1</sup>. The accused "must be" and not merely "may be" guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused.*

**(ii) Ram Niwas vs. State of Haryana (2022 Livelaw (SC) 670)**

In this judgment, the Hon'ble Supreme Court at para 18 has held as under:

*“18. The prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra, wherein this Court held thus:*

*“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of*

Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656].

**(iii) Mahajan, J. has laid down in Hanumant case [AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :**

*“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”*

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] “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.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

20. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of

*suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.*

**(iii) Raju @ Rajendra Prasad vs. State of Rajasthan(LAW(SC) 2022-9-83)**

In this judgment, the Hon'ble Supreme Court has observed as under:

*“7.3 In the case of G. Parshwanath Vs. State of Karnataka, (2010) 8 SCC 593 in paras 23 and 24, it is observed and held as under :*

*“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that*

*fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.*

*24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or*

*more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”*

**(iv) Crl.P.No.100822/2016 – Ramachandra and others vs. The State of Karnataka**

In the aforesaid petition, this Court has held as under:

“With aforesaid observations, this petition is disposed of. While resting with this matter, a direction is issued to the Home Secretary for issuing a circular to all the police stations. In the first place directing them to conduct the investigation strictly in accordance with law and not to deviate from the procedure. Secondly, in cases where investigations are taken up with reference to documents said to be forged are fake documents and the same are referred to private laboratories for verification which is not correct. Therefore, when it comes to referring the documents for scientific verification with reference to handwriting, signature or the age of the writing in the document, the same shall be referred to forensic laboratory of the State and should not be send to private laboratory for securing their opinion. This is to prevent the possible manipulation in securing favourable reports and to manipulate the final report to be filed in the said investigations.”

**(v) Chunthuram vs. State of Chattisgarh  
(Crl.A.No.1392/2011)**

The Hon'ble Apex Court in the said judgment has observed as under:

*“ 9. To establish the presence of Chunthuram at the place of incident, the Courts relied on the Test Identification Parade and the testimony of Filim Sai (PW-3). The Test Identification evidence is not substantive piece of evidence but can only be used, in corroboration of statements in Court. The ratio in Musheer Khan vs. State of Madhya Pradesh<sup>1</sup> will have a bearing on this issue where Justice A.K. Ganguly, writing for the Division Bench succinctly summarised the legal position as follows:*

*“24. It may be pointed out that identification test is not substantive evidence. Such tests are meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines.*

*10. The infirmities in the conduct of the Test Identification Parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a*

*police officer in course of investigation and they fall within the ban of section 162 of the Code. (See Ramkishan Mithanlal Sharma vs. The State of Bombay)*

11. *The next important flaw is that while the pahchan patra of the TIP mentions that three lungis were presented, the related witness was shown only one lungi for identification as per the own statement of the witness Filim Sai (PW-3). Such infirmities would 2 (1955) 1 SCR 903 therefore, render the TIP unworthy of acceptance, for supporting the prosecution.*

201. Learned counsel Shri Vishnumurthy for Accused No.11 / Suresh @ Suri contends that this accused being convicted, was in incarceration but this accused was arraigned as accused in the aforesaid judgment of conviction and faced trial. When this accused was in incarceration, it cannot be said that he participated with other accused in the crime. Even material secured by the I.O. during the course of investigation did not facilitate evidence to prove the guilt of the accused. Plurality of witnesses cannot be a ground for rendering a conviction judgment. Unless

there is cogent, corroborative, positive evidence to probabalise that these accused persons alone have committed the murder of the deceased Lingaraju by avocation as an RTI Activist, the conviction is bad in law. These are all the contentions made by the aforesaid learned counsel who emphatically seeks for intervention of the judgment of conviction rendered by the Trial Court. If not interfered, certainly the accused persons would be the sufferer.

202. Therefore, it is contended that in these appeals, it requires to analyse and closely scrutinize the evidence as regards the Exhibits P26 and P116 in respect of two affidavits filed by deceased Lingaraju prior to the alleged murder. His affidavit is notarized by an Advocate relating to complaint against Accused No.8 / Govindaraju as regards hatching criminal conspiracy at Palace Lodge at Ramanagara. The accused persons are said to have stayed in a dormitory. However, there is no evidence forthcoming on the part of the

prosecution to prove the guilt of the accused. Despite of which, the Trial Court has erroneously arrived at a conclusion that the prosecution has proved the guilt against the accused beyond all reasonable doubt. Therefore, in these appeals, it requires to consider the grounds urged in respect of the role of these accused and to consequently set aside the judgment rendered by the Trial Court in S.C.No.428/2013 dated 20.10.2020. Consequent upon setting aside the judgment of conviction, to acquit the accused of the offences leveled against them.

203. Learned Spl.PP Sri Ashok N.Naik for respondent – State in all these appeals has taken contentions and also submitted in writing and also has placed reliances in support of his arguments. He has filed synopsis mentioning important dates of events. It is contended that on 16.04.2010 accused No.12 became Corporator vide Gazette notification as per Ex.P387.

Deceased Lingaraju filed affidavit against Accused Nos.8 and 12 on 18.06.2010 and 22.06.2010 as per Ex.P26 and Ex.P116. On 06.09.2010 deceased asked for police protection from Accused as per Ex.P391. This document also refers above shown Exs.P26 and 116. As per Ex.P385 deceased Lingaraju filed complaint before the Lokayukta authority on 23.06.2012. Ex.P27 is the letter correspondence made by deceased to His Excellency Governor seeking permission to prosecute accused No.12. Complaint came to be filed before Lokayukta against accused No.8 in PCR No.65/2012 as per Ex.P349. Exs.P28 and 29 are the applications Form A under the RTI Act seeking information regarding action report against Accused Nos.8 and 12. Ex.P220 is the FIR dated 08.11.2012. On 09.11.2012 Lokayukta held raid / house search of accused Nos.8 and 12 as per Ex.P223. Accused Nos.8 and 12 availed loan of Rs.20 lakhs through accused No.12's brother and his son PW.15 from BCC bank as per Exs.P102 and 103.

On 20.11.2012 at 6.45 deceased was done to death. On 20.11.2012 PW.1 lodged complaint Ex.P1 and consequently FIR came to be registered. On 21.11.2012 W.P.47342/2012 GM-RES (PIL) was registered and this High Court suo moto initiated proceedings in the matter of death of Lingaraju. Ex.P127 is the inquest mahazar conducted on 20.11.2012. Ex.P2 is the spot mahazar under which dagger, its handle and MO.3 to 6. Ex.P17 is the seizure mahazar of blood stained clothes of PWs.1 and 2 where MO.1 and 2 were marked. On 22.11.2012 at 7.30 a.m. Accused No.6 Bhavani and Accused No.7 were arrested and their voluntary statements are marked as Exs.P311 and P310 and so also, their mobiles were seized as per MO.35, 36 and 37. Accused No.8 – Govindaraju was arrested on 22.11.2012 and his voluntary statement was recorded as per Ex.P129. On the same day, Accused Nos.1 to 5 were arrested at Ramanagar bus stand and their mobiles were seized as per MOs.38, 39 and 40. Their voluntary statements

were recorded as per Exs.P315, 314, 316 and 317. On 23.11.2012 Lokayukta conducted raid on the house of Accused Nos.8 and 12 as per Ex.P224. On 24.11.2012 recovery was made from accused No.7 and his voluntary statement was recorded as per Ex.P131 and auto bearing Regn.No.KA-05-AA-2742 and 2 choppers as per MOs.41 and 42 and cash of Rs.15,000/- was marked as MO.54. On 24.11.2012 recovery was made from Accused No.6 and his voluntary statement was recorded as per Ex.P132. Two wheeler bearing Regn.No.KA-01-ER-6249 and Cash of Rs.1,000/- as per MO.50 was marked. On 25.11.2012 recovery was made from accused No.3 and his voluntary statement was recorded as per Ex.P.313 and one chopper was recovered as per MO.30. As per voluntary statement Ex.P.314 of accused No.2, MO.29 one chopper was recovered. On the same day, accused Nos.1, 2, 3, 4 lead the investigating team near Saptagiri Dhaba and as per voluntary statement of accused No.3 MO.31, MO.32 and MO.33 were

recovered. Accused No.4 has given voluntary statement as per Ex.P316 and produced Rs.1,50,000/- two bundles MO.27 and 28 which bears bank slips. On 26.11.2012 Accused No.5 as per his voluntary statement Ex.P317 lead to his residence from Godrej and produced Rs.1 lakh, 2 bundles, which bears bank slips as per MOs.25 and 26. On 27.11.2012 at 8.45 a.m. Tata Sumo vehicle bearing Regn.No.KA-41-3600 was seized as per Ex.P124. MO.51 a sum of Rs.7000/- was seized from the residence of accused No.1 as per Ex.P156. As per Ex.P159 and voluntary statement of Ex.P.318 of accused No.8 who lead to his house and then accused No.12 produced mobile MO.43 of SIM 9449815395. On 30.11.2012 accused No.4 as per his voluntary statement Ex.P316 lead the investigating team and showed Maruthi Zen car bearing Regn.No.KA-04 MA 224. On 01.12.2012 accused No.12 produced mobiles of accused No.8 and the same were marked as MOs.44 and 45. On 06.12.2012 accused No.10 as per

his voluntary statement Exs.P324 and 325 lead and produced in his house two mobiles MOs.46 and 47 and cash of Rs.5000/- MO.52. On 09.12.2012 accused No.9 as per his voluntary statement Ex.P331 lead and produced from his house MO.53 Rs.47,000/- and one Nokia mobile MO.48 with SIM. On 12.12.2012 accused No.12 was arrested at Tanjavur who was with her brother – PW.12 Krishnamurthy. On 13.12.2012 PW.12 Krishnamurthy produced MO.49 bearing SIM 9945850261 which was used by accused No.12. On 01.01.2013 the voluntary statement of PW.1 as per Ex.P19 and voluntary statement of PW.2 as per Ex.P73 were recorded. On 07.01.2013 test identification parade and on 08.02.2013 photo identification parade were conducted. On 12.02.2013 PW.54 who collected the call details submitted analysis report to the PW.90 who is the IO. On 06.04.2013 about the compromise in C.C.No.16879/2013 PW.1 who is the wife of deceased gave her evidence in the said case. On 08.04.2014

petition in W.P.No.17847/2014 was filed by PW.1 -- Smt.Umadevi for removal of Spl.PP since she did not cooperated for compromise with the accused. On 06.05.2014 PW.1 gave her evidence in C.C.No.16879/2013 stating that accused No.8 committed the murder of her husband as per the prosecution case but pending cross examination the case was compromised. On 11.03.2015 PW.1 compromised the case before the trial Court in C.C.No.16879/2013. On 20.03.2015 the trial Court called for sting operation CD Ex.P357 from TV-9. On 07.07.2015 the trial Court passed an order regarding relevancy and admissibility.

204. In support of his arguments, learned Spl.PP has produced gazette notifications dated 26.03.2018, 11.04.2018, 04.09.2018 and 26.11.2019 issued by the Ministry of Electronics and Information Technology,

New Delhi. He has also produced the following reliances in support of his arguments:

(i) In respect of subverting trial / undermining trial / sting operation, the judgment reported in the case of **R.K.Anand vs. Registrar, Delhi High Court 2009(8) SCC 106** is relied. In the said judgment important observations are made about sting operation, evidentiary value of microchips and their copies, duties of advocates and supervisory powers of High Court.

(ii) In the case of **Aniruddha Bahal v. State (Delhi) 2010 (172) DLT 268** it is held in respect of Article 51A (b) Fundamental rights and duties – citizens of this country have a fundamental right to have a clean incorruptible judiciary, legislature, executive and other organs – there is corresponding duty to this right to expose corruption wherever found – this duty permits citizens to act as agent provocateurs to bring out and expose and uproot the corruption.

(iii) In respect of appreciation of evidence the judgment of the Hon'ble Supreme Court in the case of **M.G. Agarwal vs. State of Maharashtra (1963 AIR (SC) 200)** wherein it is held as under:

*18. There is another point of law which must be considered before dealing with the evidence in this case. The prosecution case against accused No. 1 rests on circumstantial evidence. The main charge of conspiracy under section 120 B is sought to be established by the alleged conduct of the conspirators and so far as accused No. 1 is concerned, that rests on circumstantial evidence alone. It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is*

*necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. It is in the light of this legal position that the evidence in the present case has to be appreciated.*

**(iv) Bhajju @ Karan Singh v. State of M.P. (2012 AIR (SC) (Cri) 748)**

*Evidence Act, Section 154 - A person calling a witness – he can put any question to his witness which might be put in cross-examination by the adverse party with permission of Court – Section 154 of Evidence Act enables the court, in its discretion to give the such permission – the courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence.*

*Evidence Act, Section 154 – Hostile witness – Evidentiary value of evidence of hostile witness – Court will always have to take a very cautious decision while referring to the statements of such witnesses who turn hostile or go back from their earlier statements recorded, particularly, under Section 164 of Cr.P.C. – what value should be attached and how much reliance can be placed on such statement is a matter to be examined by the Courts with reference to the facts of a given case.*

*Indian Penal Code, Section 302 – Evidence Act, Section 154 – Hostile witness – murder case – prosecution witness supported prosecution but turned hostile during cross – the witnesses were neighbors of accused – probably they turned hostile out of sympathy with accused - however, the Court placed reliance their*

*statements in examination –in – chief to the extent it supported the case and convicted the accused.*

*“Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Cr.P.C., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires.*

*It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the cases :*

- a. Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624*
- b. Prithi v. State of Haryana (2010) 8 SCC 536*

c. *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1*

d. *Ramkrushna v. State of Maharashtra (2007) 13 SCC 525*

20. PW2 and PW3 were the persons who had met the deceased first after she was put on fire. They were not the eye-witnesses to the occurrence. It is an admitted case that they were the first persons to meet the deceased after she suffered the burn injuries and had taken her to the hospital. This was their consistent version when stated before the police and even before the court. Contrary to their statement made to the Investigating Agency, in the Court, they made a statement that the deceased had told them that she had caught fire by chimney and her burn injuries were accidental. This was totally contrary to their version given to the police where they had stated that she had told them that Bhajju had poured kerosene on her and put her on fire. To the extent that their earlier version is consistent with the story of the prosecution, it can safely be relied upon by the prosecution and court. The later part of their statement, in cross-examination done either by the accused or by the

*prosecution, would not be of any advantage to the case of the prosecution. However, the accused may refer thereto. But the court will always have to take a very cautious decision while referring to the statements of such witnesses who turn hostile or go back from their earlier statements recorded, particularly, under Section 164 of the Cr.P.C. What value should be attached and how much reliance can be placed on such statement is a matter to be examined by the Courts with reference to the facts of a given case.*

(vi) In respect of suggestions and admission put on behalf of accused during cross examination, the following judgments are relied on:

**(A) Tarun Bora @ Alok Hazarika vs. State of Assam (2002 AIR (SC) 2926)**

*Indian Penal Code – Section 365 – Victim kidnapped for supply of information to Army about on Terrorist Organisation (ULFA) – Conviction under Section 365 IPC upheld – Offence of kidnapping in any form impinge upon human rights and right to life enshrined in Article 21 of the Constitution –*

*Such acts not only strike a terror in the mind of the people but have deleterious effects on the civilized society and have to be condemned by imposing deterrent punishment.*

**(B) Rakesh Kumar @ Babli vs. State of Haryana (1987 AIR SC 690)**

*Indian Penal Code, 1860, Section 302 – Incident of murder occurred to street in night hours – plea that accused could not be identified by witnesses due to insufficiency of light – plea not tenable – light may be insufficient but not all that dark so that accused could not have been identified.*

(vii) With regard to proof of seizure mahazaras of supari amount, blood stained weapons, blood stained clothes, FSL reports connecting to accused/offence and evidentiary value attached to police officer's evidence when panchas turned hostile, learned Spl.PP has relied on the following reliances:

**(A) Rameshbhai Mohanbhai Koli v. State of Gujarat (SC) 2011 AIR (SC) (Cri) 120**

*In C. Muniappan & Ors. vs. State of Tamil Nadu, JT 2010 (9) SC 95, this Court, after considering all the earlier decisions on this point, summarized the law applicable to the case of hostile witnesses as under:*

*"70.1 The evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.*

*70.2 In the instant case, some of the material witnesses i.e. E. Kamal (PW.86); and R. Maruthu (PW.51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law.*

*70.3 Some omissions, improvements in the evidence of the PWs have been pointed out by the learned Counsel for the appellants, but we find them to be very trivial in nature.*

*71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the*

*court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.*

**(B) Mallikarjun vs. State of Karnataka (SC)**

**2019 (5) RCR (Criminal) 1002**

*Section 302 - Murder - Eyewitness - while appreciating evidence of witness, approach must be to assess whether evidence of witness read as whole appears to be truthful - once impression is formed, it is necessary for court to evaluate evidence and alleged discrepancies and then, to find out whether it is against general tenor of prosecution case - if evidence of eye witness found to be credible and trustworthy minor discrepancies which do not affect core of prosecution case, cannot*

*be made ground to doubt trustworthiness of the witness.*

*Section 302 Murder – recovery – merely because panch witnesses turned hostile, recovery of weapon would not stand vitiated – evidence of IO can be relied upon to prove recovery even when panch witnesses turned hostile – PSI has clearly spoken about recovery of dagger at behest of accused and another dagger and handle of axe from scene of occurrence – his evidence cannot be discarded merely because panch witnesses have turned hostile.*

**(C) Mahendran v. The State of Tamil Nadu (SC)**

**2019 AIR (SC) 1719**

*In this judgment, it is held that opinion of an expert witness cannot be given preference over the primary statement of the witnesses in respect of manner of injuries suffered by them. Only because in certain aspects part of statement has been disbelieved, entire testimony of witnesses cannot be discarded.*

**(D) Ronny @ Ronald James Alwaris v. State of Maharashtra (SC) 1998 AIR (SC) 1251.**

*In this judgment Section 9, Evidence Act, Section 302 – IPC – murder – identification parade – identification of accused at trial is a relevant piece of evidence under Section 9 of Evidence Act – It is inherently of weak character – evidence of identification in test identification is not a substantive evidence is only a corroborative evidence – it falls within the realm of investigation – substantive evidence is the statement of witness made in the court.*

**(E) Mohd. Aslam vs. State of Maharashtra (2001 (9) SCC 362)**

*In this judgment Section 302 of IPC, Sections 9 and 3 – murder – identification – murder at 8.15 p.m. on 24.2.1994 at Kala Ghoda Mumbai – not a time when the city would go dark – witnesses could have seen the assailants in the light of city – no serious lapse in the identification parade conducted by the Magistrate – accused identified in the Court as well – no reason to disbelieve testimony of witnesses.*

(F) **Mohan Lal and another vs. Ajit Singh and another (1978 AIR (SC) 1183)**

*Section 313 of Cr.P.C., Evidence Act, 1872, Section 3 – Statement of accused – evidence on record disproving exculpatory part of the statement part, which accords with the evidence, permissible to accept and act upon.*

(viii) In respect of dying declaration – On the basis of Ex.P.26 affidavit dated 18.06.2010 to 19.11.2012 on which date PW.87 – Dhruva Kumar, advocate heard from deceased regarding “life threat” leads to the circumstances of transactions resulting in death as per Section 32(1) of Indian Evidence Act. The Hon’ble Supreme Court has addressed this issue in the case of **Sudhakar vs. State of Maharashtra (2000 AIR (SC) 2602)**, **Kans Raj vs. State of Punjab and others (2000 AIR (SC) 2324)**

(ix) In respect of 65B Certificate the reliance of Hon’ble Supreme Court in the case of **Anvar P.V. vs. P.K.Basheer and others** at para 24 it is held as under:

*“ 24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act.”*

Further, in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others (2020)(7) SCC 1 at para 50** it is held as under:

*“We may hasten to add that Section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that*

*the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.”*

(x) In respect of conspiracy, the case of **K.R.Purushothaman vs. State of Kerala (2006(12) SCC 631** it is held as under:

*“To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly*

*established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.”*

In respect of statements under Section 164 of Cr.P.C. the judgment of Hon'ble Supreme Court in the case of Ramesh Singh @ Photti vs. State of Andhra Pradesh (2004 AIR (SC) 4545) it is held that “ Section 164 of IPC, Section 302 of IPC – Murder Case – investigating officer got recorded statements of some of the PWs under Section 164 of Cr.P.C. it is no ground to reject their statements – evidence of such witnesses has

only to be considered with caution and nothing beyond that.”

205. On all these grounds, it is contended by the learned Spl. PP Shri Ashok N. Naik that the impugned judgment of conviction rendered by the Trial Court in S.C.No.428/2013 dated 18.10.2020 being just and proper, needs no interference in these appeals. Hence, he prays for dismissal of the appeals.

206. In the context of contentions made by the learned Senior Counsel Shri B.V. Acharya and Shri Vishnumurthy for Accused Nos.1, 2 and 3, the learned Senior counsel Shri C.V. Nagesh and Shri Raghavendra K for Accused Nos.8 and 12 inclusive of Shri Ajith Anand Shetty for Accused No.4, Shri Satyanarayana Chalke for Accused Nos.5, 6 and 7, learned counsel Shri M. Devaraja for Accused No.9 & 10 and learned counsel Shri Vishnumurthy for Accused No.11 and the counter arguments addressed extensively by the learned Spl.PP

Shri.Ashok N Naik for the respondent / State in these matters and on perusing the common judgment of conviction rendered by the Trial Court in S.C.No.428/2013 dated 28.10.2020 inclusive of the evidence of PW-1 to PW-90, Exhibits P1 to P401, Material Objects namely MO-1 to MO-54 inclusive of Exhibits C1 and C2 and Exhibits D1 and D2, it is relevant to state that Accused Nos.8 and 12 had hatched a criminal conspiracy along with the other accused persons and are said to have hired Accused Nos.1, 2 and 3 to eliminate deceased Lingaraju who was an RTI Activist and so also an Editor of "Maṅaprachanda" patrika.

207. Accused Nos.1 to 3 are said to be supari killers and as such, in order to pay the said supari killers, Accused No.12 / Gowramma had pledged her gold ornaments through her brother PW-15 / Revanna and his son Hemanth at Bengaluru City Co-operative

Bank, Avalahalli and are said to have drawn an amount of Rs.9,74,000/- each after deducting the share amount, appraiser charge and so also application fee. The said amount was handed over by Revanna to Accused Nos.8 and 12. Whereas Exhibits P21 to P24 reveals that Accused No.8 / C. Govindaraju and Accused No.12 / Gowramma's daughter's marriage was arranged at Palace Grounds, Bengaluru as on 26.11.2012. On 19.11.2012, loan was borrowed by PW-15 and so also his son from the Bangalore City Co-operative Bank. Lokayuktha Police had conducted raid on the house of Accused Nos.8 and 12 as on 09.11.2012. Lingaraju being an RTI Activist and an Editor of 'Mahaprachanda', was murdered as on 20.11.2012.

208. The prosecution materials as well as the evidence of witnesses reveals that the police had seized Rs.3 lakhs from Accused Nos.1, 4, 5, 6, 7, 9 and 10.

PW-81 / Shivamalavaiah has recovered an amount of Rs.1,00,000/- from Accused No.5 on his disclosure statement given during investigation. Accused No.5 had stated that the amount of Rs.1 lakh which was recovered from Accused No.5 was given by Accused No.8 / C. Govindaraju for the service of supari killing, in order to eliminate the deceased Lingaraju who was an RTI Activist and an Editor of 'Mahaprachanda'.

209. It is revealed that Accused Nos.1 to 5 went in an autorickshaw bearing No.KA-05/AA-2742 of Accused No.7 by holding deadly weapons. Similarly, Accused Nos.6 and 10 had come in a Hero Honda vehicle bearing No.KA-01/ER-5249 and reached Bhakthamarkandeya Layout at around 6.45 a.m. Accused Nos.1, 2 and 3 are alleged to have assaulted Lingaraju and done him to death. During investigation, PW-81 being an I.O. in part had seized a Tata Sumo bearing No.KA-41 / 3600 and so also a Zen car bearing No.KA-04/MA-224 said to

be used by Accused No.4. The said vehicles were seized through Accused Nos.6 and 7. These are all the circumstances indicating that accused persons had involved in committing the murder of deceased Lingaraju and also that they received supari amount from Accused No.8 / C. Govindaraju to eliminate the deceased Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda', as contended by the learned Spl. PP.

210. PW-54 / Manoj M. Hoovale being an I.O. after analyzing the downloaded documents into laptop relating to digital information, had taken print out in four volumes (CDR). PW-54 has given the analysis report under Section 65-B of the Indian Evidence Act which is marked as Exhibit P-295.

211. Exhibit P-273 reveals that mobile No.9449815395 belonged to Accused No.12 / Gowramma. As regards Exhibit P-274, call details timings shows that around 7.44 a.m., 7.50 a.m., 8.04

a.m., PW-7 / Prakash, being the driver of Accused No.8/ C. Govindaraju , had spoken with Accused No.12 / Gowramma. The said Gowramma's mobile number was in conversation with her driver's mobile number 9945850261. Exhibit P226 and Exhibit P228 indicates the name of Accused No.4 and Accused No.11 as rowdysheeters. After committing the murder of Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda', the accused persons are said to have stayed in Gopinatham Mistry Trial Camp. PW-19 / Soundar Raj has stated in his evidence that he was working in the said lodge and he has identified Accused No.3 who had stayed in the dormitory on 20.11.2012. After committing the murder of the deceased Lingaraju, accused persons are said to have travelled to Hogenaikal falls in Indica car and Tata Sumo car and stayed in the said lodge. But there is no worthwhile evidence on the part of the prosecution as contended by the learned counsel for the accused.

212. The prosecution has given more credentiality to the motive factor and also dying declaration termed as an affidavit of Exhibit P-26 and Exhibit P-116. The contents of the affidavit reveals that prior to the death of Lingaraju, his life was under threat. In order to prove the motive factor and dying declaration, the prosecution has relied on the evidence of PW-22, PW-69 and PW-87 and has banked upon the evidence of those witnesses inclusive of the materials got marked at Exhibits P26, P116, P39, P27, P28, P29, P349, P222, P220, P223 and Exhibit P391. The prosecution has proved the contents in the mahazar through the evidence of PW-18, PW-15 in respect of the mahazar at Exhibit P2, Exhibit P178 and Exhibit P308 and so also Test Identification Parade conducted has been proved by the evidence of PW-1 / Uma Devi and PW-2 / Karthik and PW-52 by getting marked documents at Exhibits P74, P75 and P179 inclusive of photo identification through the evidence of PW1, PW-2, PW-57, PW-64 and PW-88 and relating to

Exhibits P30, P74, P75 and P34 to P70 and Exhibit P170, Exhibit P194 and Exhibit P179. Insofar as the mobile conversations it has to be established by the prosecution through the evidence of PW-70 to PW-74, PW-54, PW-57, PW-64 and so also the exhibited documents at Exhibits P-135, 172, 173 to 177, Exhibit P194, P184-192, Exhibit P138 to 195, Exhibit P196 and 225 to 295 and such other evidence. The marriage of the daughter of Accused nos.8 and 12 was scheduled on 20.11.2012 at Palace Grounds, Bengaluru. However, it is relevant to refer to Section 32 of the Indian Evidence Act, 1872, which reads thus:

*“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc ., is relevant. —Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court*

*unreasonable, are themselves relevant facts in the following cases:—*

*(1) when it relates to cause of death. — When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.*

*(2) or is made in course of business. — When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.*

*(3) or against interest of maker. —When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.*

*(4) or gives opinion as to public right or custom, or matters of general interest. —When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.*

*(5) or relates to existence of relationship. —When the statement relates to the existence of any relationship 25 [by blood, marriage or adoption] between persons as to whose relationship 25 [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.*

*(6) or is made in will or deed relating to family affairs. —When the statement relates to*

*the existence of any relationship 25 [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.*

*(7) or in document relating to transaction mentioned in section 13, clause (a). —When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).*

*(8) or is made by several persons, and expresses feelings relevant to matter in question. —When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.”*

But there is no substance in the contention made by the learned Spl. PP as regards Exhibits P.26 and P.116 as dying declaration.

213. Whereas Accused No.8 / C. Govindaraju along with Accused Nos.4, 5, 7 and 11 went to the house of Lingaraju to invite to the marriage of his daughter. After extending the marriage invitation card to Lingaraju, Accused No.8 / C. Govindaraju had showed the said Lingaraju to Accused Nos.4, 5, 7 and 11. It is stated that Accused Nos.8 and 12 had hatched a criminal conspiracy with other accused persons and also secured the services of supari killers namely Accused Nos.1 to 3 in order to eliminate Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda'. As according to the criminal conspiracy hatched among accused Nos.8 and 12 with other accused, accordingly on 19.11.2012 at Palace Lodge in Room Nos.16 and 17 situated at Ramanagara, accused nos.1, 2, 3, 4, 5, 6 and 10 had conspired together and discussed to eliminate Lingaraju and therefore on the same day they were staying in the said lodge. But according to the conspiratorial meeting held among them, as on

20.11.2012 at around 4.30 a.m., they left the Palace Lodge at Ramanagara and asked Accused No.7 to wait near Vijayanagara Service Station. Subsequently, Accused Nos.1 to 5 went in an autorickshaw bearing No.KA-05/AA-2742 of Accused No.4 by holding deadly weapons and Accused Nos.6 and 10 came in a Honda vehicle bearing No.KA-01/ER-6249 and reached Bhakthamarkandeya Layout at around 6.45 a.m. Near a public tap, deceased Lingaraju was seen collecting water from a public tap. Accused Nos.1, 2 and 3 are said to have assaulted him with means of chopper and dagger and caused his death on the spot. The wife of Lingaraju namely Smt. Uma Devi / PW-1 and their son Karthik / PW-2 had made efforts to save Lingaraju from their clutches. But Accused No.2 is said to have shown a chopper and caused life threat to them. These are the evidence which have been considered by the Trial Court to render a conviction judgment. But there is no worthwhile evidence let in by the prosecution to prove

the guilt against Accused Nos.1, 2 and 3 inclusive of Accused Nos.8 and 12 and so also Accused Nos.4 to 7 and 9 to 11.

Whereas PW-1 and PW-2 are the star witnesses but they have given a go-by to the version of the complaint at Exhibit P1 and their statements as recorded under Section 164 of the Cr.P.C. which are marked as Exhibits P-19 and P-73.

214. Learned Senior Counsel Shri B.V. Acharya for Accused Nos.1 to 3 and learned Senior counsel Shri C.V. Nagesh for Accused Nos.8 and 12 and so also the counsel on record for all other accused, have taken us through the evidence of PW-1 / Uma Devi who is none other than the complainant who lodged the complaint at Exhibit P1 based upon which criminal law was set into motion. But PW-1 / Uma Devi and PW-2 / Karthik are said to be eye-witnesses to the incident, as according to the theory of the prosecution. However, they have not

supported the case of the prosecution and both of them have resiled from their earlier versions, that is FIR and Exhibit P1. Even PWs 1 and 2 have not supported the TIP conducted in their presence and even the mahazars conducted in their presence relating to the incident of murder of Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda'. Both of them have given a go-by to the version of the case of the prosecution.

215. The Trial Court has referred to certain circumstances appearing on the part of the prosecution. The medical evidence disclosed antemortem injuries over the person of the deceased Lingaraju. Recovery of material objects is at the instance of the accused persons and so also the mobile conversations of the accused persons is also incriminating evidence. Further, accused persons were staying in the lodge and had hatched criminal conspiracy among themselves to execute the murder of Lingaraju and they had used the

recovered vehicles for the said purpose. Further, the Accused No.8 / C. Govindaraju had given supari amount to commit the murder of Lingaraju, his relative by hatching criminal conspiracy by staying in Ranganatha Hotel. These are all the circumstances as appearing against the accused according to paragraph 229 of the impugned judgment of acquittal rendered by the Trial Court. But Exhibit P1 reveals that deceased Lingaraju was an Editor of 'Mahaprachanda' newspaper and also an RTI Activist. Though Accused No.12 / Gowramma was the Corporator of Azad Nagar Ward in Chamarajpet, Accused No.8 / C. Govindaraju being the husband of Accused No.12 was acting as if he was the Corporator of that area on behalf of Accused No.12.

216. It is stated that Lingaraju had filed a complaint against Accused Nos.8 and 12 before the Lokayuktha police to conduct a raid. Accordingly, Lokayuktha police having collected sources, had raided

the house of Accused Nos.8 and 12 as on 09.11.2012. Therefore, it is stated that vengeance developed in between Accused Nos.8 & 12 and deceased Lingaraju. Therefore, motive factor has been assigned to prove the enmity between the deceased and Accused No.8. It is also revealed that in the year 2011-12, deceased Lingaraju and defeated candidates of BBMP election had gone to PW-87 / Druvakumar and requested him to draft a complaint in view of the fact that Accused Nos.8 and 12 had submitted a false affidavit before the Election Commission at the time of filing nomination to Corporation Election. Accordingly, PW-87 had drafted a complaint and had given it to deceased Lingaraju, which was filed before the Lokayuktha and the BBMP. For that reason also enmity developed between deceased Lingaraju and Accused No.8.

217. PW-26 in his evidence has stated that the deceased Lingaraju, an RTI Activist and the Editor of

'Mahaprachanda' had lodged a complaint against him before the BBMP regarding encroachment of lake and he had also lodged a complaint against power loom owners. In this regard, Accused No.8 / C. Govindaraju being a relative of Lingaraju, had tried to pacify the quarrel between the power loom owners and Lingaraju. However, Lingaraju had not heeded to the advise of Accused No.8 / C. Govindaraju.

218. It is stated that deceased Lingaraju had approached PW-87 / Druvakumar saying that he intended to file a complaint against the owners of the power looms with the Lokayuktha police and so also before the BBMP. Accordingly, PW-87 had drafted a complaint and handed it over to deceased Lingaraju. Deceased Lingaraju being an RTI Activist had filed the said complaint before the aforesaid authorities and enquiry was commenced by them. Being unhappy about the same, the power loom owners had

approached Accused No.12 / Gowramma who was the then Corporator of Azad Nagar Ward, Chamrajpet in Bengaluru City. There is an allegation that Accused No.8 had called deceased Lingaraju and threatened him to withdraw the complaint filed against power loom owners. Sri. Boregowda who the owner of the Power Loom Association is said to have picked up a quarrel with deceased Lingaraju by going to the house of Lingaraju along with other power loom owners.

219. It is relevant to refer to Exhibit P-26, a notarised affidavit dated 18.06.2010 filed by deceased Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda' which reveals that if Lingaraju did not withdraw the complaint lodged against power loom owners, he would be put into trouble by Accused No.8/ C. Govindaraju. Deceased Lingaraju had also filed another affidavit marked as Exhibit P.116 dated 22.06.2010 against Gangadhar and Gopal who had

encroached the Government Rajakaluve and graveyard. In the said affidavit he has also mentioned that there was threat to his life from the power loom owners as well as from Accused No.8 and others.

220. Learned Spl. PP Shri Ashok N. Naik has contended that Exhibits P.26 and P.116 which were filed by the deceased Lingaraju are to be termed as dying declaration and accordingly he has referred to Section 32 of the Indian Evidence Act, 1872 relating to the concept of 'dying declaration'.

221. Though Exhibits P.26 and P.116 are notarized affidavits which have been filed by deceased Lingaraju, however, having regard to the concept of Section 32 of the Indian Evidence Act, 1872, it cannot be said that the affidavit filed by the deceased Lingaraju is to be termed as dying declaration, merely because he has filed a notarised affidavit relating to extending life threat to him by the persons stated in the affidavits.

Unless there are some specific materials in terms of statement, that is a dying declaration made by the deceased Lingaraju when he was about to die, it cannot be termed as a dying declaration. In the instant case, Exhibits P.26 and P.116 which are notarized affidavits have been filed by deceased Lingaraju. Therefore, it cannot be said that it is a dying declaration and consequently, the contention made by the learned Spl. PP Shri Ashok N. Naik in this regard, does not hold any substance.

222. The prosecution has got marked Exhibits P.387, P.382, P.26, P.116, P.385, P.27, P.349, P.28, P.29, P.22 and Exhibit P.220, P.23 and Exhibit P.391 are the exhibits that were got marked on the part of the prosecution relating to motive factor in order to eliminate deceased Lingaraju. But at a cursory glance of the evidence of PW-22, PW-26, PW-69 and PW-87 in the examination-in-chief and also cross-examination, it

is seen that they do not corroborate with any other independent evidence of PW-1 / Uma Devi, or PW-2 / Karthik or with PW-8 / Arjun. Though these witnesses have been subjected to examination on the part of the prosecution, they did not absolutely support their case relating to eliminating the deceased Lingaraju as narrated in the complaint at Exhibit P1 and so also the spot mahazar at Exhibit P2 conducted by PW-81 in the presence of panch witnesses. During the mahazar, a steel dagger in the shape of knife with one handle was seized and blood droplets fallen on the spot was also seized and the said articles were marked as MO-1 to MO-6. But PW-81 / Shivamalavaiah has been subjected to examination as regards the boundaries of the place of occurrence which is indicated in the spot mahazar. The I.O. has prepared the spot mahazar and also prepared the sketch in respect of the scene of crime as per Exhibit P.208 and as per Exhibits P3 to P16. But at a cursory glance of the contents of the mahazar as

well as the sketch, there is no corroborative evidence facilitated by the prosecution to prove the guilt against the accused persons that the accused had hatched a criminal conspiracy and eliminated Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda'.

223. PW-1 / Uma Devi who is none other than the author of the complaint at Exhibit P1 and so also wife of the deceased Lingaraju has stated in her evidence that at the time of committing the murder of her husband, herself and also her husband were residing at her mother's house situated at Bhaktamarkandeya Layout. She was residing there for about 20 years prior to the incident. But her husband was working as an employee in Canara Bank but had later resigned the said job and started working as an Editor of 'Mahaprachanda' newspaper. At the time of murder of her husband, he was an Editor. But on the date of the incident narrated, she came to know that her husband was an RTI Activist

and on the date of the incident, that is on the date of eliminating her husband, the news of murder was telecasted in the Television at 7.00 a.m. These are the evidence given by PW-1, but she did not withstand the versions of her complaint at Exhibit P1. On 20.11.2012 at around 6.45 a.m., PW-1 / Uma Devi and her husband Lingaraju came down from their house and her husband had gone to fetch water from the public tap for washing the staircase of their house, the distance of the stair case from the public tap was about 100 ft. But when she was coming down from the stair case, she found that three persons had surrounded her husband and were assaulting him. When she rushed there, they are said to have ran away from the place and that she had shouted asking Karthik to come early. These are the evidence on the part of the prosecution. PW-1 has been subjected to examination thoroughly relating to Exhibit P1 of the complaint but she did not support the case of the prosecution. She has given a

go-by to the version of her complaint at Exhibit P1 inclusive of the contents of the mahazar at Exhibit P2. This mahazar was conducted in the presence of PW-1 / Uma Devi. She has identified the spot and the dead body of her husband marked as Exhibit P3 and Exhibit P16.

224. PW-1 / Uma Devi and her son PW-2 / Karthik had given a statement as contemplated under Section 164 of the Cr.P.C., which is marked as Exhibit P19 and also statement of her son Karthik and so also got marked by recording statement under Section 164 Cr.P.C. PW-1 / Uma Devi and her son PW-2 / Karthik did not support the case of the prosecution as regards the contents of their statements made under Section 164 of the Cr.P.C. PW-1 / Uma Devi was summoned to Parappana Agrahara Jail whereby she had identified the persons being arraigned as accused. Photos of the accused persons were marked at Exhibits P35 to P38.

Photos of Accused Nos.1 to 5 also appear. But she did not give evidence on the part of the prosecution to identify the accused persons even though identification parade was held by PW-52, the Taluk Executive Magistrate.

225. PW-2 / Karthik, son of the deceased Lingaraju has stated in his evidence that he knew Accused No.8 / C. Govindaraju and also his wife Accused No.12 / Gowramma who are the relatives of his father deceased Lingaraju. His father Lingaraju was murdered about 3 years back. During the lifetime of his father, his father was running an auto finance business from 13 to 14 years. Himself and his father and his mother PW-1 / Uma Devi were residing in the house of his grandmother. But on 20.11.2012 in the morning at around 7 to 7.15 a.m. when he was sleeping in his house, at that time, he heard the noise of his mother PW-1. Therefore, he had come out from his house and

saw that his father Lingaraju had sustained injuries and died near the public tap near their house. His father Lingaraju sustained injuries under his right eye, neck as well as stomach part. Injures were caused due to assault by weapons like chopper. He found that a knife had fallen in the scene of crime. Himself and his mother PW-1 / Uma Devi had informed the murder of his father Lingaraju to the police. Accordingly, police had visited the scene of crime and recorded their statements. He identified the photos of the dead body of his father Lingaraju and also scene of crime which is marked as Exhibits F3 to P16.

226. PW-52 being the Taluk Executive Magistrate had given evidence on the part of the prosecution relating to conducting test identification parade by securing PW-1 / Uma Devi and also PW-2 / Karthik. The identification parade of five accused persons was conducted on 29.12.2012 at 3.00 p.m. at Parappana

Agrahara Jail. As on 01.01.2013 they had conducted test identification parade and in that regard, the Chamarajpet police had given a requisition to the aforesaid Taluk Executive Magistrate. Thereafter she had sent another notice dated 03.01.2013 to witnesses Smt.Umadevi and Karthik with regard to conducting the test identification parade of accused persons on 07.01.2013 by fixing the time and place. She prepared the document regarding test identification parade and identification of accused persons by Umadevi and obtained the signature of Umadevi on that document, the same is marked as Ex.P.75, the signature of Umadevi is marked as Ex.P.75(b). Further, PW-52 / Taluk Executive Magistrate had called another witness namely PW-2 / Karthik for identification of accused persons. After the said Karthik identified accused persons, she marked the said document as Exhibit P74 and obtained his signature at Exhibit P-74(a). Though the said Test Identification Parade was conducted by

PW-52 and PW-1 / Uma Devi and PW-2 / Karthik had identified the accused persons, however, both of them have not withstood their statements given before the Investigating Officer and even as regards Exhibits P.74 and P.75 relating to identification of the accused persons by them.

227. At a cursory glance of the evidence of PW-1, PW-2, PW-52, PW-57, PW-64 and PW-88 in respect of identifying the accused persons who are alleged to have involved in committing the murder of the deceased, it is seen that their evidence does not find corroborated with the independent evidence or even with the evidence of PW-1 / Uma Devi, the author of the complaint at Exhibit P1 or even with the evidence of PW-2 / Karthik, the son of deceased Lingaraju.

228. PW-1 / Uma Devi and PW-2 / Karthik have given statements before the Judicial Magistrate as under Section 164 of the Cr.P.C. and their statements

have been marked at Exhibits P.19 and P.73 respectively. Even though they have given their statements relating to assaulting the deceased Lingaraju by means of deadly weapons, but they have not withstood the versions of their statements to prove the guilt of the accused that the accused have committed the murder of the deceased Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda' newspaper.

229. At a cursory glance of the evidence of PW-70 and PW-75 to PW-81 inclusive of PW-90, it is seen that their evidence is contrary to the evidence of PW-1 and so also the evidence of PW-2 / Karthik insofar as the contents of Exhibit P1 / complaint and so also the contents of Exhibits P1 to P401 and so also MO-1 to MO-54. Though MO.1 to MO.54 were seized by the I.O. by drawing a mahazar in the presence of panch witnesses, but under Section 27 of the Indian Evidence

Act, information received from the accused to the extent of facts stated by the accused and based on the voluntary statements of the accused, recovery has to be specifically stated according to the aforesaid provision under Section 27 of the Indian Evidence Act. But the prosecution even though had subjected to examination several witnesses such as PW-1 to PW-90 and even got marked several documents at Exhibits P.1 to P.401 inclusive of material objects at MO-1 to MO-54 relating to proving the guilt against the accused, but at a cursory glance of the evidence of PW-1 and PW-2 and so also evidence of PW-45 / Dr. J. Kantharaju and the evidence of PW-46 / Dr. Pradeep Kumar inclusive of the evidence of PW-53 / Malathi D who is the Scientific Officer and so also the evidence of PW-81 / Shivamalavaiah, with regard to the injuries inflicted over the person of the deceased Lingaraju, it is found that their evidence are camouflaged and there is no corroborative evidence on the part of the prosecution to

prove the guilt against the accused. Further, their evidence is not corroborated with any other independent evidence relating to eliminating the deceased Lingaraju as narrated in the complaint at Exhibit P1. But it is relevant to refer to the materials which were collected by the I.O. during the course of investigation. On 26.11.2012, the marriage of the daughter of Accused Nos.8 and 12 was fixed at Palace Grounds, Bengaluru. Four to five days prior to the date of marriage of their daughter, Accused No.8 had gone to the house of deceased Lingaraju along with Accused Nos.4, 5, 7 and 11 to extend the marriage invitation of their daughter. Accused No.8 / C. Govindaraju and deceased Lingaraju, RTI Activist were relatives and were acquainted with each other prior to the incident. Further, Accused Nos.8 and 12 had been to the house of Lingaraju to extend the marriage invitation card of their daughter. It further indicates that Lingaraju and Accused No.8 were in talking terms with each other, which is also one of

the circumstantial evidence. But as regards the motive factor to indicate that there was an animosity developed between them and conspiratorial meetings were held among the persons arraigned as accused to eliminate the deceased Lingaraju by engaging supari killers, there is no evidence forthcoming on the part of the prosecution to prove the guilt against the accused. There is no cogent, corroborative and positive evidence relating to the said aspect on the part of the prosecution.

230. Based upon the complaint at Exhibit P1 filed by PW-1, the case in Cr.No.238/2012 came to be registered by the Chamarajpet police for offences initially under Section 302 read with Section 34 of the IPC. PW-1 / Uma Devi even though she being the author of the complaint and also being the wife of the deceased, she has not supported the case of the prosecution. Inclusive of that, her son PW-2 / Karthik

has also given a go by to the version of his statement. Both PWs 1 and 2 have given a go-by to the versions of the contents at Exhibit P1 of the complaint and so also the substance in the FIR inclusive of their statements recorded under Section 164 of the Cr.P.C. Even PW-1 and PW-2 have not given evidence relating to identification parade conducted by PW-52 being the Taluk Executive Magistrate who was subjected to examination. Even the Photo Identification parade was conducted by her. Though the statements under Section 164 Cr.P.C. of PW-1 / Uma Devi and PW-2 / Karthik were recorded as per Exhibits P.19 and P.74, but both of them did not support the versions of the prosecution to their statements at Exhibits P.19 and P.73 relating to the murder of Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda'.

231. The Trial Court has arrived at a conclusion and convicted Accused Nos.1 to 12 for offences reflected

in the operative portion of the order relating to offences under the IPC, 1860. But it is settled position of law that when doubt arises in the evidence of the prosecution, benefit of doubt shall be extended to the accused. In all these appeals pertaining to Accused Nos.1 to 12, though several witnesses have been subjected to examination including the material witnesses namely PW-1 and PW-2 who are eye-witnesses, it is seen that both PW-1 and PW-2 have given a go-by to the versions of their statements inclusive of the substance in the FIR said to be recorded by the Investigating Agency. Even the official witnesses who have been examined on the part of the prosecution relating to drawing of mahazar and also for having seized material objects marked as MO-1 to MO-54, but benefit of doubt has accrued on the part of the prosecution. In the criminal justice delivery system, when doubt arises in the mind of the Court, the said benefit shall be extended to the accused alone.

232. PWs 1 and 2 being eye-witnesses on the part of the prosecution though have given their evidence as regards the murder Lingaraju, wherein his body was lying at the scene of crime, but they have not supported the case of the prosecution to any extent and the same is revealed in their evidence itself and in the evidence relating to the Test Identification Parade conducted by PW-52 / Taluk Executive Magistrate. Even at a cursory glance of the entire evidence on the part of the prosecution, it indicates that the prosecution did not facilitate worthwhile evidence to convict the accused for the alleged offences. Viewed from any angle, the prosecution though had adduced evidence by subjecting to examination in all PWs 1 to 90 and several documents have been got marked inclusive of the material objects and so also had recorded voluntary statements of the accused and even disclosure statements of the accused, it is on the statement of Velu at Exhibit 310, Voluntary statement of the accused

Umashankar @ Bhavani at Exhibit P311, voluntary statement of the accused Raghavendra @ Raghu marked at Exhibit P313, and further voluntary statement of the aforesaid accused marked at Exhibit P313(a), voluntary statement of the accused R. Shankar at Exhibit P314, further voluntary statement of the accused Raghavendra @ Raghu at Exhibit P314(a), voluntary statement of Rangaswamy at Exhibit P.315, voluntary statement of the accused Chandra at Exhibit P.316, voluntary statement of accused Shankar at Exhibit P.317, voluntary statement of the accused C. Govendaraju at Exhibit P.318, voluntary statement of the accused Jaheer at Exhibit P324, voluntary statement of accused D. Loganath at Exhibit P331, Statement of Smt. Gowramma at Exhibit P.339. These are all voluntary statements which have been recorded by the I.O. during the course of investigation and based upon their voluntary statement, the mahazar has been conducted by the I.O. in the presence of panch

witnesses and so also spot mahazar was drawn in the presence of PW-1 / Uma Devi. Even though voluntary statements have been recorded and investigation has been carried out by the I.O. relating to laying of the charge-sheet against the accused and drew the seizure mahazar in their presence and in the presence of panch witnesses and though evidence has been adduced by the prosecution by subjecting to examination several witnesses, we find no worthwhile evidence to connect the accused with the crime. But the Trial Court has erroneously arrived at conviction by taking into consideration the charge-sheet material, which is inadmissible in evidence unless there is credible evidence. But law is clear and also well-settled that in order to prove the case, the prosecution needs to adduce worthwhile evidence. However, in the instant case, the prosecution has failed to bring any iota of worthwhile evidence to hold that appellants / Accused Nos.1 to 12 guilty of the alleged offences and that they

are responsible for eliminating the deceased Lingaraju, an RTI Activist and the Editor of 'Mahaprachanda' newspaper.

233. PWs 1 and 2 who are the star witnesses on the part of the prosecution being the wife and son of the deceased Lingaraju, have turned hostile and have not supported the case of the prosecution. Even at a cursory glance of the evidence of PW-89 who provided a CD containing the sting operation conducted under the head Yudha Khanda, it completely discloses that primary evidence has not been produced. Except marking Exhibit P357 being the CD which is a secondary evidence which is inadmissible, PW-89 had not disclosed the contents of the said CD in his examination-in-chief and the Trial Court in its judgment has also not disclosed the contents of the said CD. The fact that secondary evidence being inadmissible in law has been completely ignored by the Trial Court to arrive

at an erroneous conclusion by rendering conviction against accused persons.

234. Though the prosecution has subjected to examination several witnesses such as PW-1 to PW-90 inclusive of official witnesses, but several witnesses have given a go-by to the versions of their statements and they have been examined as PW-1, 2, 4 to 12, 15 to 17, 21, 22, 28 to 44, 47 to 49, 55, 56, 59, 62, 63, 68, 82, 83, 85 and 86. Whereas, at a cursory glance of the evidence of these witnesses, none of the independent witnesses have supported the case of the prosecution to incriminate any circumstances against the appellants / accused. In spite of that, the Trial Court has erroneously arrived at a conclusion to convict the appellants / accused for offences punishable under Section 109 read with Section 149 and Section 302 read with Section 149 of the IPC, 1860 and so also for other offences for which charges were leveled against them.

235. Out of ninety witnesses even though 44 witnesses have given their evidence on the part of prosecution, but all of them are official witnesses and none of the evidence of those witnesses is directly incriminating against the appellants / accused. Further, even though documentary evidence has been adduced, there are no clinching circumstances against the appellants / accused in order to come to the conclusion that the accused had committed the murder of the deceased Lingaraju as narrated in the theory of the prosecution.

236. However, at a cursory glance of the evidence of the witnesses on the part of the prosecution and also in the totality of the circumstances of the case, we are of the opinion that the prosecution has failed to establish the guilt against the accused by facilitating positive, cogent and corroborative evidence to probabalise that the accused and accused alone have committed the

murder of the deceased Lingaraju being an RTI Activist as narrated in the complaint made by PW-1 / Uma Devi who is none other than the wife of the deceased and also being eye-witnesses to the case of the prosecution. When the case of the prosecution in entirety is found to be doubtful and is full of inconsistencies and when doubt arises in criminal justice delivery system, benefit of doubt shall always accrue in favour of the accused persons alone. In the instant case, the prosecution has failed to establish the guilt of the accused persons by facilitating worthwhile evidence. Consequently, the accused persons, namely appellants, deserve to be acquitted. In terms of the aforesaid reasons and findings, we proceed to pass the following:

**ORDER**

These Criminal Appeals namely CrI.A.1068/2020, CrI.A.No.53/2021, CrI.A.No.54/2021 and CrI.A.No.118/2021 filed by the accused / appellants in

the respective appeals, are hereby allowed. Consequently, the judgment of conviction dated 28.10.2020 and order of sentence dated 29.10.2020 rendered by the LVIII Addl. City Civil and Sessions Judge (CCH-59), Bengaluru City, in S.C.No.428/2013 is hereby set-aside. Consequent upon setting aside the conviction judgment, Accused Nos.1 to 12 / appellants in the respective appeals are hereby acquitted of the offences for which they were held charge.

However, Accused No.1 / Rangaswamy @ Ranga, Accused No.2 / R. Shankar, Accused No.3 / Raghavendra @ Raghu, Accused No.4 / Chandra, Accused No.5 / Shankar @ Gunda, Accused No.6 / Umashankara @ Bhavani, Accused No.7 / Velu, Accused No.9 / Loganatha, Accused No.10 / Jaheer, Accused No.11 / Suresh @ Suri @ Surya are in incarceration from the date of their arrest. Therefore, the concerned Jail Authorities are directed to set

Accused Nos.1 to 7 and 9 to 11 at liberty forthwith, if they are not required in any other case. Ordered accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

KS / DKB