

The State Of Karnataka vs Gurraiah @ Chittibabu on 13 December, 2021

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S.C.No.192/2019

KABC010037942019

IN THE COURT OF THE LVI ADDL. CITY CIVIL &
SESSIONS JUDGE, BENGALURU CITY (C.C.H.57)

:PRESENT:

Smt.K.G.Chintha, B.Sc., LL.B.,
LVI Addl. City Civil & Sessions Judge,
Bengaluru.

Dated this the 9th Day of December, 2021.

S.C No.192/2019

COMPLAINANT : The State of Karnataka,
By Yeshwanthpura police station,
Bengaluru.
(By Public Prosecutor)
V/s

ACCUSED 1. Gurraiah @ Chittibabu
S/o Late Nagaiah
Aged about 20 years
R/at No.35/1, Nagamma Nilaya
11th Cross, 1st main,
Near LCR School
Gokul 1st stage,
1st phase, Yeshwanthpura,
Bengaluru

2. G.Praveen @ Ompode
S/o Gopi
Aged about 19 years
1 S.C.No.192/2019

R/at no.47, LCR School Road,
11th Cross, Yeshwanthpura,
Bengaluru

3. Kishore M.
S/o Mahadev
Aged about 20 years
R/at No.518, 9th Main
8th Cross, K.N.Layout,

Yeshwanthpura,
Bengaluru

(By Sri.S.S./S.M advocate for A1
Smt.S.K. Advocate for A2 and 3)

Date of offence	19.10.2018
Date of report of offence	19.10.2018
Name of the complainant	M.S.Suhas
Date of commencement of recording of evidence	10.08.2021
Date of closing of evidence	28.10.2021
Offences complained of	U/Secs.302, 307 R/w Sec.34 of IPC
Opinion of the Judge	Accused No.1 to 3 are convicted
State represented by	Learned Public Prosecutor 2 S.C.No.192/2019
Accused defended by	Sri.S.S./S.M advocate for A1 Smt. S.K. for A2 and 3.

JUDGMENT

This is a charge sheet presented by the Police Inspector of Yeshwanathpura police station, Bengaluru against the accused No.1 to 3 for the offences punishable under Sec. 302 and 307 R/w Sec.34 of IPC.

2. The brief facts of the prosecution case is that:□C.W.1 to 3 and deceased Jagadeep Singh were working in Conrad hotel and they are friends. C.W.1 and Jagadeep Singh are roommates residing at Yeshwanthpura. On 19.10.2018 at about 0.15 and 0.30 hours in the mid night C.W.1 to 3 and Jagadeep Singh wanted to go to a restaurant near Navarang for dinner and C.W.1 to 3 came near Gokul 1st stage, 1st phase, LCR school main road, 11th cross near the residence of C.W.1 and Jagadeep Singh and they were talking. C.W.1 and 3 decided to go on the motor cycle and C.W.2 and Jagadeep Singh decided to go in a cab and were booking a cab to go to the restaurant near

Navarang. Then accused No.1 to 3 came near Jagadeep Singh and C.W.2 and with a common intention picked up quarrel with Jagadeep Singh and C.W.2. By hearing the fight C.W.1 and 3 who had proceeded little further came back and questioned as to why they are quarrelling with Jagadeep Singh. Then accused No.1 stabbed Jagadeep Singh on the right side of his neck and caused bleeding injuries. Accused No.2 assaulted C.W.1 with beer bottle on his head causing grievous injuries. Accused No.3 also assaulted C.W.1 with cement brick piece on the head of C.W.1 causing injuries with attempt to murder him. Hence accused No.1 committed the murder of Jagadeep Singh and accused No.2 and 3 with intend to kill C.W.1 caused grievous injuries to him on his head.

3. The investigating officer has submitted charge sheet before the XXIV Addl. Chief Metropolitan Magistrate, Bengaluru who has committed the case to the court of sessions. After hearing both prosecution and accused before charge, charge was framed against the accused No.1 to 3 under Sections 302 and 307 R/w 34 of IPC and the accused No.1 to 3 pleaded not guilty and claimed to be tried.

4. In order to prove the guilt of the accused, the prosecution has examined 23 witnesses out of 32 witnesses cited in the charge sheet as P.Ws.1 to 23 and got marked Ex.P.1 to 65 and got identified M.Os. 1 to 23. Statement of accused under section 313 Cr.P.C is recorded. Accused denied the incriminating evidence and has not adduced any defence evidence.

5. Heard the arguments of both sides.

6. The points that arise for my consideration are :□

1. Is the death of Jagadeep Singh Homicide?

2. Has prosecution proved that accused No.1 with a common intention along with accused No.2 and 3 caused death of Jagadeep Singh?

3. Whether the act of accused No.1 in causing death of Jagadeep Singh is culpable homicide amounting to murder or not amounting to murder?

4. Whether accused No.2 and 3 with a common intention along with accused No.1 assaulted C.W.1 with an attempt to murder him and caused grievous injuries?

5. What order?

7. My answer to the above points are as under:□Points No.1 : In the Affirmative Points No.2 : Accused No.1 has caused the death of Jagadeep Singh.

Points No.3 : Culpable homicide
amounting to murder

Point No.4 : Accused No.2 and 3 has
attempted to murder

C.W.1 causing grievous injuries.

Point No.5 : As per final order,
for the following:-

:REASONS:

8. Points No.1 to 4:□These points are taken together for consideration to avoid repetition of facts and discussion.

9. It is the specific case of the prosecution that C.W.2 and 3 are doing internship in hotel management at Conrad hotel situated at Trinity Circle, Bengaluru. C.W.1 is working as chef in the said hotel. Deceased Jagadeep Singh was also working in the said hotel as chef. C.Ws.1 to 3 and deceased Jagadeep Singh are friends. Jagadeep Singh was on leave for few days. On 18.10.2018 after the work C.Ws.1 to 3 decided to go out for dinner together. C.W.2 Nidhi and C.W.3 Nisha wanted to meet Jagadeep Singh who is residing along with C.W.1 Suhas. Hence they came near the room of C.W.1 and Jagadeep Singh at Yeshwanthpura at LCR school Road where they are residing together. After finishing their work they came to the said place at about 11.30 p.m. After reaching their place of residence, C.W.1 called Jagadeep Singh and asked him to come down along with key of the motor cycle of Abhishek Shettigar C.W.4 who is also residing with C.W.1 and Jagadeep Singh. Accordingly Jagadeep Singh came down along with motor cycle key. After meeting Jagadeep Singh C.W.1 to 3 decided to go for dinner in restaurant near Navarang along with Jagadeep Singh. C.W.1 Suhas and C.W.3 Nisha decided to go by bike. C.W.2 Nidhi and Jagadeep Singh decided to go by cab and they were booking for cab. C.W.1 and 3 proceeded little further and they heard quarrelling sound and returned back immediately. They found 3 persons quarrelling with Jagadeep Singh and C.W.2 Nidhi. When C.W.1 questioned the accused persons who were under the influence of alcohol, accused No.1 stabbed Jagadeep Singh with a knife on the right side of his neck. Accused No.2 and 3 assaulted C.W.1 with beer bottle and concrete brick piece on his head causing grievous injuries. C.W.1 Suhas and Jagadeep Singh took an auto and went to M.S.Ramaiah medical college hospital and Jagadeep Singh died in the hospital and C.W.1 Suhas was treated as in patient in ICU. Based on the statement of C.W.1 the complaint was registered. Hence it is the case of the prosecution that the accused with a common intention caused the death of Jagadeep Singh amounting to murder and attempted to murder of C.W.1 by assaulting him.

10. C.W.1 the complainant is examined as P.W.4. He has reiterated the complaint averments. According to him they were residing in Mathikere in a rented room along with C.W.4, C.W.5 and Jagadeep Singh since 2017. Since September 2018 Jagadeep Singh was not well and he was on leave. On 18.10.2018 during night he came along with C.W.2 and 3 to the room as C.W.2 and 3 wanted to see Jagadeep Singh who was not well. They reached near the residence at about 11.55 p.m. Since they had not taken food they decided to go to a restaurant near Yeshwanthpur circle. Himself and C.W.2 were proceeding on motor cycle and Jagadeep Singh and C.W.3 were booking for cab. When they were booking for cab 3 persons came near them. All the accused persons caught hold of Jagadeep Singh by holding his collar and one of the accused stabbed Jagadeep Singh with knife on his neck. Another accused assaulted PW.4 with a bottle on the left side of his head. Another accused

assaulted him with a stone on his head. When he shouted for help all the 3 accused left the place. He has sustained bleeding injuries on his head and his cloths were blood stained. He took an auto and he along with Jagadeep Singh went to M.S.Ramaiah hospital and got admitted to the hospital. After some time he heard about the death of Jagadeep Singh. Police came to the hospital and recorded his statement as per Ex.P.4. He has identified his blood stained cloths, belt and shoes as per M.O.1 to 6. He identified the knife used by the accused to stab Jagadeep Singh as per M.O.7. Further identified beer bottle pieces as per M.O.8 and 2 pieces of cement bricks as per M.O.9. He also identified the photograph of deceased Jagadeep Singh as per Ex.P.5.

11. In the cross examination, P.W.4 states that 4 of them are together residing in a room at Mathikere. The owner of the building had given room to all of them jointly. Whereas the rental agreement as per Ex.P.1 is entered in the name of Abhishekh Shettigar and not jointly in the name of C.W.1, 4, 5 and Jagadeep Singh. Though the rental agreement is only in favour of Abhishekh Shettigar C.W.4/P.W.1, there is no dispute that C.W.1 Suhas and Jagadeep Singh were also residing with Abhishekh Shettigar P.W.1. P.W.4 says that M.O.1 to 6 were seized in the hospital on the next day of the incident. He does not know as to when M.Os.7 to 9 the weapons were seized. The cloths of P.W.4 as per M.Os.1 to 6 were seized on 23.10.2018 by the police. However the medical officer who treated P.W.4 handed over the cloths on the next day of the incident and same were produced before the IO by the concerned police P.W.12 Yellalingh on 23.10.2018.

12. P.W.4 has clearly stated as to how the accused stabbed Jagadeep Singh and assaulted him with beer bottle and concrete brick. Nothing is elicited in the cross examination of P.W.4 to disbelieve the injuries sustained by him or the death of Jagadeep Singh due to the stab injury caused by accused. P.W.4 states that there were street lights in the road and it was not fully dark and he could identify the accused persons. There was sufficient light to see the face of the persons. Hence he was able to identify the accused persons and he had identified accused persons during test identification parade conducted by P.W.19 the Tahasildar at central prison, Bengaluru. P.W.4 further states that no persons passed by that way except 2 vehicles. No shops were opened nearby to the said area. There are residential houses near to the scene of occurrence. If they had shouted loudly the residents of the said houses could have come out, but nobody has come out.

13. He does not know if any CCTV camera is installed nearby to their house. Even according to the prosecution no CCTV camera were found nearby to the scene of occurrence. IO states that CCTV is available in LCR school, but it would cover till gate and not to the road where the incident took place. P.W.4 had no acquaintance with the accused earlier. He was at distance of 50 meters from Jagadeep Singh and C.W.2 when he heard the sound as they had just moved to proceed to restaurant. He does not know if the accused No.1 asked for cigarette with Jagadeep Singh and when Jagadeep Singh said that he has no cigarette the accused picked up quarrel. He does not know the reason for accused to catch hold of the collar of Jagadeep Singh and to assault him. He has been cross examined much with regard to the distance from the accused to Jagadeep Singh and to him and the place where C.W.2 and 3 were standing at the time of incident and whether he was standing in the right side or left side of Jagadeep Singh. P.W.4 states that accused persons were around deceased Jagadeep Singh. It is only after he returned back to the said place, the accused has stabbed Jagadeep Singh and he has seen the accused stabbing Jagadeep Singh. He was trying to cover

Jagadeep Singh to protect him from the assault of accused. Jagadeep Singh was on his right side. The accused has stabbed Jagadeep Singh on the right side of his neck with the knife. He also states that LCR school is on one side of the scene of occurrence and their room is opposite to the LCR school. On either side of the scene of occurrence one road proceeds to Mattikere Main Road and on one side there is railway track. The distance from their building to the scene of occurrence is about 50 meters. The school is also at a distance of less than 50 meters.

14. P.W.4 further states that the motor cycle belongs to the brother of C.W.4/P.W.1 and he had asked Jagadeep Singh to bring the key of bike. He also used the vehicle of the brother of C.W.4. C.Ws.2 and 3 were standing together at the time of incident at a distance of 10 feet from C.W.1 and Jagadeep Singh. C.Ws.2 and 3 were crying and they too have shouted for help. He does not know if there is any security guard in the school. The care taker of their building was not outside the building so as to observe the incident. After the incident, after 2-3 minutes auto rickshaw came and by then hoysala vehicle also came there and helped them to take the auto. It is suggested to P.W.4 that accused No.1 to 3 were not present at the time of incident and it is in some other incident that P.W.4 sustained injuries and it is also suggested that Jagadeep Singh was murdered by some other persons and at the instance of police he is deposing falsely and he denies the said suggestions. The evidence of P.W.4 would go to establish that the accused persons have come and attacked deceased Jagadeep Singh and when he tried to cover Jagadeep Singh the accused assaulted them. Accused were not known to them prior to the incident. P.W.4 clearly states that accused were under the influence of alcohol. There was no reason for accused to assault them, but under the influence of alcohol it appears that the accused have picked up quarrel with Jagadeep Singh and P.W.4 Suhas. P.W.4 has clearly stated that it is the accused No.1 who stabbed Jagadeep Singh with M.O.7 and it is accused No.2 and 3 who assaulted him with beer bottle and cement brick pieces.

15. C.W.2 Nidhi an eye witness to the incident is examined as P.W5. She was doing internship in hotel Conrad along with C.W.3. It is her evidence that on 18.10.2018 after completion of their shift in the hospital they decided to go out for dinner. They went to Yeshwanthpur to meet Jagadeep Singh and then to go for dinner. C.W.1 and C.W.3 decided to go on bike. Herself and Jagadeep Singh were looking for cab. 3 persons came near them and asked for cigarette. They are the accused persons. When they informed that they do not have cigarette they started fighting with them. On hearing the sound, Suhas C.W.1 and C.W.2 who were proceeding on bike came back. Accused No.1 to 3 were fighting with Jagadeep Singh. C.W.1 tried to push them away. One of the accused stabbed Jagadeep Singh on the right side of the neck with knife. It is accused No.1 who stabbed Jagadeep Singh. She has identified accused No.1 and the knife used by him as per M.O.7. One of the accused assaulted C.W.1 Suhas with bottle on head and he was bleeding. She has identified the bottle pieces as per M.O.8. Later accused ran away from the spot. They wanted to take injured to the hospital, but both Suhas and Jagadeep Singh went to the hospital with the help of police in an auto. Later P.W.5 and C.W.3 went to their PG. On the next day they have shown the scene of occurrence to the police and police have conducted mahazar as per Ex.P.6. She has also identified the photograph taken at the scene of occurrence at the time of conducting mahazar as per Ex.P.7 and 8.

16. It is the cross examination of P.W.5 that from May 2018 to December 2018 she was staying in PG. The duration of study was 4 years. She was studying in residential college and was staying in

college accommodation. Only during internship she was staying in PG. Internship is for the period of 5 months. After completion of their education she left Bengaluru in October 2020. After she left Bengaluru in October 2020 for the first time she has come to Bengaluru on the day of her examination before the court. Further there was no restriction for the timings in the PG. There was no entry and exit register in the PG. There was no security. The owner of the PG is staying in ground floor. There was CCTV camera in and around the PG. Even during late night and early in the morning she could enter the PG. They reached PG on that night at about 1.30 a.m. They went in Uber cab. An attempt has been made by the defence counsel to elicit that she was not present at the scene of occurrence at the alleged time of incident and there would have been records in PG to prove that they had gone out during night but nothing could be elicited in the cross examination of P.W.5 to show that she had not accompanied C.W.1 and 3 to Yeshwanthpur the place where the C.W.1, 4, 5 and Jagadeep Singh were residing.

17. Further in the cross examination P.W.5 states that, she did not go to the room of Jagadeep Singh. There was street lights at the place of occurrence. Hence she was able to see the face of accused persons. Even on earlier occasion she has never visited the room of Jagadeep Singh. After they reached Yeshwanthpura it took about 5 minutes to Jagadeep Singh to come down from his room and meet them. There were shops and houses nearby to the place of incident. None of the shops were open. She does not remember if accused persons came from behind or in front of Jagadeep Singh and what was the dress worn by the accused persons at that particular time. By hearing the sound Suhas came on bike itself to the spot and started separating them. The fight took place for about 15 minutes. She did not scream. She did not know what to do. She was thinking that nothing should happen to Suhas and Jagadeep Singh. She was telling the accused persons not to do anything. Nisha C.W.3 was screaming. Despite of scream nobody came there. The place of incident is the road. She does not know from which side the accused came. Accused No.1 was holding knife in his hand. Accused No.1 was standing in front of Jagadeep Singh. Accused No.2 and 3 were holding bottles. It was suggested that since there is no bar nearby to place of incident, accused has not carried any bottle or knife and they have not stabbed Jagadeep Singh nor assaulted Suhas C.W.1 and she denied the said suggestions. When they shouted for help accused left the place. They came to the main road and saw the police and police asked auto fellow to take Suhas and Jagadeep Singh to the hospital. She does not know the registration number of auto rickshaw and names of the police officers who came there. They helped Suhas to take Jagadeep Singh in the auto and both were bleeding. Even on her footwear there was blood drops but she has not given the same to the police. She did not call the police at the time of incident or immediately after the incident.

18. C.W.3 Nisha who is doing internship in hotel Conrad along with C.W.2 is examined as P.W.6. It is also her evidence that from February 2016 to 2020 she was studying in Bengaluru. During the relevant point of time she was doing internship. Jagadeep Singh was working in the said hotel in kitchen department. C.W.1 was also working in the said hotel. Jagadeep Singh was not attending duty for few days. Hence they decided to go to Yeshwanthpura to meet Jagadeep Singh. She along with C.W.1 and 2 went to Yeshwanthapur and after meeting Jagadeep Singh they decided to go for dinner to a restaurant near Navarang. She was proceeding along with Suhas on the bike. C.W.2 and Jagadeep Singh were looking for cab. When they proceeded little further 3 guys came fully drunken. She felt these 3 persons may do something to Jagadeep Singh and Nidhi. Hence they came back.

They also heard the sound of fighting. Accused were fighting with Jagadeep Singh and Jagadeep Singh was trying to defend himself by pushing them. C.W.1 Suhas also went to help Jagadeep Singh. The accused pushed Suhas and Jagadeep Singh and they went little further to a darker place. Accused No.1 slit Jagadeep Singh with knife on the right side of his neck. Accused No.2 and 3 assaulted Suhas with bottle and stone. Suhas sustained injuries on his head and was bleeding. When they shouted for help nobody came there. Suhas wanted to take Jagadeep Singh on bike to the hospital, but Jagadeep Singh was unconscious. Hence they went to main road and shouted for help, by then police vehicle came there. Suhas by seeing the police vehicle asked them to go to PG and he has taken Jagadeep Singh to hospital. Hence they went to PG. On the next day they came to know that Jagadeep Singh is dead. On the next day she has also shown the place of incident to the police and police have conducted mahazar as per Ex.P.6 and seized bottle pieces as per M.Os.8 and 9 and also took photograph as per Ex.P.7 and 8.

19. It is the cross examination of P.W.6 that she was residing in PG near Conrad hotel during internship. There is no register maintained in the PG for entry and exit. There is no security in the PG. They screamed when the fight was going on, but not much. They were crying. The incident took place in front of her. There are buildings nearby the place of incident. No shops were open. No people were walking around. The fight took place for about 10 minutes between 11.30 and 12.00 mid night. There was street light nearby the place of incident. By seeing the accused persons she along with C.W.1 went back behind Jagadeep Singh and C.W.2. Accused persons came in front of them. At the time of incident she was standing at a distance from 10 meters from accused behind Jagadeep Singh. They were screaming and calling for help. Nobody came out from the house. They were having mobile but they did not call the police. They did not take Jagadeep Singh and Suhas to the hospital. When they went near main road as per the instruction of Suhas herself and C.W.2 went back to the PG. She does not know when the auto rickshaw came and they went to the hospital. When the accused came cross them a little away from the place of incident they were not holding any weapons.

20. The evidence of P.W.6 goes to show that P.W.5 and 6 did not wait till the auto rickshaw came and Suhas and Jagadeep Singh left to the hospital. Whereas P.W.5 states that when they went to main road police helped Suhas and Jagadeep Singh to take auto rickshaw to go to hospital. P.W.6 also states that police came to the spot and Suhas said he would take help of police and then go to hospital. Except this minor discrepancy the evidence of P.W.5 and 6 is consistent and strong to believe that they were along with deceased and Suhas and have witnessed the incident. P.W.4 victim also states that accused were fully drunk and it is under the influence of alcohol the accused have asked for cigarette from Jagadeep Singh who did not have the cigarette.

21. P.W.4 to 6 have clearly stated that accused No.1 stabbed Jagadeep Singh with a knife on the right side of his neck causing grievous injury which has resulted in his death. Further accused No.2 and 3 have assaulted P.W.4 with bottle and stone on his head. P.W.4 does not say that accused No.2 assaulted him with stone but P.W.5 and 6 state that accused No.3 also assaulted him with concrete brick on his head. When P.W.4 has suffered severe blow on his head he could not have recollected with what object accused No.3 assaulted him. But P.Ws.5 and 6 the eye witnesses have deposed that P.W.4 was assaulted with concrete brick piece on head by accused No.3. Further it could only be a

lapse on the part of prosecution that the same was not elicited in the evidence of P.W.4. The cross examination of P.W.4 to 6 with regard to the position of the accused persons from that of the victim has not been contradicted in the evidence of P.W.4 to 6. Their evidence is so strong and corroborative enough to believe that the accused No.1 has stabbed Jagadeep Singh and accused No.2 and 3 have assaulted P.W.4.

22. C.W.4/P.W.1 is Abhishekh Shettigar who has taken the room on rent with whom C.W.1 and Jagadeep Singh were residing. When he was at room Suhas called Jagadeep Singh and asked him to get the key of the bike belonging to the brother of P.W.1 and Jagadeep Singh went down by taking motor cycle key. Later he received call from his brother and came to know that Suhas has been assaulted and Jagadeep Singh has been stabbed and they are admitted to M.S.Ramaiah hospital. Accordingly he went to M.S.Ramaiah hospital and found that Jagadeep Singh is dead and Suhas is seriously injured on his head and is in ICU. He has narrated about the manner in which the incident has taken place. But he is not an eye witness to the incident and he has heard about the incident from P.W.4 Suhas. His evidence would go to show that Jagadeep Singh and Suhas are residing with him and that C.W.1 to 3 had come near their room and they wanted to go for dinner along with Jagadeep Singh and thereafter the incident took place.

23. C.W.19 the owner of the building is examined as P.W.3 and he has let out the room to P.W.1 Abhishekh Shettigar on rent of Rs.4,000/□p.m and advance amount of Rs.15,000/□in 2017. He only states about letting out the room to Abhishekh Shettigar.

24. C.W.6 Bhajan Singh who is examined as P.W.2 is the relative of deceased Jagadeep Singh. He has identified the photograph of deceased Jagadeep Singh as per Ex.P.2 and 3. After hearing about the death of Jagadeep Singh he has gone to the hospital and after the arrival of the father of Jagadeep Singh, he has again gone to the hospital and has identified the dead body. His evidence would go to show that Jagadeep Singh was residing in Yeshwanthpur along with his friends and he was working in hotel.

25. C.W.10 Jaisingh is examined as P.W.17. He also belongs to the native of deceased Jagadeep Singh. He came to know on 21.10.2018 that Jagadeep Singh was stabbed by somebody and died. He has gone to M.S.Ramaiah hospital and seen the dead body of Jagadeep Singh. He knows the father of Jagadeep Singh since his childhood. There were other persons present in the hospital along with him.

26. C.W.7 Chandacharan Choudary is the security Manager of Conrad hotel and is examined as P.W.7. Since C.W.1 Suhas is the employee of the hotel and that Jagadeep Singh was earlier working in the said hotel, he has visited M.S.Ramaiah hospital enquired Suhas about the incident and helped the father of Jagadeep Singh to visit the hospital, identified the dead body and has helped them. As a courtesy he has visited along with HR team to M.S.Ramaiah hospital. An attempt was made to elicit that since Jagadeep Singh was no more an employee in the hotel, there was no necessity for him to visit the hospital and meet the father of Jagadeep Singh. His evidence goes to show that Jagadeep Singh had left the employment in Conrad hotel as on the date of incident and P.W.4 was working in their hotel.

27. C.W.12 Mohammed Imran the witness to the spot mahazar is examined as P.W.8. According to him police had issued him notice to cooperate with the mahazar stating that a murder has taken place near LCR School and he has gone to the said place on 19.10.2018 at about 10.45 a.m. The police conducted the mahazar as per Ex.P.6 and seized pieces of beer bottle as per M.O.8 and 2 pieces of cement concrete brick as per M.O.9 and also sample cement soil with blood stains as per M.O.10. Police have also taken the photograph at the time of mahazar as per Ex.P.7 and 8. It is two girls who have shown the place of incident to the police. He states that he affixed his signature to Ex.P.6 at the scene of occurrence. Police called him over phone and asked him to come to station and served the notice. Further deceased Jagadeep Singh is his friend and police had his number with them. He further states that usually bottle pieces are available on the road side and he saw that there was blood stains on the bottle pieces and therefore police seized the same. At the time of incident he was not present. The scene of occurrence is at a distance of about 100 to 150 meters from LCR school. He also states that the bottle pieces were sealed by the police. The evidence of P.W.8 corroborates the evidence of P.W.5 and 6 the eye witnesses and contents of mahazar.

28. P.W.14 is the Assistant Engineer of PWD who has prepared the spot sketch as per Ex.P.33 on the request of the IO. He has visited the place of incident on 07.11.2018. Ex.P.33 indicates that the place of incident is LCR school road, the northern boundary is drinking water unit, South is H.No.57/1, and either side towards East and West LCR school road is situated. The scene of occurrence is proved in the evidence of P.Ws.4 to 6, spot mahazar witness P.W.8 and the evidence of P.W.14.

29. C.W.17 Shankar B.M a witness to the seizure mahazar Ex.P.16 is examined as P.W.9. His evidence is that on 20.10.2018 the accused have taken the investigating officer PW.18 along with panch witness CW.18 to the scene of occurrence and also to the house of accused No.1 to 3 and they have produced the weapons used for commission of the offence and their blood stained cloths. According to the P.W.9 the accused No.1 produced the knife M.O.7, shirt as per M.O.11 and black pant as per M.O.12 from his house kept on the 'chejja'. Police at the time of conducting mahazar took photograph as per Ex.P.17 and 18 when accused No.1 produced the knife M.O.7 and M.O.11 and 12. Further police have seized the neck of beer bottle, a broken piece of bottle at the instance of accused near the compound of LCR school and photograph as per Ex.P.21 and 22 were taken when the accused produced the broken piece of beer bottle used by accused No.2 to assault P.W.4. He has also identified the piece of beer bottle as per M.O.13. Further accused No.2 has produced shirt as per M.O.14 and pants as per M.O.15 which he had worn at the time of incident which was blood stained, from his house. Similarly accused No.3 has produced the jeans pant and shirt as per M.Os.16 and 17 and Ex.P.23 the photograph was taken in his house. He has identified the accused persons and seized articles. Further P.W.9 states that on 20.10.2018 police called him in the morning when he was standing near petrol bunk by parking his car. He was working for Ola company during then. He has not gone to the police station in connection with the case. He does not remember the contents of Ex.P.16. The house of accused No.1 situate near LCR school at a distance of 100 meters. The persons shown in the photograph have taken them to their house and has produced the blood stained cloths and knife M.O.7. He was unable to give the boundaries to the place from where the bottle piece was seized. He does not know as to when accused were arrested. Police had brought the accused in the jeep and along with them he too was taken for conducting mahazar.

30. C.W.18 Anil another witness to the seizure mahazar Ex.P.16 is examined as P.W.10. He too states that police had issued him notice to cooperate with the mahazar as per Ex.P.24. When he was near Yeshwanthpur circle police called him and he was taken along with police and accused persons near LCR School and one of the accused produced knife, shirt and pant kept at the chejja in his house and photographs were taken at the said place. He has identified the material objects seized from the house of accused No.1 as per M.Os.7, 11, and 12. Thereafter the accused took them to the house near Chowdeshwari temple and produced pant and shirt kept beneath syntex tank which were seized as per M.Os 14 and 15. Thereafter one of the accused also taken them near LCR School to a ground and produced beer bottle piece as per M.O.13. Thereafter accused have taken them to the house in K.N. layout and one of the accused produced pant and shirt as per M.Os 16 and 17 and photograph were taken at all these places. He has identified the material objects and the photographs. P.W.10 has identified the accused persons before the court. It was suggested to him that he is an informer to the police and therefore he was called to cooperate with the mahazar and he denies the same. Since he has working as auto driver police knows him. He had accompanied police and accused in the police jeep. Police took them to Yeshwanthpur circle and from there near LCR school and thereafter to the houses of accused and also near the LCR school ground where the M.Os were seized. Accused No.1 had kept knife and cloths on the chejja. Police took him stating that the murder has taken place and mahazar is to be conducted and took the photograph at the respective places. Nothing is elicited in the evidence of P.W.9 and 10 to disbelieve their evidence with regard to the seizure of blood stained cloths and the weapons at the instance of accused No.1 to 3. Their evidence is corroborative enough to believe that Ex.P.16 was conducted in their presence at the instance of accused.

31. C.W.26 Prashanth Patil, is examined as P.W.11. He is the police sub-inspector who received the information regarding the assault on C.W.1 and Jagadeep Singh. His evidence is that on 19.10.2018 C.W.32 the IO issued him the memo as per Ex.P.25 to secure the accused persons in this case. Accordingly along with C.W.27 to 29 he was in search of accused persons at RMC Yard, Peenya, Jalahalli, Vidyaranya, Yelahanka and Shivajinagar etc and at about 6.30 p.m he received information that accused are available near Lottogollahalli Railway Station and he went to the said place. He found accused No.1 to 3 in Lottogollahalli Railway Station and apprehended them and produced them before the IO at 8.00 p.m along with his report Ex.P.26.

32. It is the evidence of P.W.4 and 5 the victim and eye witness that after the injury sustained by P.W.4 and Jagadeep Singh they were looking for a vehicle to go to the hospital and hoysala vehicle came and the police helped them to take auto and go to the hospital. The investigating officer C.W.32 do not state about the information received by police prior to information given by P.W.11 the PSI to him. P.W.11 states that immediately after 2 hours of the incident he started searching for the accused persons. The incident has taken place at about 12.30 mid night and they have come to know about the occurrence of the incident. How P.W.11 received information regarding the incident is not explained. P.W.18 the IO does not state about receiving of any information from hoysala police or the police on beat duty at the said area regarding the incident and P.W.11 also do not state as to how he received information about the incident. Both do not state that the injured had called them and informed about the incident. P.W.5 and 6 have also not called the police. Hence probabilities are that the police who were on duty in the said area or the hoysala police who were on

duty who have helped P.W.4 and deceased Jagadeep Singh to go to hospital came to know about the incident and P.W.11 has started searching for the accused persons. P.W.11 states that though he received memo from C.W.32 at 8.00 a.m he was in search of accused persons since night itself. P.W.11 was on night duty on 18.10.2018. He secured the accused persons at 6.30 p.m on 19.10.2018. He was questioned as to whether any CCTV camera was available near the scene of occurrence and he did not find any CCTV at the said place. The accused denies their arrest from Lottegollahalli Railway Station. According to accused No.2 and 3 police called their mother to the police station and accused No.2 and 3 were called to the police station and they were not arrested from Lottegollahalli Railway Station. Even according to accused No.1, he was not arrested along with accused No.2 and 3 at Lottegollahalli Railway Station. P.W.11 though do not state about the information received by him during night itself, his evidence is cogent enough to believe that the police had information soon after the occurrence and were on search of the accused persons and they must have helped the victims to go to hospital.

33. C.W.16 Akash Shettigar is examined as P.W.13. He is the relative of P.W.4 Suhas the injured. He knows Jagadeep Singh who was residing along with P.W.1 and 4. According to him P.W.1 called him over phone and informed about the incident and injuries sustained by him and hence he went to M.S.Ramaiah hospital. He came to know that Jagadeep Singh died out of the injury and saw his body. He also met P.W.4 Suhas and enquired him about the incident. Police conducted inquest mahazar as per Ex.P.13 in his presence on 21.10.2018 after arrival of the father of the deceased. He has affixed his signature in Ex.P.13 in the mortuary of M.S.Ramaiah medical college hospital.

34. C.W.20 Dr.D.Sudhakar is examined as P.W.15. He is the medical officer who has treated P.W.4 Suhas with the history of assault on 19.10.2018 at 1.30 a.m. On examination he found cut lacerated wound over left parietal region and midline. CT Brain was taken and brain was found normal. According to him injury No.1 is grievous in nature and injury No.2 is simple in nature and he has issued wound certificate as Ex.P.34. He further states that if a person is assaulted with M.O.8 and 9 such injuries as mentioned in Ex.P.34 could be caused. He has collected cloths of C.W.1 and handed over the same to the police as per M.Os.1 to 6. Except suggestion by accused No.2 and 3 that if a stone is hit on head such injuries will be caused, nothing is elicited in the cross examination of P.W.15 to prove that P.W.4 had not sustained any injuries due to assault of accused No.2 and 3.

35. C.W.21 Dr.S.Praveen is examined as P.W.16. He is the Professor, Department of Forensic Medicines, M.S.Ramaiah Hospital who conducted the postmortem examination of deceased Jagadeep Singh on 21.10.2018 between 2.20 p.m and 4.00 p.m. He has handed over the cloths, slippers etc., to the police as per M.Os.18 to 22 found on the dead body. He has examined the dead body and mentioned the external and internal injuries in the postmortem report Ex.P.35. According to him cause of death is due to hemorrhage and shock as a result of stab injury to the neck sustained by him. He has found the wedge shaped stab wound 2 cm X 0.6 cm X muscle deep, obliquely placed over right side of neck. Upper anterior end is relatively blunt, lower posterior end is relatively acute. It is situated 7 cm below the right angle of mandible, 8 cm above right mid-point of clavicle, and 10 cm from the midline. On dissection the weapon after piercing skin, subcutaneous tissue, underlying muscles of neck has severed the underlying common carotid artery and internal jugular vein. The track is filled with blood and blood clots. The wound is directed forward, inwards and downwards

for a depth of 3.5 cm. Further as per injury No.2 incised wound 3.5 cm X 0.1 cm present over left side of neck, just below the left earlobe and contused abrasions present over back or left arm and front of both the knees. Except these external injuries there are no other injuries found on the body.

36. The police have also sought his opinion by showing the weapon M.O.7 on 16.08.2021. He has given the report as per Ex.P.36 stating that injuries No.1 and 2 could be caused by the type of weapon M.O.7 examined by him. Cross examination of P.W.16 is that M.O.7 was produced before him for opinion only on 16.08.2021 and the postmortem was conducted on 21.08.2018 i.e. almost after 2 years. It is also suggested to him that injuries No.1 and 2 could be caused with any sharp edged weapon and he admits the same. The delay in producing M.O.7 before P.W.16 is due to the delay in receiving the report from Forensic Science Laboratory and return of articles. After receipt of the report from FSL, at the request I.O, P.W.22 the present inspector of Yeshwanthpura police station has taken M.O.7 to P.W.16 and has obtained his opinion. It is only after the court called for the case properties after framing of charge, the police have taken the report from FSL. According to the Assistant Director of DNA Section of FSL they examine the articles on priority and seniority basis as per the directions issued by the Hon'ble Supreme Court of India. Due to shortage of number of faculty there is a delay in examining the articles and therefore he was able to give the report on 02.11.2021. The examination of articles was commenced on 19.07.2021 and completed on 10.08.2021. The evidence of P.W.15 and 16 corroborates with the evidence of P.W.4 to 6 regarding injuries sustained by P.W.4 and Jagadeep Singh due to the assault of accused No.1 to 3 and the cause of death as stated by P.W.16.

37. C.W.24 N.Tejas Kumar the Tahasildar who conducted Test Identification Parade of accused is examined as P.W.19. According to him on 23.10.2018 he received information from XXIV Addl. Chief Metropolitan Magistrate, Bengaluru to conduct the Test Identification Parade and on 25.10.2018 he received request from IO. On 27.10.2018 he has sent memo to C.W.32 the IO and the jail authority to keep the accused and witnesses present as per Ex.P.49. On 30.10.2018 he has conducted Test Identification Parade at central prison Bengaluru and he sent the report to XXIV Addl. Chief Metropolitan Magistrate, Bengaluru. Ex.P.50 to 52 are the Memorandum of Test Identification Parade of accused No.1 Gurraiah @ Chittibabu. Ex.P.53 to 55 are the memorandum of test identification parade of accused No.3 Kishore and Ex.P.56 to 58 are the memorandum of Test Identification Parade of accused No.2 Praveen. C.W.1 Suahas C.W.2 Nidhi and C.W.3 Nisha are the witnesses who identified the accused persons. In the cross examination he states that 2 police personnels had come to central prison on the day of Test Identification Parade. They were not present at the time of conducting Test Identification Parade. He has examined 1:5 accused persons and has shown them to the witnesses. Jail authority had produced another 5 under trial prisoners to examine along with accused No.1 to 3 separately. It is suggested to him that he has not conducted any Test Identification Parade and at the instance of police sitting in the office he has prepared the report and submitted report to the learned XXIV Addl. Chief Metropolitan Magistrate, Bengaluru and he denies the said suggestions. P.W.4, 5 and 6 who are C.W.1 to 3 have also identified the accused persons before the court. P.W.4 also states about the P.W.19 conducting Test Identification Parade in the central prison.

38. C.W.27 Mahalingaswamy N.K. the Head Constable of Yeshwanthpura police station is examined as P.W.20. He has assisted C.W.26 to secure the accused persons. He has also assisted the IO by translating the statements of C.W.2, 3, 6 to 11 from Hindi to Kannada. He has collected blood sample of C.W.1 from M.S.Ramaiah hospital drawn by the medical officer for DNA test and has produced it before C.W.32 along with his report Ex.P.38. Thereafter at the instance of Investigating officer he has taken blood sample to FSL. He has also shown scene of occurrence to C.W.23 the Engineer of PWD to prepare the spot sketch. In the statement translated by him, he has not mentioned that he has translated the statement given by C.W.2, 3 and 6 to 11. He is B.Com graduate. He knows Hindi, English and Kannada and hence the IO has taken his assistance for translating the statement of C.W.2 and 3 given by them orally.

39. C.W.34 Gangarangaiah the Assistant Sub Inspector of Yeshwanthpura police station is examined as P.W.21. It is his evidence that on 19.10.2018 at about 1.30 a.m C.W.32 called him to M.S.Ramaiah hospital. He told them that 2 persons are assaulted and they have been admitted to the hospital. The investigating officer told him to collect the memos from the hospital and inform him after receiving the memo. Hence he stayed in the hospital. At about 4.40 a.m he received the death memo of Jagadeep Singh as per Ex.P.39 and he informed the same to C.W.32. He has also received the memo of P.W.4 Suhas who sustained injuries as per Ex.P.40. After C.W.32 came to the hospital he has handed over the memos to him and C.W.32 recorded the statement of C.W.1 as per Ex.P.4. On 19.10.2018 he has accompanied the IO to the scene of occurrence for conducting spot mahazar as per Ex.P.6. C.W.2 and 3 the eye witnesses have shown the scene of occurrence to the police and photographs were taken at the said place as per Ex.P.7 and 8. He has written Ex.P.6 and affixed his signature to the Ex.P.16 on 20.10.2018. He was taken to the places of accused for seizure of weapons and blood stained cloths of accused and mahazar was written as per Ex.P.16 by him in the house of accused No.1 to 3 and near LCR school from where the accused No.2 produced bottle pieces. P.W.21 states that when he went to the hospital during night he met Jagadeep Singh and Suhas, but he does not know whether Jagadeep Singh was alive. He has not spoken to them as they were under treatment. Statement of P.W.4 was recorded in the presence of medical officer and medical officer has signed Ex.P.4. The panch witnesses were secured by the investigating officer. It was suggested to him that the police themselves had kept the weapons and cloths in the house of accused No.1 to 3 and thereafter they have taken accused to their houses and seized material objects and he denies the said suggestions.

40. C.W.33 L Purushotham the Assistant Director of FSL is examined as P.W.23. He has deposed that on 02.11.2018 police had submitted the case file and 25 articles pertaining to this case. The case file and articles were verified and registered the case as DNA 530/2018. He has given DNA code to all the 25 articles with description of the articles upto 25. Chemical examination was conducted to determine the detection of blood stains in the articles No.1 to 19 and 21 to 24. Suspected stained regions were subjected to DNA profile examination. Blood stains were detected on articles No.3 i.e. cement mud collected from scene of occurrence and article No.5 the knife, article No.6 to 9, 2 shirts and 2 pants and articles No.11 to 25. Blood stains were not detected on articles No.1, 2, 4 and 10. As per his opinion DNA profile result of Jagadeep Singh from whom the postmortem blood was collected and sent in item No.20 is included from being contributor of blood stains detected on articles No.13, 14, 16 and 18. Further blood sample collected from Suhas M.S P.W.4 sent in item

No.25 is included from being the contributor of blood stains detected on item No.8, 13, 14 and 18. 3 unknown male individuals are included from being contributor of blood stains detected on item No.9, 11 and 15. Accordingly he has issued report as per Ex.P.61. Along with his report he enclosed annexures Ex.P.61 to 63 and sample seal Ex.P.65.

41. In the cross examination, P.W.23 admits that he did not examine the articles since 02.11.2018 to 19.07.2021 due to shortage of experts and as per the directions of Hon'ble Supreme Court of India they take up the matter on priority basis and seniority basis. It was suggested to him that after 2 years gap blood stains could not have been detected in M.Os.1 to 23 and he denies the same. He states that all the articles are kept in controlled condition in storage condition of DNA section. Apart from Suhas and Jagadeep Singh, blood stains of 3 unknown male individuals are detected on articles No.9, 11 and 15. If the blood samples of unknown persons had been given he could have identified the human identity. This evidence of P.W.23 goes to show that the blood stains found on articles were of Suhas, Jagadeep Singh and 3 unknown persons. Unfortunately the investigating officer has not collected the blood sample of accused persons and has not sent to FSL. If the blood stains of accused persons had been sent to FSL he would have compared the blood stains with blood sample of accused No.1 to 3. There are no other persons before the court whose blood sample would have been found on the articles No.9, 11 and 15 other than the accused persons. Though the defence of the accused is that Jagadeep Singh and Suhas sustained injuries in some other incident, nothing is elicited in the evidence indicating any other possible incident in which Jagadeep Singh and Suhas would have sustained injuries and whereabouts of accused at the particular point of time. He plea of alibi is not taken by the accused. Not sending the blood sample of accused No.1 to 3 for DNA test to FSL is not a ground to disbelieve the evidence of P.W.23 and his evidence is convincing to prove that blood stains found on the articles were of Suhas P.W.4, deceased Jagadeep Singh and accused No.1 to 3.

42. C.W.32 Y.Muddraj the IO is examined as P.W.18. He has deposed about the investigation conducted by him in detail. According to P.W.18 he received the information at 1.00 a.m between night on 18 and 19th October 2018 from PSI Prashanth Patil i.e. P.W.11 that 3 persons have assaulted 2 persons and the victims have been taken to M.S.Ramaiah hospital for treatment. Immediately he has proceeded to M.S.Ramaiah hospital in hoysala vehicle. On enquiry he came to know that both Jagadeep Singh and M.S.Suhas P.W.4 are under treatment in ICU and hence he could not meet the injured. He deputed Gangarangaiah P.W.21 to stay in the hospital and receive the memo from the medical officer who treated Jagadeep Singh and Suhas. Accordingly P.W.21 has received the memo as per Ex.P.39 and 40 regarding the death of Jagadeep Singh and injuries sustained by Suhas P.W.4. He received call from P.W.21 at 5.00 a.m. Immediately he had gone to the hospital and recorded the statement of P.W.4 between 5.30 and 6.30 a.m and registered the case, based on the statement of P.W.4 as per Ex..4 and forwarded the FIR to the court as per Ex.P.41. He had deputed C.W.26 to 29 to secure the accused and on 19.10.2018 C.W.26 produced accused No.1 to 3 before him. He has deposed about the voluntary statement given by accused No.1 to 3, spot mahazar as per Ex.P.6, seizure mahazar as per Ex.P.16 at the instance of accused on 20.08.2018. He has recovered the weapons M.O.7 the knife at the instance of accused No.1. Bottle pieces as per M.O.8 and concrete brick piece as per M.O.9 were seized from the scene of occurrence under Ex.P.6. Further he has seized M.O.13 beer bottle piece with neck produced by accused No.2

from near the compound of LCR school seized under Ex.P.16. He has also stated about the inquest mahazar, recording the statements of eye witnesses, relatives of deceased Jagadeep Singh, enquiry with the security manager of Conrad hotel where C.W.1 and deceased are working and C.W.2 and 3 were doing internship in hotel management. Further he has forwarded the blood stained cloths to FSL. He has requested the medical officer of M.S.Ramaiah hospital to collect the blood of P.W.4 for DNA test and same was forwarded to FSL. He has requested the Tahasildar P.W.19 to conduct the Test Identification Parade. As per the order of learned Magistrate and after concluding of the investigation he has submitted charge sheet except for receipt of the FSL report.

43. The cross examination of P.W.18 is that when he went to the hospital he was informed that Jagadeep Singh is in ICU and is under treatment. Jagadeep Singh was brought to the hospital in auto rickshaw by Suhas P.W.4 and both got admitted to the hospital. In Ex.P.39 and 40 the memo issued by the medical officer there is no mention as to who got admitted Suhas and Jagadeep Singh in the hospital. According to P.W.18, P.W.11 PSI Prashanth Patil had information regarding the incident within 2 hours from occurrence and it is P.W.11 who has informed about the incident. He does not state as to how P.W.11 received information and from whom P.W.11 had received information regarding the incident and injuries sustained by Jagadeep Singh and Suhas. Even P.W.11 does not state about the information received by him regarding the incident. This aspect of receiving information by the police are not elicited in the evidence of P.W.11 and 18 the investigating officer. According to P.W.4 to 6 the injured and eye witnesses, after Jagadeep Singh and P.W.4 sustained injuries due to assault of accused they came near main road to take an auto rickshaw, by then police came and helped them to take an auto rickshaw and thereafter P.W.4 and Jagadeep Singh have gone to the hospital in the said auto rickshaw. Whereas P.W.11 and 18 do not state about the assistance given by the police to sent the injured to the hospital.

44. P.W.18 further stated that his staff had informed about the place of incident during night itself. He does not remember the name of staff who informed him. The said staff is not cited as witness in the charge sheet. He has asked Hoysala police to guard the scene of occurrence as he has to collect the evidence at scene of occurrence. Since it was night he did not take the photograph of the scene of occurrence as he wanted the eye witnesses to identify the scene of occurrence.

45. P.W.18 further states that till P.W.11 the PSI produced the accused before him he was not aware as to who are the accused involved in the case. After producing the accused before him he has interrogated them and recorded their voluntary statement. As per the voluntary statement of accused No.1 to 3, they are friends for long time and they work at the same place. They used to meet once in a while after working hours and used to have alcohol. Further accused No.1 used to carry knife always with him and accused No.1 carried knife. They were under the influence of alcohol at the time of incident and they have attacked Jagadeep Singh when they were quarrelling with Jagadeep Singh and C.W.3. C.W.1 has tried to protect Jagadeep Singh from accused and during then accused No.1 has stabbed Jagadeep Singh with knife and accused No.2 and 3 have assaulted P.W.4 with bottle and concrete brick piece on his head causing injuries. Though the voluntary statement of accused cannot be considered as piece of evidence except for the recovery that has been made by the investigating officer as per the say of accused, the said statement corroborates with the evidence of P.W.4 to 6 who have stated that accused were fully drunk and they have picked up quarrel with

Jagadeep Singh and assaulted both Jagadeep Singh and Suhas. It is suggested to P.W.18 that by using 3rd degree method he has recorded the statement of accused and obtained their signature which has been denied by him.

46. Further he has not found any CCTV footage near the place of incident. CCTV is available in LCR school. But that will cover till school gate and not to the place of incident and hence he could not secure any CCTV footage regarding the occurrence or scene of occurrence. Further it is P.W.5 and 6 the girls who accompanied C.W.1 to meet Jagadeep Singh and who were present at the place has shown the scene of occurrence. The IO has found the blood stained bottle piece, mud and piece of concrete brick at the place of incident which has been seized by him. P.W.18 states that he contacted C.W.2 and 3 when he met them in the hospital on 19.10.2018 at 9.00 a.m. However after the incident C.W.2 and 3 had gone to their PG and they came to the hospital to meet Suhas and see the dead body of Jagadeep Singh. P.W.18 further states that there are houses near the place of incident and houses are at distance of 50 to 60 feet from the scene of occurrence. If one had shouted loudly the residents could have heard the screaming and could have come out, but C.W.2 and 3 though had cried and screamed it has not reached the residents and the time of occurrence will have to be seen as it has taken place at about 12 to 12.30 a.m in the mid night.

47. P.W.18 has recorded the voluntary statement and he has come to know that accused have committed the alleged assault under the influence of alcohol between 18.10.2018 and 19.10.2018 at about 12 o' clock in the mid night. Accused were produced before him on 19.10.2018 at 8.00 p.m. He has got medical check up done but he had not got the blood check up for grouping and detection of alcohol in the blood of accused No.1 to

3. However they were arrested after about 18 hours and therefore findings of alcohol contents in the blood ought not have been detected and the IO has not taken any initiative to take the blood test done for alcohol intake. Further P.W.18 has collected the blood stained weapon and cloths of the injured, deceased and the accused persons, but unfortunately he has not collected the blood sample of accused persons for DNA test to find out whether blood stains found on the cloths of accused No.1 to 3 pertains to deceased Jagadeep Singh and Suhas. Except for not drawing of blood of accused and sending it for DNA test to FSL, as regards the identity of accused persons there cannot be any dispute as P.W.4 to 6 have clearly stated about the identity of accused No.1 to 3.

48. It is suggested to P.W.18 that there was no impediment to him to conduct the inquest prior to the visit of family members, immediately after the death of Jagadeep Singh and if there was any impediment to take the photograph of deceased soon after his death. There was no impediment, but he has not taken any photograph until inquest is done. Hence it was suggested that no injury was found on the body of the Jagadeep Singh on the neck and the said injury is inflicted after his death but the evidence of P.W.16, the professor of Department of Forensic Science M.S.Ramaiah Medical College hospital and the postmortem report goes to show the injury is antimortem in nature and not postmortem injury. Nothing is elicited in the cross examination of P.W.16 to show that the injury found on the neck of Jagadeep Singh is inflicted after his death. It is further suggested that he did not take any steps for seizure of the weapon immediately after the arrest of the accused. The accused were arrested at 8.00 p.m. Hence he has not taken any steps to seize the weapons immediately. He

had to interrogate the accused. It is on 20.10.2018 at about 10.00 a.m, he has taken accused No.1 to 3 to the place stated by them and accused No.1 has taken them to his house and has produced knife M.O.7 and his blood stained cloths. The FSL report and evidence of P.W.23 is that blood stains were detected on articles No.5 i.e. M.O.7 button knife which goes to establish that accused No.1 has used M.O.7 knife to stab Jagadeep Singh.

49. It is suggested to P.W.18 that after coming to know that accused No.1 has kept the knife at home, the IO himself along with police personnels went to the house of accused No.1 and kept the knife and cloths in his house and thereafter accused were taken to the house of accused No.1 and he seized M.O.7 and M.O.11 and 12 the shirt and pant of accused No.1. Similar suggestion has also been put by accused No.2 and 3 to P.W.18 that IO along with police personnels went to their house and kept the blood stained cloths in their house and thereafter they were taken to the house and seized the same. From where the IO could get the knife M.O.7 and blood stained cloth of accused No.1 to 3 as per M.Os.11, 12, 14, 15, 16 and 17 prior to the seizure is not stated by the defence and no such suggestion has been put to the IO. It is not the case of the accused that the cloths do not belong to them. Hence it is only a vague suggestion without any basis put by the defence counsel to P.W.18. Further he has not send the knife to the medical officer who conducted the postmortem examination of Jagadeep Singh seeking opinion as he had sealed the knife and sent it to FSL and it is only after the receipt of articles from FSL the present police Inspector P.W.22 has sent the knife for opinion from P.W.16. P.W.18 has also not sent the knife for finger print examination as it was not necessary. Only blood stains had to be detected on the knife and whether weapon was used for commission of offence. It is further suggested that M.O.7 knife did not contain any blood stains whereas FSL report makes it clear that bloods stains were detected on the knife. It is further suggested to P.W.18 by accused No.2 and 3 that their mother was called to the police station and thereafter accused No.2 and 3 were called to the police station and not they were arrested from Lottgollahalli Railway Station. Except this suggestion nothing inconsistent or contrary to evidence of victim and eye witnesses is elicited in the cross examination of IO to disbelieve his evidence.

50. It is the arguments of the learned counsel for accused No.1 that IO states that blood stains found at the scene of occurrence and he has not taken the photograph of the blood stains at the scene of occurrence. The IO has taken the photograph of the scene of occurrence at the place shown by P.W.5 and 6 as per Ex.P.7 and 8.

51. It is the further argument of the learned counsel for accused No.1 that the prosecution has not proved the motive or intention of accused to commit the offence or to cause injuries to Jagadeep Singh which resulted in his death. In view of the evidence of victim P.W.4 and ocular evidence of P.W.5 and 6 which is very strong and credit worthy and that defence counsel has not elicited anything from cross examination of P.W.4 to 6 to discard their evidence, the possession of knife M.O.7 with accused No.1 is to be taken into consideration and he has stabbed Jagadeep Singh on vital part causing grievous injuries which has resulted in his death. Therefore, the accused No.1 knew very well that causing injury with weapon like M.O.7 a sharp edged weapon would cause grievous injuries and the said injury likely to cause death of a person. Therefore, the intention and knowledge of accused No.1 is proved in the evidence of victim P.W.4, eye witnesses, evidence of medical officer who conducted postmortem examination of Jagadeep Singh, FSL report and the

evidence of IO. Therefore, the prosecution has proved that the death of Jagadeep Singh is culpable homicide amounting to murder.

52. It is the further arguments of the learned counsel for accused No.1 to 3 that the incident has not taken place at the place as stated by the witnesses near LCR school and P.W.4 to 6 do not state about the presence of any eye witnesses. Admittedly the incident has taken place in the mid night where all the residents would have been in deep sleep. Further, as noticed by the court from the evidence given by P.W.5 and 6 the eye witnesses they appear to be very soft natured and unless one is bold enough, they would not have shouted so loudly, so as to get the public to the place of incident or awake the residents, nor they thought of calling the police to the place of incident. Both are students and the manner in which the accused came and attacked P.W.4 and Jagadeep Singh has shocked them. It would not have come to their mind at that moment that they should call for police or they should shout so loud that public would arrive to the place. Nothing would flash in their mind especially being young girls, unless they have courage to face such situation.

53. The accused had no contacts with the victims prior to the incident. They are strangers to each other. What has provoked the accused to attack deceased Jagadeep Singh and P.W.4 Suhas appears to be the intoxication due to alcohol or in the spur of movement. But the intention of accused to attack deceased Jagadeep Singh and Suhas and assault with knife, beer bottle and concrete brick piece is evident from the evidence of P.Ws.4 to 6.

54. The further arguments of the learned counsel for accused is that the physical features of other accused persons at the time of Test Identification Parade along with accused No.1 to 3 is not stated by the Tahasildar P.W.19 which creates suspicion with regard to the Test Identification Parade conducted by P.W.19. His report as per Ex.P.50 to 58 would indicate as to how he has conducted Test Identification Parade in the central prison and how P.W.4 to 6 had identified each of the accused No.1 to 3. Hence there cannot be any dispute regarding identity of the accused No.1 to 3. It is further argued that the inquest mahazar and postmortem of deceased Jagadeep Singh is conducted after 3 days. The IO P.W.18 has given clarification to the fact that he wanted the relatives of deceased to identify the dead body, as many of the family members of deceased would object for conducting the postmortem prior to their arrival and therefore he has waited for the father and relatives of deceased Jagadeep Singh to arrive at the hospital. Hence there is a delay in conducting the inquest and postmortem which cannot be viewed seriously.

55. The learned counsel for accused has objected regarding the manner in which prosecution has conducted the evidence of certain witnesses and it is argued by the learned counsel for accused No.1 that inefficiency of the prosecution cannot be a reason to recall the witnesses. P.W.4 was recalled for further examination in chief by the learned Public Prosecutor as he had not identified the accused persons and he had not stated about blood sample collected by the medical officer for DNA test. It was seriously objected by the learned counsel. No doubt the prosecution ought to have come prepared to the court that all the material evidence to be elicited from the witnesses and the lapses on the part of prosecution or IO cannot be a ground to discard their evidence when the prosecution was able to place cogent and credit worthy evidence to prove the commission of offence by the accused persons.

56. If the evidence of witnesses as discussed above is scrutinized closely, what could be gathered from their evidence and the documents produced by the prosecution, clearly establishes that the death of Jagadeep Singh is homicide and it is accused No.1 who has caused the death of Jagadeep Singh.

57. It is further argument of the learned counsel for accused No.2 and 3 that Sec.302 and 307 of IPC is not applicable to the accused No.2 and 3. But accused No.2 and 3 has caused grievous injuries to P.W.4 with intend and knowing that such injury would result in death and therefore accused No.2 and 3 would be liable for attempt to murder and not murder.

58. Now the question is whether Sec.34 of IPC could be made applicable to accused No.2 and 3 in committing murder of Jagadeep Singh. As could be seen from the evidence on record there was no meeting of mind between the accused persons prior to the incident to attack Jagadeep Singh and Suhas and cause injury or death. Accused No.1 to 3 were under the influence of alcohol. The accused have picked up quarrel with Jagadeep Singh which is proved in evidence. When Suhas P.W.4 had come to the rescue of Jagadeep Singh and tried to separate Jagadeep Singh from accused, accused No.1 has stabbed Jagadeep Singh with knife and accused No.2 and 3 has assaulted P.W.4 Suhas.

59. Accused No.1 was carrying knife and in the fight he has used the knife and with intention to kill Jagadeep Singh inflicted injury to vital part i.e. the neck of Jagadeep Singh causing grievous injuries and he knew very well that such injury to the neck by slitting with knife would cause death. Accused No.1 has not explained the reason for carrying a knife with him always. Hence an inference could be drawn that accused No.1 had the intention of causing injury which could result in death. Whereas, accused No.2 and 3 have not assaulted Jagadeep Singh. On the other hand they have assaulted Suhas on vital part i.e. head with bottle and concrete brick piece and they knew that causing injuries to the head may amount to death, but death is not caused and therefore they are liable for attempt to murder and not murder of Jagadeep Singh and Section 34 of IPC cannot be made applicable to accused No.2 and 3 for the offence under Section 302 of IPC.

60. As defined in Section 300(3) of IPC (Thirdly) --If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, amounts to murder.

61. Under Sec.300(3) of IPC, intention of causing bodily injury must be present, besides the person causing bodily injury should also intend to inflict a particular injury. The word injury and intention make it very clear that it should be within the knowledge of the offender that he should inflict that particular type of injury which is sufficient in the ordinary course of nature to cause death. The evidence on record would establish that it was within the knowledge of accused No.1 when he inflicted injury to the neck with sharp edged knife that the said injury is sufficient in the ordinary course of nature to cause death. From the facts and circumstances of the case and evidence on record it could be clearly gathered that accused No.1 had the intention and knowledge to cause injury to the neck of deceased Jagadeep Singh with knife which would result in death and has resulted in death.

62. In view of the discussion above viewing from any angle the court is of the view that accused No.1 is guilty of the offence punishable under Sec.302 of IPC by committing murder of Jagadeep Singh. Further accused No.2 and 3 are guilty of attempt to murder of P.W.4 Suhas amounting to the offence punishable under Sec.307 R/w 34 of IPC. Accordingly point No.1 is answered in the Affirmative, Point No.2 is answered holding that accused No.1 caused the death of Jagadeep Singh, Point No.3 is answered holding that culpable homicide amounting to murder and Point No.4 is answered holding that accused No.2 and 3 attempted to commit murder of P.W.4.

63. Point No.5:□In view of my findings on points No.1 to 4 accused No.1 will have to be convicted for the offence punishable under Sec.302 of IPC. Accused No.2 and 3 will have to be convicted for the offence punishable under Sec. 307 R/w Sec.34 of IPC. Accordingly I proceed to pass the following:□ORDER Accused No.1 is found guilty of the offence punishable under Sec.302 of Indian Penal Code.

Accused No.2 and 3 are found guilty of the offence punishable under Sec.307 R/w Sec.34 of IPC.

Bail bond and surety bond of accused No.2 and 3 stands cancelled.

Sentence will be passed after hearing the accused.

(K.G.Chintha) LVI Addl.City Civil & Sessions Judge, Bengaluru.

ORDERS ON SENTENCE Heard accused No.1 to 3 on the question of sentence.

Accused No.1 to 3 submit that they are innocent of the alleged offences and prays for their release. Accused No.3 further submits that his father is no more and he has to maintain the family. Accused No.1 to 3 were working in a private factory and earning less than Rs.10,000/□p.m. prior to the incident.

The accused No.1 with intention and knowledge has committed the murder of Jagadeep Singh. The offence under Sec.302 of Indian Penal Code is punishable with death or imprisonment for life and shall also be liable to fine. Hence considering the financial background of accused No.1 imposing sentence of imprisonment for life and fine of Rs.30,000/□would be just and proper.

Accused No.2 and 3 has attempted to murder P.W.4 Suhas causing grievous injuries. Considering the financial background of accused No.2 and 3, in the facts and circumstances of the case imposing sentence of imprisonment for a period of 10 years and fine of Rs.15,000/□each would meet the ends of justice. In default accused No.2 and 3 shall undergo rigorous imprisonment for a period of 1 year. If the accused No.2 and 3 undergoes default sentence fine cannot be recovered. Since compensation will have to be paid to the victim fine could be recovered as provided under sub Section (1) of Sec.421 of Cr.P.C.

Further out of the fine amount imposed on accused No.1, Rs.25,000/□shall be paid to the father of deceased Jagadeep Singh C.W.8 Ranjith Singh Kunvar.

Out of the total fine amount of Rs.30,000/- imposed on accused No.2 and 3, Rs.25,000/- shall be paid to C.W.1/P.W.4 M.S.Suhas as compensation under Sec.357(1) Cr.P.C.

In view of all these I proceed to pass the following: ☐ORDER The accused No.1 is convicted for the offence punishable under Sec.302 of Indian Penal Code.

Accused No.1 is sentenced to undergo imprisonment for life and to pay fine of Rs.30,000/-

Out of the fine amount of Rs.30,000/- a sum of Rs.25,000/- shall be paid to C.W.8 Ranjith Singh Kunvar father of deceased Jagadeep Singh as compensation under Sec.357(1) Cr.P.C.

The accused No.2 and 3 are convicted for the offence punishable under Sec.307 R/w Sec.34 of Indian Penal Code. Accused No.2 and 3 are sentenced to undergo rigorous imprisonment for a period of 10 years and shall pay fine of Rs.15,000/- each. In default of shall undergo rigorous imprisonment for 1 year.

Out of the total fine amount of Rs.30,000/- a sum of Rs.25,000/- shall be paid to C.W.1/P.W.4 M.S.Suhas as compensation under Sec.357(1) Cr.P.C.

It is made clear that having regard to the proviso to sub sec.(1) of Sec.421 Cr.P.C even if the accused No.2 and 3 undergo the default sentence they are not absolved of their liability to pay the fine amount.

The period of detention undergone by accused No.2 and 3 during trial is given set off under Sec.428 of Cr.P.C.

M.Os. 1 to 23 being worthless
shall be destroyed after appeal
period.

Supply free copy of the judgment
to accused No.1 to 3.

(Dictated to the Stenographer, transcribed by her, corrected, and then pronounced by me in the Open Court on this the 13th Day of December, 2021) (K.G.Chintha,) LVI Addl.City Civil & Sessions Judge, Bengaluru.

: ANNEXURE :

1. List of witnesses examined by prosecution.

P.W.1

C.W.1

Abhishekh Shettigar

P.W.2

C.W.6

Bhajan Singh

P.W.3	C.W.19	G.Srinivas
P.W.4	C.W.1	Suhas M.S.
P.W.5	C.W.2	Nidhi
P.W.6	C.W.3	Nisha
P.W.7	C.W.7	Chandacharan Choudary
P.W.8	C.W.12	Mohammed Imran
P.W.9	C.W.17	Shankar B.M.
P.W.10	C.W.18	Anil
P.W.11	C.W.26	Prasanh K.Patil
P.W.12	C.W.30	Yellalinga
P.W.13	C.W.16	Aakash Shettigar

P.W.14	C.W.23	Nagaraj
P.W.15	C.W.20	Dr.Sudhakar
P.W.16	C.W.21	Dr.S.Praveen
P.W.17	C.W.10	Jai Singh
P.W.18	C.W.32	Y.Muddaraj
P.W.19	C.W.24	N.Tejas Kumar
P.W.20	C.W.27	N.K.Mahalingaswamy
P.W.21	C.W.34	Gangarangaiah
P.W.22	C.W.35	K.Suresh
P.W.23	C.W.33	Purushotham L.

2. List of witnesses examined by defence.

☐Nil☐

3. List of documents marked by prosecution.

Ex.P.1	Rental Agreement
Ex.P.2	Photo of deceased
Ex.P.3	Photo of deceased
Ex.P.4	Complaint
Ex.P.4(a)	Signature of P.W.4
Ex.P.5	Photo of deceased
Ex.P.6	Spot Mahazar
Ex.P.7 & 8	Photo of spot mahazar
Ex.P.9 to 12	Photo of deceased
Ex.P.13	Inquest mahazar
Ex.P.14	Notice to pancha
Ex.P.14(a)	Signature of P.W.8
Ex.P.15	Notice to pancha
Ex.P.16	Panchanama

Ex.P.17 to 23 Photos taken during mahazar Ex.P.24 Notice to pancha Ex.P.24(a) Signature of P.W.10 Ex.P.25 Memo issued to P.W.11 Ex.P.25(a) Signature of P.W.11 Ex.P.26 Report of P.W.11 Ex.P.27 Requisition report Ex.P.28 Report of P.W.12 Ex.P.29 Report of P.W.12 Ex.P.30 Acknowledgment of FSL Ex.P.31 Passport issued to P.W.12 Ex.P.32 Requisition by IO to PWD to prepare spot sketch Ex.P.33 Sketch prepared by P.W.14 Ex.P.33(a) Signature of P.W.14 Ex.P.33(A) Letter by AEE Addressed to P.I. with sketch Ex.P.34 Wound certificate of Suhas M.S. Ex.P.35 Postmortem report of Jagadeep Singh Ex.P.35(a) Signature of P.W.16 Ex.P.36 Opinion of P.W.16 on weapon Ex.P.36(a) Signature of P.W.16 Ex.P.37 Sample seal Ex.P.37(a) Signature of P.W.16 Ex.P.38 Identification form of Suhas Ex.P.38(D) Report of P.W.20 Ex.P.39 Death memo of Jagadeep Singh Ex.P.39(a) Signature of P.W.18 Ex.P.40 Assault memo of injured Suhas issued by M.S.Ramaiah hospital Ex.P.40(a) Signature of P.W.18 Ex.P.41 FIR Ex.P.41(a) Signature of P.W.18 Ex.P.42 Relevant portion in voluntary statement of A1 Ex.P.43 Relevant portion in voluntary statement of A2 Ex.P.44 Relevant portion in voluntary statement of A3 Ex.P.45 Receipt for having received the body Ex.P.46 Requisition for T.I.P Ex.P.47 Requisition for collection of blood sample for DNA Ex.P.48 Details of trainees in Conrad Hotel Ex.P.49 Memo sent by P.W.19 to P.W.18 Ex.P.49(a) Signature of P.W.19 Ex.P.50 to 52 Memorandum of T.I.P. of accused No.1 Ex.P.50(a) to Signature of P.W.19 52(a) Ex.P.53 to 55 Memorandum of T.I.P. of accused No.3 Ex.P.53(a) to Signature of P.W.19 55(a) Ex.P.56 to 58 Memorandum of T.I.P. of accused No.2 Ex.P.56(a) to Signature of P.W.19 58(a) Ex.p.59 Covering letter to 24th ACMM Ex.P.59(a) Signature of P.W.19 Ex.P.60 Cover in which the report is sent.

Ex.P.61	FSL report
Ex.P.62	Annexure in DNA 530/2018
Ex.P.63	Annexure in DNA 530/2018
Ex.P.64	Forwarding note from DNA section
Ex.P.65	Sample seal of FSL in DNA 530/2018

4. List of documents by defence.

Nil

5. List of material objects marked by prosecution.

M.O.1	Black colour Jerkin
M.O.2	Sky blue colour jeans pant
M.O.3	Black colour belt
M.O.4	White colour sleeveless blood stained banian
M.O.5	Dark blue colour underwear
M.O.6	Pair of Puma shoes, black, red, white in

M.0.7	Button knife
M.0.7(a)	Signature of P.W.16
M.0.8	Pieces of beer bottle
M.0.9	Two pieces of cement concrete boulders
M.0.10	Plastic box containing sample cement soil
M.0.11	One white, red, black mixed shirt
M.0.12	Blood stained black pant
M.0.13	Pieces of beer bottle with neck
M0.14	One Grey colour T-shirt
M.0.15	One blue colour jeans pant
M.0.16	One shirt with black and white colour design
M.0.17	One blue colour jeans pant
M.0.18	One black colour sweat shirt
M.0.19	One black colour track pant
M.0.20	One black colour half sleeves T-shirt with multi design
M.0.21	One dark blue colour underwear
M.0.22	One paid grey and black colour slippers
M.0.23	Blood stained mud

LVI Addl.City Civil & Sessions
Judge, Bengaluru.

13.12.2021
St- PP
A1 - S.S.
A2 and 3- S.K.

Order on sentence pronounced in
open Court. (Vide separate order)

ORDER

The accused No.1 is
convicted for the offence
punishable under Sec.302 of
Indian Penal Code. Accused No.1
is sentenced to undergo
imprisonment for life and to pay
fine of Rs.30,000/-.

Out of the fine amount of
Rs.30,000/- a sum of
Rs.25,000/-shall be paid to
C.W.8 Ranjith Singh Kunvar

father of deceased Jagadeep
Singh as compensation under
Sec.351(1) Cr.P.C.

The accused No.2 and 3 are
convicted for the offence
punishable under Sec.307 R/w
Sec.34 of Indian Penal Code.
Accused No.2 and 3 are
sentenced to undergo rigorous
imprisonment for a period of 10
years and shall pay fine of
Rs.15,000/- each. In default of
payment of fine accused No.2 and
3 shall undergo rigorous
imprisonment for 1 year.

Out of the total fine amount
of Rs.30,000/- a sum of
Rs.25,000/- shall be paid to
C.W.1/P.W.4 M.S.Suhas as
compensation under Sec.357(1)
Cr.P.C.

It is made clear that having
regard to the proviso to sub sec.
(1) of Sec.421 Cr.P.C even if the
accused No.2 and 3 undergo the
default sentence they are not
absolved of their liability to pay
the fine amount.

The period of detention under

during trial is given set off under
Sec.428 of Cr.P.C.
M.Os. 1 to 23 being
worthless shall be destroyed after
appeal period.

Supply free copy of the
judgment to accused No.1 to 3.
Issue conviction warrant

accordingly.

LVI Addl.City Civil & Sessions
Judge, Bengaluru.