



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2023

PRESENT

THE HON'BLE MR. JUSTICE B.VEERAPPA

AND

THE HON'BLE MRS. JUSTICE K.S.HEMALEKHA

CRIMINAL APPEAL No.1299 OF 2022

BETWEEN:

1. SRIRAMA @ SHIVARAMA,
S/O DHARMAPPA,
AGED ABOUT 29 YEARS,
OCCUPATION LABOUR,
R/A HONNAVALIE, MACHANGALLI,
BHADRAVATHI TALUK,

AT PRESENT R/AT AYANOOR KOTE VILLAGE,
SHIVAMOGGA TALUK AND DISTRICT.
IN JUDICIAL CUSTODY

...APPELLANT

(BY SRI. PRABHAKARA T. C., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY RIPPONPETE
POLICE STATION, SAGARA,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BENGALURU-560001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, ADDITIONAL STATE PUBLIC
PROSECUTOR)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF Cr.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 16.12.2015 AND ORDER OF SENTENCE DATED 18.12.2015 PASSED IN S.C.No.167/2013 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA (SITTING AT SAGAR) CONVICTING THE APPELLANT/ACCUSED NO.2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 120B R/W 34 OF IPC.

THIS CRIMINAL APPEAL COMING ON FOR ORDERS THIS DAY, **B.VEERAPPA J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Heard Sri T.C.Prabhakara, learned counsel for the appellant and Sri Vijaykumar Majage, learned Additional State Public Prosecutor for State, on admission.

2. The present Criminal Appeal is filed by the appellant/accused No.2 against the judgment of conviction dated 16.12.2015 and order of sentence dated 18.12.2015 passed in S.C.No.167/2013 on the file of the V Additional District and Sessions Judge, Shivamogga, sitting at Sagar, convicting the accused No.2 for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life i.e., to remain in prison until his death and to pay fine of ₹25,000/-, in default, to under go rigorous imprisonment for one year; and further sentencing him to



undergo rigorous imprisonment for a period of two years and to pay fine of ₹20,000/-, in default, to undergo simple imprisonment for six months for the offence punishable under Section 120-B of the Indian Penal Code.

3. The matter requires consideration.
4. Accordingly, the Criminal Appeal is admitted.
5. With the consent of learned counsel for both the parties, the Appeal is taken up for final hearing.
6. Sri T.C.Prabhakara, learned counsel for the appellant/accused No.2 fairly submits that this Court, by the Order dated 25.03.2022 passed in Criminal Appeal Nos.596/2016, 104/2016 and 1348/2018, filed by accused No.4, accused No.3 and accused No.1, respectively, acquitted accused Nos.1 and 3 for the offence punishable under Section 120B of the Indian Penal Code and confirmed the conviction for the offence punishable under Section 302 of the Indian Penal Code, holding that there is material against accused Nos.1 and 3; and acquitted accused No.4 for the offences punishable under Sections 302 and 120B of the Indian Penal Code. Learned counsel further submitted



that while confirming the conviction under Section 302 of the Indian Penal Code in respect of accused Nos.1 and 3, this Court, modified the sentence imposed by the learned Sessions Judge to "imprisonment for life" from "imprisonment until their death". The same benefit may be extended to the appellant/accused No.2, also. The submission is placed on record.

7. It is the case of the prosecution that the complainant/ P.W.1, father of the deceased lodged a complaint as per Ex.P.6 against unknown persons and stated that he is the resident of Basavapura Village, Hosanagar Taluka. Deceased Raghavendra is his third son. Deceased Raghavendra was in love with accused No.4- Savitha of Doddlimane of Koduru. Their marriage was solemnized about 11 years back at Bengaluru and out of the wedlock, two children were born viz., Pavan and Sahana and they were residing together at Basavapura Village. The complainant and his son-deceased Raghavendra were doing coolie and carpenter work and were also doing milk vending business and used to supply milk to Basavapura Dairy. Accordingly, on 01.04.2013, the deceased Raghavendra had



gone to supply milk to the dairy and did not return home on that night and he was murdered in the land adjacent to their house. His daughter-in-law/Savitha-accused No.4 had seen the dead body on the next day morning at about 7.00 a.m. and informed the people. One Srinath of Basavapura Village informed this fact over phone to one Halappa, who is the nephew of the complainant, because at that time, the complainant had gone to his sister's house at Mavinahole and after returning, he came to know that someone had killed his son. Thereby, lodged the complaint.

8. Since the matter was triable by the Sessions Judge, the case was committed to the Court of Sessions. The learned Sessions Judge secured the presence of the accused persons, framed the Charge, read it over and explained in the language known to them, who pleaded not guilty and claimed to be tried.

9. In order to prove its case the prosecution, the prosecution examined in all 20 witnesses as P.Ws.1 to 20 and marked material documents Exs.P1 to P42 and the material objects as MOs.1 to 21. After completion of evidence of prosecution witnesses, the statement of accused persons as



contemplated under the provisions of Section 313 of the Code of Criminal Procedure were recorded explaining the incriminating circumstances in the evidence of the prosecution witnesses. The accused persons though denied all the incriminating circumstances, did not chose to adduce any evidence on their behalf.

10. Based on the aforesaid pleadings, the learned Sessions judge framed two points for consideration.

11. Considering both oral and documentary evidence on record, the learned Sessions Judge answered the points in the affirmative holding that the prosecution proved that on 01.04.2013, at about 7.45 to 8.00 pm, in the land of P.W.1- Nagendrappa/complainant, situated at Basavapura village coming within the limits of Ripponpet Police Station, accused Nos.1 to 3 at the instance of accused No.4, attacked the deceased-Raghavendra with choppers, while he was returning from the dairy, with an intention to kill him in the background of previous enmity between accused persons and deceased Raghavendra, as accused No.1 had illicit relationship with accused No.4. The accused No.1 assaulted with chopper on the



neck, accused No.2 with chopper on the neck and hand, accused No.3 assaulted with chopper on the hands of Raghavendra with an intention to cause death and thereby, committed an offence punishable under Section 302 read with Section 34 of Indian Penal Code. Further, recorded that the accused Nos.1 to 4 hatched a plan, had criminal conspiracy to kill Raghavendra and thereby committed an offence punishable under Section 120B read with Section 34 of Indian Penal Code. While convicting the accused persons under the provisions of Section 302 of the Indian Penal Code, the learned Sessions Judge sentenced them to undergo imprisonment for life i.e., to remain in the prison until their death and also imposed fine. Hence, the present Criminal Appeal is filed.

12. We have heard the learned counsel for the appellant and the learned Additional State Public Prosecutor.

13. Sri T.C.Prabhakara, learned counsel for the appellant/accused No.2 submits that while confirming the conviction order for the offence punishable under Section 302 of the Indian Penal Code, this Court, modified the sentence imposed by the learned Sessions Judge sentencing the accused



persons "to remain in prison until their death" to "imprisonment for life". The same benefit may be extended to the appellant/accused No.2, also. The submission is placed on record.

14. Learned counsel further contended that there is no link from the beginning till the completion of investigation and there is no evidence with regard to illicit relationship between accused Nos.1 and 4, and there is no material against the present appellant/accused No.2 in the homicidal death of the deceased. The prosecution has not produced any material documents to prove the conspiracy, as contemplated under Section 120B of the Indian Penal Code. In the absence of the same, the order passed by the learned Sessions Judge convicting the accused No.2 under Section 120B of the Indian Penal Code cannot be sustained. He further contended that the prosecution has not produced any call details to show that accused Nos.1 and 4 had any relationship before or after the incident. The prosecution has not produced any evidence as contemplated under Section 65B(4) of the Indian Evidence Act. Learned counsel further contended that, since this Court has



already held that accused Nos.1 to 3 have committed an offence punishable under Section 302 of the Indian Penal Code, by judgment dated 25.03.2022 passed in Criminal Appeal Nos.1348/2018 and 104/2016, the sentence "to remain in prison until death" may be modified to "imprisonment for life" in respect of the present appellant/accused No.2.

15. Per contra, Sri Vijaykumar Majage, learned Additional State Public Prosecutor, while justifying the impugned judgment of conviction and order of sentence passed by the learned Sessions Judge, contended that, P.W.1-father of the deceased and P.W.3-sister of the deceased have deposed about the motive for commission of the offence i.e., illicit relationship between accused No.1 and accused No.4. He further contended that M.O.7-ear studs belongs to accused No.4 which was pledged by accused No.1 in the shop of P.W.15. The same was identified by P.Ws.1 and 15. He further contended that M.O.13-chopper, M.O.10-pant and M.O.11-shirt, were recovered at the instance of accused No.1 under Ex.P.18-seizure mahazar. The witnesses to seizure mahazar-P.Ws.17 to 19 supported the case of the prosecution. M.O.14-chopper was



recovered from accused No.2 and clothes of accused No.2 were blood stained. Thereby, the involvement of the present appellant/accused No.2 in the homicidal death of the deceased along with other accused persons is proved by the prosecution. Accused Nos.1 and 3 have already been convicted by this Court and therefore, sought to dismiss the Criminal Appeal.

16. In view of the aforesaid rival contentions urged by learned counsel for the parties, the points that would arise for our consideration in the present appeal are:

(i) Whether the Appellant/accused has made out a case to interfere with the impugned judgment of conviction and order of sentence convicting accused No.2 under the provisions of Section 302 of the Indian Penal Code?

(ii) Whether the accused has made out a case to interfere with the impugned judgment of conviction order passed by the trial Court under the provisions of Section 120B of Indian Penal Code in the facts and circumstances of the case?

17. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and



perused the entire oral and documentary evidence including the original records, carefully.

18. The gist of the complaint filed by P.W.1-Nagendrappa as per Ex.P6 is that, the deceased Raghavendra is his third son. The accused No.4 and his son were in love. Thereafter, their marriage was solemnized about 11 years back at Bengaluru and out of the wedlock, they have two children by name Pavan and Sahana. The complainant, deceased Ragavendra, Accused No.4 and two children were residing together and they were doing coolie. Deceased Raghavendra and P.W.1 were doing coolie and carpenter work and also doing milk vending business. On 01.04.2013 at about 7.00 p.m., Raghavendra had gone to supply milk to the diary and not returned. Thereafter, on the information given by one Halappa, nephew of the complainant because at that time complainant had gone to his sister's house at Mavinahole, and came to know that somebody has killed his son, thereby, he lodged a complaint on 02.04.2013 at about 11.45 a.m. The same was registered in Cr.No.76/2013 for the offence punishable under Section 302 of the Indian Penal Code. It is also not in dispute that after



investigation, the jurisdictional police filed charge sheet against accused Nos.1 to 4.

19. This Court being the Appellate Court, in order to re-appreciate the entire oral and documentary evidence on record, it is relevant to consider the evidence of prosecution witnesses and the documents relied upon.

- (i) P.W.1-Nagendrappa, father of the deceased who lodged the complaint as per-Ex.P6, reiterating the averments made in complaint, deposed that accused No.4 Savitha asked him to go to Brahmeshwara village, where his elder sister Nagamma resides. Hence, he had gone there and in his absence his son Raghavendra had gone to supply milk to the dairy in the evening. On the next day, his sister received a phone call from someone about murder of Raghavendra. Thus, he went to the spot and found injuries on the neck, cheek, hand and other parts of the body of the deceased. He further stated that his son used to harass and assault Savitha-accused No.4 as he had come to know that she was having



illicit relationship with accused No.1-Chathrapathi Naika. He further stated that accused No.4 Savitha with an intention to marry accused No.1 instigated accused Nos.2 to 4 to kill her husband. M.O.1-milk can, M.O.2-mobile, M.Os.8 and 9 two milk dairy cards and M.O.3-slippers, M.O.4-hand bag, M.O.5-Ash colour pant, Mo.6-Black colour T-shirt, M.O.7-ear studs were marked in his evidence.

In the cross examination, he has stated that after 15 days of the murder, police called him to the police station. When he first visited police station, he was not aware as to who committed the murder. Second time when he visited to the police station, his daughter-in-law Savitha-accused No.4 was in custody. During those two occasions, he had not told to the police that accused No.4 had relationship with accused No.1. He supported the case of the prosecution.

- (ii) P.W.2-Kum.Veena, daughter of P.W.1 and sister of the deceased deposed that she has scribed the



complaint and read over the contents of the complaint to PW-1. She identified the said complaint-Ex.P6 as well as her handwriting. She has signed the complaint as per Ex.P6(b) after the signature of PW-1 as per Ex-P6(a). She identified the milk can, slippers of Raghavendra. She deposed that she did not go near the dead body out of fear. Thereby, she cannot say how the clothes was on the dead body. She identified the slippers-M.O.3, milk can-M.O.1 and mobile-M.O.2. She deposed that police did not call her any time after 2013 and she was not aware of the cause of murder of deceased Raghavendra. P.W. was not cross examined.

- (iii) P.W.3-Janaki is the co-sister of accused No.4-Savitha who deposed that herself and her husband are residing separately beside the house of deceased Raghavendra. Raghvendra was doing coolie work and was supplying milk to the dairy and there was a quarrel between him and his wife - accused No.4. She further deposed that when they



were living together both Savitha and Raghavendra were cordial but thereafter when they were separated, they started to quarrel and fight. On 01.04.2013, deceased Raghavendra had gone to supply milk to the dairy. At that time P.W.1 had gone to the house of his elder sister at Brahmeswara. On the date of the incident, accused No.4-Savitha came to her house and told that her husband had not returned and she had no currency in her cell phone and asked her to make a call. Accordingly, her husband made a phone call to deceased Raghavendra. But his phone was switched off. Then, accused No.4 came along with children to stay in her house. Accused No.4 said that they will stay night there itself and accordingly, slept there. She further deposed that on the next day morning, when they woke up, accused No.4 did not go to her home and P.W.3 went to start electric motor by the side of the wetland to fetch water. At that time, accused No.4 followed her and after switching on the motor, they sat near a small plant



then, they came back. Accused No.4 asked her to accompany her to open the door of her house as she was scared. Then, they went there and accused No.4 opened the door of her house and started cleaning the front yard. Though she could see the dead body from the said place she questioned her as to whether the milk cattle visible in the land belonging to her family or not so that she could see the place of murder. Before she could see the said milk can, accused No.4 started telling that her husband was murdered by somebody in the said land. Then she went to the said land found injuries on his body. She further deposed that she came to know accused had murdered Raghavendra. She also stated that accused Nos.1 and 3 used to visit the house of deceased Raghavendra many times. She does not know the reason for quarrel between them. In the cross examination, she deposed that she had told the police that when she returned to home, after Savitha opened the doors of her house, she had sent her son to call her and her husband. When



they went and asked her, she told that when she was cleaning her cattle shed she remembered the milk can as well as her husband, went further to see the direction in which her husband had gone and found a milk can in the land and hence, she called her. The said portion of the statement is marked as Ex.D1. In the cross-examination she further deposed that she has stated before the police that accused Nos.1 to 3 were visiting the house of the Raghavendra in his absence. The witness supported the case of the prosecution. Nothing has been elicited to disbelieve the case of the prosecution.

- (iv) P.W.4-Nagaraja, worker in Basavapura dairy deposed that deceased Raghavendra had supplied milk to dairy on the date of the incident and there is entry in the registry. Ex.P-8 and Ex.P-9 belongs to the deceased Raghavendra and accused No.4-Savitha and supported the case of the prosecution.
- (v) P.W.5-Nagalingappa, deposed that he knows deceased Raghavendra, he was murdered in his land



about 6 or 7 months back. He had seen the dead body with injuries on the left face, neck and left hand. Exs.P-1 to 5 are the photographs of the dead body. After 15 days of the murder police had brought the accused persons stating that they had committed the murder of Raghavendra. Firstly the police arrested accused No.1 and then arrested the accused Nos.2 and 3 and brought them to the place of the incident. He identified Exs.P1 to P5 which are the photographs of the dead body of the deceased Raghavendra and supported the case of the prosecution.

- (vi) P.W.6-Ganapathi deposed that deceased Raghavendra was murdered on 01.04.2013 at his land. Police had drawn inquest on the dead body as well mahazar at the place of murder. He has signed the same and identified the signature on Ex.P11-mahazar. He identified the signature on the inquest and the same is marked as Ex.P14 and signature as Ex.P14(a). He further deposed that Puttappa and



Lokesh had signed the mahazar. Police had taken the photographs of the dead body which were marked as Exs.P1 to P5. There was a milk can, a mobile, slipper, a bag which were seized by the police and he identified the same which were marked at Mos.1 to 4. The learned public prosecutor is permitted to open the seal of the two containers after finding the same intact with seal. He identified the container with blood stained soil marked as M.O.8. He identified the container with ordinary soil, marked as M.O.9. In the cross examination, he deposed that there were no weapons at the place of the incident, and supported the case of the prosecution.

- (vii) P.W.7-Puttappa, resident of Kadegadde village deposed that he knows Gunduru mole which is 2 kms away from his house and he had seen the dead body of Raghavendra who was murdered on 01.04.2013 and the deceased was murdered in his land only. He went to the place of murder after



hearing the news. Police had visited the place and taken photographs in his presence which were marked at Exs.P1 to P5. Police had recorded the mahazar at the said place and seized the steel milk can, mobile, slippers, yellow colour bag, soil with blood stains and sample dry soil and two dairy cards. They were marked as M.Os.1 to 4, 8 and 9. Police had taken his signature on paper slips to affix the same to the articles seized and he has identified his signature on Ex.P.10, and supported the case of the prosecution. In paragraph No.5 it is specifically stated that accused No.1 from his house had taken him to Ayanur stating that he had pledged the ear studs of accused No.4-Savitha at a jewellery shop at Ayanur and stated that they were given to him by accused No.4-Savitha. He had taken P.Ws-6 and 7 to Sri Krishna Jewellers at Ayanur. The owner of the shop had got the said ear studs which he had kept at a different place and handed over the same to the police. The owner of the shop had told that he has paid money to the accused No.1 for the said ear



studs but the police told him that it was irrelevant and he should hand over the same. Police had recorded the mahazar and taken his signature. He can identify the same which were marked as Ex.P.19 and Ex.P19(a). He identified the ear studs which were marked as M.O.7. He further deposed that accused No.1 had shown the chopper at the cattle shed, handed over the same to the police which were marked as M.O.13. From there, accused Nos.1 and 2 took them to a village called 'Kote' stating that they had kept choppers which were used for committing the offence. When they went there, there were no such choppers. It was in somebody's house. Then, they all went to that house and accused Nos.1 and 2 handed over the chopper which was kept on the top of the toilet. Police seized the same and marked as M.O.14. He further deposed that he has identified the night pant and T-shirt which were marked as M.Os.15 and 16. The witness turned hostile to the case of the prosecution. But in the cross-examination by



prosecution he stated that accused No.2 had told them that he would hand over the clothes which he was wearing at the time of offence. He further deposed that accused No.2 had handed over M.Os.15 and 16 to the police and police seized the same in his presence which contained blood marks. He further told that the clothes produced by accused No.1 were stained with blood. He also handed over his mobile phone with SIM card to the police. He also admitted that he himself and another pancha namely Raghupathi had gone to the police station and accused No.1 had taken them to the place of murder first, then, to his house and later, to Sri Krishna jewelers shop at Ayanur. Police have videographed the said events. Looking to the lengthy cross examination made by the prosecution he has not given any evidence to disbelieve his presence during the seizure mahazar stated supra. Thereby, he strongly supported the case of the prosecution.



(viii) P.W.8-Latha who is none other than the sister of the accused, has not supported the case of the prosecution. In the cross examination she deposed that she has two SIM cards of Airtel company and stated that she had not given SIM card to accused No.1, he only had taken her mobile. Police had taken the SIM card from her. Further she admitted that it is her duty to protect and save her brother accused No.1 and she is prepared to protect him at any cost.

(ix) P.W.9-Devaraj, one of the pancha deposed that himself and CW.18-Noorulla had come on 26.04.2013 for recording the mahazar to the Ripponpete police station in connection with the murder of husband of accused No.4 by accused Nos.1 to 3. At that time, accused No.4-Savitha was in police custody who narrated the murder of her husband. Police have seized M.O.18 and SIM card. She supported the case of the prosecution.



- (x) P.W.10-Suresh, pancha to the spot mahazar deposed that on 29.04.2013, police called him along with C.W.19 to the police station. At that time, accused Nos.1 to 3 were in police custody and were asked to show the spot. Accordingly, they went in jeep. They went to the spot which is near the house of accused No.4-the land belonging to deceased Raghavendra. From there, they went to the house of father-in-law of accused No.3 at Thyjavalli, wherein, accused No.3 had produced M.O.19-chopper from the new toilet. Police seized the same which had blood stains on it. He further deposed that he had identified the mahazar with his signature as per Ex.P-24. He identified the T-shirt produced by accused No.3 which was marked as M.O.20 and it bears the signature. He also deposed that M.O.20-Tshirt was stained with blood and half pant produced by accused No.3 was marked as M.O.21. He further deposed that M.Os.20 and 21 were sealed covers and opened after the seal was found intact. He further deposed that there were 2-3



persons in the police station. In the cross examination he deposed that Basavapura is 15 to 20 kms from Tyajavalli. Arasanala is about 30 kms from Tyajavalli. Only accused No.3 was handcuffed at the police station by the police. Accused No.3 had taken them with the police. The other accused had not come with them. He told that accused No.1 had shown the place of murder on the previous day to the police. Further he stated that there were two stone slabs made to use as toilet. When the chopper was removed from below the said stone slabs, the police had taken assistance of three persons to remove each of the stones. The pit was half full with night soil. M.O.19 was in the middle of the night soil and straight. He deposed that it is not true to suggest that M.O.19 was kept by the side of the septic pit. It is true to suggest that in the mahazar it is scribed as standing to the wall of the septic pit. He further deposed that they had gone inside the house but only accused No.3 and police went inside. There was only a girl at the house. When police



enquired the said girl, she said that she did not know anything. If suggested that accused No.3 had neither shown any place or weapon or clothes but the police had planted them and recovered. He supported the case of the prosecution.

- (xi) P.W.11-Chandrappa, owner of the house, deposed that accused No.3-Parashuram had hidden chopper in the lavatory outside his house. He also deposed that police seized them seizure mahazar as per Ex.P.24 in lavatory of his house. Accused No.3 produced chopper from the lavatory before the police. Police seized the same. He identified M.O.19 shown to him which is the said weapon. In the cross examination, he deposed that the stone with which he had closed the lavatory weighted about 25 to 30 kgs. Police had already removed the stone slabs before he went to the place. The entire waste water of his house was being stocked in the said lavatory pit and even the rain water was stocked in the said pit. It is not true to suggest that though he knew



nothing he is deposing falsely at the instance of police. He further deposed that it is not true to suggest that neither the police had come to lavatory nor Chatrapathi had shown M.O.19. Thereby he supported the case of the prosecution. Nothing worthy has been elicited from the mouth of the witness during the course of cross examination to disbelieve their evidence.

- (xii) P.W.12-Jaya Naika, deposed that he sold bike-M.O.12 to one Girish for ₹8,000/- but he had paid only ₹4,000/- and had agreed to pay ₹4,000/- at the time of transferring the bike. Hence, RC was not transferred to the name of Girish. Girish told him that he had handed over the bike to one Chatrapathi i.e., accused No.1. In the cross examination he has stated that he has not stated this fact before the police. He had not seen accused No.1 earlier and seeing him for the first time in the Court, thereby, supported the case of the prosecution.



(xiii) P.W.13-Shashikanth, PSI, P.W.14- Ramachandra Naik, Police Inspector, and P.W.17- Ganapathi, Police Inspector, deposed regarding their part in the investigation and, supported the case of the prosecution. They identified Exs.P.6 and P.7. P.W.13 was not cross examined.

(xiv) P.W.15-Prashanth, owner of the Sri Krishna Jewellery shop at Ayanur deposed that he knows accused No.1 who is present before the Court. Accused No.1 had come to him to prepare the jewellery for his sister and therefore, he knows him since about 3-4 years. Exs.P.16 and P.17 are pledged chits containing signature of P.W.7 belonging to them. Accused No.1-Chatrapathi had come to him on 31.03.2013 and handed over a pair of Lakshmi ear studs to pledge the same. He had paid ₹7,000/- to him. After some time, police came along with accused No.1-Chatrapathi and enquired him whether accused No.1 had pledged the jewellery to him. He accepted and handed over the



pair of ear studs pledged by accused No.1 to the police and police seized the same. M.O.7 is the ear studs. Police recorded the mahazar to which he had affixed his signature which is identified and marked as Ex.P.19-seizure mahazar. In the cross examination he has specifically stated that accused No.1 had received ₹2,000/- and later, ₹5,000/- on two different dates. The police had not seized the original book Ex.P.16 which contains the carbon copy of the original. In the cross-examination he denied the suggestion that 'it is not true to suggest that accused No.1 had not come to his shop and pledged M.O.7'. Further denied that 'it is not true to suggest that neither the police came nor he had handed over M.O.7 to the police'. Further he denied that it is not true to suggest that he had signed the mahazar at police station and deposing falsely at the instance of police out of fear. Thereby, he stood his defence. Nothing has been elicited in the cross examination of P.W.15.



(xv) P.W.16-Dr.Anilkumar, deposed that on the request made by Ripponpete police on 02.04.2013, he conducted autopsy of dead body Raghavendra, aged about 30 years, in Cr.No.76/2013. He noted five major injuries on the dead body and Ex.P36-post mortem report wherein, he found cutting of spinal cord in the base of the skull. Other parts were intact. He has collected the clothes on the body to be sent to FSL. He opined that cause of death is due to shock and hemorrhage as a result of injuries to the vital organs. The time of death was approximately 24 hours prior to the post mortem. Accordingly, issued Ex.P.36. He identified Exs.P1 to P5 belonging to the dead body. He also seen the choppers sent to him which were marked as M.Os.13, 14 and 19. He opined that the assault with the said weapons could cause injuries on the person. He identified his signature on the opinion at Ex.P.40. The same is marked as Ex.P40(a). In the cross examination, he had denied the suggestion



that he had not examined any weapons but he had obliged the investigating officer in issuing Ex.P40.

(xvi) P.W.17-Ganapathi, CPI of Hosanagar Circle who was working between November 2011 to July 2013 deposed that on 02.04.2013, he took up further investigation from one Shashikantha Naik-P.W.13, PSI, visited the place of incident, secured the panchas conducted part of investigation to draw mahazar-Ex.P.11 and found a pair of red colour hawai slipper, a mobile of red colour belonging to G-Five company, a yellow colour cotton bag, a milk steel can, two cards issued by Basavapura Milk Produces Society and identified M.Os.1 to 4, 8 and 9 and also Exs.P.8 and P.10. He further deposed that in the presence of panchas, he recorded the inquest as per Ex.P.14. He recorded the statements of the Subramanya, Umesh, Suvarna, Nagaraja and he had gone to the place of incident, photographed and videographed the spot. The photos were marked as per Exs.P.1 to P.5 and videograph is at



Ex.P.41. He prepared hand sketch of place of incident-Ex.P42. He directed P.C-889 to take the dead body to the hospital. Accordingly, he arrested the accused. He recorded the statements of Ashok, Srinivas, Raghavendra, Rajendra, Harish and Santhosh. Thereafter, he transferred investigation to PSI, Hosanagar. Nothing has been elicited in the cross-examination of P.W.17 to disbelieve the statements made in the examination in chief.

(xvii) P.W.18-Devendrappa, villager of Thyajavalli, deposed that Shivappa Bisetappa is the father in law of accused No.3-Parashurama. About 2 years back police brought accused No.3-Parashurama near the house of the said Shivappa and took his signature. He doesn't know the contents. In the cross examination, he has admitted that house of Shivappa and one Chandrappa are adjacent to each other and said Chandrappa had dig a pit for toilet and accused No.3-Parashuram took the police there but he denied that the accused persons produced



chopper from the said pit. He further stated that Parashurama produced his blood stained clothes from the house of Shivappa. He further stated that the Parashuram is the son-in-law of the Thyjavalli village. He has not committed any mistake and therefore, he has not signed any false documents and Shivappa is good at him. He further stated that when the police came to the village, about 25-30 people had gathered. By the time he reached, everything was over and he just signed the mahazar and supported the case of the prosecution.

(xviii) P.W.19-Raghupathi, one of the seizure pancha deposed that on 26.04.2013 police called him to act as pancha to accused-Chatrapathi house and he was with the police at about 1.45 p.m., and produced bike, SIM card, chopper and one receipt and his blood stained clothes before the police in his presence. Accordingly the police seized the same under the mahazar Ex.P18. He further deposed that they came to the village of Ayanur. At that time,



accused Nos.1 and 2 were there and accused No.1 showed the jewellery shop wherein he had pledged the ear studs. Police seized before him under seizure mahazar Ex.P19. Accused No.2 took them to his house and produced blood stained clothes and chopper kept on the toilet was also seized by the police and same is marked as Ex.P20. Nothing has been elicited in the evidence of Pw.19, supported the case of the prosecution.

(xix) P.W.20-Dr.Lingegowda deposed that on 28.04.2013, Ripponpet Police in Cr.No.76/2013 seen 14 items in sealed cover and on medical examination of M.O.5-Ash colour pant, M.O.6-Black colour T-shirt, M.O.8-blood stained mud, M.O.9-plane mud, M.O.10-pant, M.O.11-shirt, M.O.14-chopper, M.O.15-night pant, M.O.16-shirt, M.O.19-chopper, M.O.21-half pant and after considering the examination, he has issued report Ex.P39A. Except item No.2 and item No.8, all the other items were blood stained and he identified



M.Os.5, 6, 8 to 16, 19 to 21. No cross examination was made.

20. We have perused the oral and documentary evidence of aforesaid witnesses and voluntary statements of accused Nos.1 to 4. It is necessary that prosecution has to prove the case to establish the motive for commission of the offence. According to the prosecution, motive for the offence is illicit relationship between accused Nos.1 and 4 and ill-treatment to accused No.4 by her husband deceased-Raghavendra after coming know of the illicit-relationship. The prosecution witnesses in categorical terms deposed about the illicit relationship between accused Nos.1 and 4. Pws.1 and 3 have specifically stated and deposed about the way in which the accused No.4 conducted herself on the date of incident. The learned Sessions judge after appreciation of the materials on record, has come to a conclusion that conspiracy between accused Nos.1 to 4 to eliminate the deceased is proved. But the fact remains neither the call record details as per Ex.P30 nor the evidence of call details clearly depose there was conspiracy between accused Nos.1 to 4 to eliminate the deceased.



21. The fact remains that Section 65B(4) of the Indian Evidence Act, 1872, mandates to produce a certificate to prove the electronic records. But in the present case, no such certificate is produced. The Hon'ble Supreme Court in the case of **Anvar.P.V. vs. P.K.Basheer and Others** reported in **(2014) 10 SCC 473**, at paragraphs 16 and 24 held as under:

"16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

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.”

22. Admittedly, the prosecution has not examined the authorized person who has issued call details and no such Certificate is produced which is required under the provisions of



Section 65B(4) of the Evidence Act. In the absence of same, the said material Ex.P30 cannot be accepted. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal** reported in **(2020) 7 SCC 1**, wherein, the Hon'ble Supreme Court at paragraphs 51 ,52, 73.1, 73.2 and 73.3 has held as under:

"51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the Respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

52. 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.

73. The reference is thus answered by stating that:

73.1. Anvar P.V., as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad and the judgment dated



03.04.2018 reported as Shafhi Mohd. V.State of H.P., do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..." With this clarification, the law stated in paragraph 24 of Anvar P.V. does not need to be revisited.



73.3. The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.”

23. Thereby, in the absence of Certificate, the conviction based on the CDR would lead to injustice. Thereby, though the prosecution pleaded that conspiracy has been proved, in the absence of compliance of mandate under the provisions of Section 65B(4) of the Evidence Act, alleged conspiracy cannot be accepted.

24. As already stated supra, the motive is illicit relationship between accused Nos.1 and 4. The same was spoken by P.W.1- father of the deceased and P.W.2-sister of the deceased. M.O.7-ear stud belonging to accused No.4 was pledged by accused No.1 in the shop of P.W.15. M.O.7 was identified by P.W.1. It is also not in dispute that accused Nos.1 to 3 have conspired to eliminate the deceased, at the instance of accused



No.4. The evidence of P.W.15-Prashanth, clearly depicts that police had taken accused Nos.1 and 2 to a village called Kote stating that they have kept choppers which were used for committing the offence. When they went there, there were no such choppers; it was in somebody's house. Then they all went to that house and accused Nos.1 and 2 handed over the chopper, which was kept on the top of the toilet. Police seized the same and marked as M.O.14. They told that they had washed the chopper at the water tank of the village and had kept the same over the toilet. He identified the said mahazar and marked as Ex.P20 and P20(a). P.W.16 further deposed that after opening the seal, there were night pant and T-shirt. Police had packed the M.Os and he had signed on the slips. The night pant and T-shirt were marked as M.Os.15 and 16. He further admitted in the cross examination that it is true to suggest that accused No.2-Sriram had told them that he would hand over the clothes he was wearing at the time of offence and he would show the same. Accused No.2 handed over M.Os.15 and 16 to the police and they were seized in his presence which contained blood marks. He also admitted that it is true to suggest that accused No.1-Chatrapathi was stained with blood.



25. The material on record clearly depicts the recovery of M.O.14-chopper from accused No.4 and blood stained clothes of accused No.2. Admittedly, accused No.2 has filed the present Criminal Appeal, only after the order dated 25.03.2022 passed by this Court in Criminal Appeal Nos.596/2016, 104/2016 and 1348/2018, filed by accused No.4, accused No.3 and accused No.1, respectively, modifying the punishment "to remain in prison until their death" to "imprisonment for life". The recovery of choppers from accused Nos.1, 2, and 3 as per mahazars Exs.P.18, 20 and 24, M.Os.13, 14 and 19-choppers recovered at the instance of accused Nos.1, 2 and 3 spoken to by the mahazar witnesses and specifically stated by the Investigating Officer. The prosecution has discharged its burden in proving the involvement of accused No.2 in the homicidal death of the deceased. It is for the accused No.2 to explain how his clothes were blood stained, apart from recovery of choppers from him.

26. In the statement recorded under Section 313 of the Code of Criminal procedure, the appellant/accused No.2 has denied the incriminating circumstances adduced against him by the



prosecution witnesses, in toto. He has not offered any explanation. In the absence of the same, adverse inference has to be drawn against the accused No.2 and our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Prahlad vs. State of Rajasthan*** reported **(2020)1 SCC Crimes 381**, wherein, at paragraph 11, it is held as under:

"11. No explanation is forthcoming from the statement of the accused under Section 313 CrPC as to when he parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused."

The accused No.2 has not offered any explanation as to how his clothes were blood stained. Thereby, the learned Sessions Judge is justified in convicting the accused No.2 for the offence punishable under Section 302 of the Indian Penal Code. Our view is fortified by the dictum of Hon'ble Supreme Court in the case of ***Nana Keshav Lagad vs. State of***



Maharashtra reported in **(2013) 12 SCC 721**, paragraph 27 held as under:

"27. The other submission made on behalf of the appellants was with reference to the human blood found in the clothes worn by A1 and A4. It was contended that the prosecution failed to satisfactorily establish through any independent evidence about the bloodstains found in the clothes of A1, as well as the appellant in Crl.A.No.1010 of 2008. In that respect instead of reiterating the details, it will be sufficient to refer to the conclusion reached by the Trial Court, while dealing with the said contention, which are found in paragraph 63. The relevant part of it reads as under:

"63. In the present case, the evidence of API Padwal in this respect is not seriously challenged or shattered. After all the accused are arrested under Panchanama and at the time of arrest panchanama of accused Nana blood stained clothes were seized. It is not in any way contended or for that matter even whispered that I.O.API Padwal was having any rancor against the accused or he was motivated or interested in one sided investigation with the sole object of implicating the accused. As a matter of fact, the investigation in this case appears to be totally impartial. When it was transpired that two accused



by name Sandeep and Ganesh, the juvenile delinquent have not taken part in the assault, their names were deleted from the prosecution case by filing report U/s 169 of Cr.P.C. Therefore, here the investigation as proceeded impartially and it is also not even for the sake of it, is suggested to API Padwal that, no such blood stained clothes were recovered from the accused Nana, moreover, as per the settled position of law, there is no presumption in law that a Police Officer acts dishonestly and his evidence cannot be acted upon. Therefore, here the evidence of API Padwal is sufficient to prove the recovery of the blood stained clothes of the accused. His evidence also goes to prove that, all these articles blood stained clothes etc., were sent to C.A. and as per the C.A. report Exh.61 the blood was detected on the clothes of the accused and deceased and this blood was human blood.....In the present case, though the C.A. report, Exh.61 shows that, the said human blood was of group "B", C.A. report Exh.62 about the blood sample of the accused states that, the blood group could not be ascertained as the results were inconclusive, moreover, there is no C.A. of the blood sample of the deceased to prove that, he was having blood group "B". However, the fact remains that, the stains of human blood were found on the clothes of accused Nana and he has not



explained how this blood stains were on his clothes and therefore, as observed in this authority, it becomes one more highly incriminating circumstance against the accused."

In fact, as rightly noted by the Trial Court, it was for the appellants to have explained as to how the clothes worn by them contained human blood. In Section 313 questioning, no explanation was forthcoming from the appellants. In these circumstances, the said contention also does not merit any consideration.

27. The material on record clearly depict that the case of the prosecution is that there was illicit relationship between accused Nos.1 and 4 and thereby accused No.4 had given her ear studs to accused No.1, in turn accused Nos.2 and 3 hatched a plan to eliminate the deceased so that accused No.1 could continue his relationship with accused No.4. The same was spoken to by the prosecution witnesses. The medical evidence of P.W.16-Dr.Anil Kumar clearly depicts the homicidal death of the deceased. He further stated that he had noticed five major injuries on the deceased and further stated that inner parts of the body, after dissecting, found cutting of spinal chord in the



base of the skull. Other parts were intact. He had collected the clothes on the body to be sent for FSL. The cause of death was due to shock and hemorrhage and injuries to the vital organs. The time since death to the post mortem was approximately 24 hours. Accordingly, issued Ex.P.36-post mortem report. Nothing has been elicited in the cross examination of P.W.16-Doctor.

28. The involvement of the accused Nos.1 to 3 in homicidal death of the deceased is proved, in the light of the evidence of Pws.1, 3, 7 and 9 and recovery of the material objects Mos.13, 14 and 19-chopper as per seizure mahazars, Exs.P18, 19, 20 and 24, and also the voluntary statements of the accused persons. It is true that based on the voluntary statement, conviction cannot be imposed on the recovery made. Apart from the medical evidence, the other corroborated evidence also proved the involvement of the accused persons in the homicidal death of the deceased.

29. The FSL officer who was examined as P.W.20 specifically deposed that on 28.05.2013, Ripponpet police station in Cr.No.76/2013 sent 14 items in a sealed cover and he examined the same. Except item Nos.2 and 8, all other items



were blood stained and accordingly, issued Ex.P39-FSL report. Thereby, prosecution proved the involvement of accused No.2 along with accused Nos.1 and 3 in the homicidal death of the deceased, beyond reasonable doubt.

30. Further, on the charge of conspiracy under Section 120B of Indian Penal Code, it was necessary to establish that there was agreement between the parties for doing unlawful act and it is very difficult to establish direct evidence. At the same time in the absence of any evidence to show meeting made between conspirator for concealing the committed act, it is not possible to hold any person guilty for the offence under Section 120B. But in the present case charge was not only 120B, but also Section 302 read with Section 34 of Indian Penal Code against the accused persons. Though the conspiracy has not been proved based on the alleged confession statement of the accused or in the absence of certificate under Section 65B(4) of the Act, even though the prosecution proved the conspiracy between parties by the oral and documentary evidence, in view of the mandate of Section 65B of the Act, they are technically escaping from the clutches of law for the offence under Section



120B of the Indian Penal Code. The other evidence on record clearly depicts that accused No.2 is involved in the homicidal death of the deceased under the provisions of Section 302 of the Indian Penal Code.

31. Since this Court has already convicted accused Nos.1 and 3 for the offence punishable under Section 302 of the Indian Penal Code by the judgment dated 25.03.2022 passed in Criminal Appeal Nos.596/2016, 104/2016 and 1348/2018 by modifying the sentence from "imprisonment till death" to "imprisonment for life", to that extent, the present Criminal Appeal filed by the accused No.2, has to be allowed.

32. For the reasons stated above, the first point raised for consideration is answered in the negative holding that the appellant/accused No.2 has not made out a case to interfere with the impugned judgment of conviction and order of sentence, convicting him under the provision of Section 302 of the Indian Penal Code. The second point is answered in the affirmative holding that accused No.2 has made out a case to interfere with the impugned judgment of conviction and order of sentence passed by learned Sessions Judge convicting him



under the provisions of Section 120B of the Indian Penal Code, since the prosecution has not produced any certificate mandated under the provisions of Section 65B(4) of the Indian Evidence Act and therefore, it is not safe to convict the accused No.2 under Section 120B of the Indian Penal Code.

33. In view of the above we pass the following:

ORDER

- (i) The Criminal Appeal No.1299/2022 filed by the accused No.2-Srirama @ Shivarama, is ***allowed in part.***
- (ii) The impugned judgment of conviction and order of sentence, convicting the accused No.2 under the provisions of Section 302 of the Indian Penal Code, sentencing him to undergo imprisonment for life i.e., to remain in prison until his death is ***modified*** and accused No.2 is sentenced to undergo imprisonment for life. The imposition of fine and default sentence is not altered.



- (iii) The impugned judgment of conviction convicting accused No.2 for the offence punishable under Section 120B of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 2 years and to pay fine of ₹20,000/-, in default to undergo simple imprisonment for six months is hereby **set aside** for want of Certificate under Section 65B(4) of the Indian Evidence Act.
- (iv) Accused No.2 is **acquitted** for the offence punishable under Section 120B of the Indian Penal Code.
- (v) It is made clear the accused No.2 is sentenced to undergo imprisonment for life instead of "imprisonment till death".

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Kcm