

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 02ND DAY OF APRIL 2013

:PRESENT:

THE HON'BLE MR.JUSTICE B.V.PINTO

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRIMINAL APPEAL NO.2841/2011

BETWEEN:

K.DODDAPPA,
S/O. CHANNAPPA,
AGED ABOUT 55 YEARS,
R/O. HOSAHALLI,
TQ. KUDLIGI, DIST. BELLARY. ... APPELLANT

(BY SRI.S.S.YADPAMI, ADVOCATE)

AND:

1. MAHALINGAPPA,
S/O. MARIYAPPA,
AGED ABOUT 35 YEARS.
OCC: AGRICULTURE.
2. SIVALINGAPPA,
S/O. MARIYAPPA,
AGED ABOUT 22 YEARS.
OCC: AGRICULTURE.
3. DASAVAHALLI PRAKASH,
S/O.MARIYAPPA,

AGED ABOUT 23 YEARS.
OCC: AGRICULTURE.

4. PARASURAMA,
S/O. THIPPESWAMY,
AGED ABOUT 24 YEARS.
OCC: AGRICULTURE.
5. PARASAPPA,
S/O. NAGAPPA,
AGED ABOUT 30 YEARS.
OCC: AGRICULTURE.
6. MANJUNATH,
S/O. NAGAPPA,
AGED ABOUT 28 YEARS.
OCC: AGRICULTURE.
7. GIDDA PARASAPPA KARIAPPA,
S/O. SIDDAPPA,
AGED ABOUT 25 YEARS.
OCC: AGRICULTURE.

R1 TO 7 ARE RESIDING AT:
HOSAHALLI VILLAGE,
KUDALIGI TALUK,
BELLARY DISTRICT.

8. THE STATE OF KARNATAKA,
HOSAHALLI POLICE STATION,
DIST: BELLARY.
REPRESENTED BY SPP
DHARWAD
CIRCUIT BENCH.

...RESPONDENTS

(BY SRI.GANGADHAR.J.M. ADV. FOR R1-R7)

(BY SRI.RAVIRAJ, AGA FOR R8)

VIDE ORDER DATED 12.10.2011, THE ABOVE CRL.RP. IS CONVERTED INTO CRL.A. & THE SAME IS NUMBERED AS CRL.A.2841.2011.

THIS CRIMINAL APPEAL IS FILED U/S 372 OF CR.P.C. SEEKING TO SET ASIDE THE IMPUGNED JUDGEMENT AND ORDER OF ACQUITTAL PASSED BY THE SESSIONS JUDGE, FAST TRACK COURT-III, HOSPET, IN S.C.NO.36/2009 DATED 11.02.2011 BE CONVICT THE RESPONDENTS/ACCUSED NOS. 1 TO 7 FOR THE ALLEGED OFFENCES P/U/S 120 B, 143, 147, 148, 302 OF IPC R/W SEC. 34 OF IPC.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, **B.V.PINTO J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the original complainant challenging the Judgment dated 11.02.2011 passed by the Fast Track Court-III at Hospet in SC No.36/2009 acquitting the respondents/accused of all offences under Section 120-B, 143, 147, 148, 302 r/w Sec 149 of IPC.

2. It is the case of the prosecution that, the complainant is having six brothers and three sisters and all his brothers are residing separately. The complainant is the eldest brother and the deceased Kuberappa is the ninth brother of the complainant. The said Kuberappa had married daughter of his sister by name Vanajakshamma and he was having two sons and a daughter. The deceased was living along with his wife and children in the house by the side of NH-13 at Hosahalli within the jurisdiction of Hosahalli police Station, Bellary District.

3. It is the case of the prosecution that, on 13.11.2008 at about 9.30 p.m., the deceased Kuberappa after having dinner left his house along with his friend Lambani Srinivas-PW.5. But, he did not return till next day morning. The younger brother of the complainant tried to

contact the deceased Kuberappa through mobile. But, the same was switched off. At about 5.00 p.m., on 14.11.2008, one Revanna informed that the dead body of the deceased Kuberappa is lying near the water tank behind Sophia Convent School, Hosahalli, which fact he came to know through Suresh-water man who saw the dead body at the first instance on that day at about 4.00 p.m. The complainant along with the family members rushed to the spot and saw the dead body under the water tank and also noticed that the head of the deceased was crushed and he was bleeding. There was also bleeding from the private part of the deceased. It is stated that, there was dispute regarding cart road between one Mahalingappa S/o. Mari Nagappa-accused No.1 and others. There were also assault cases registered against both the parties and due to the said enmity, the said Mahalingappa and his

men were looking for an opportunity to assault them. Hence, the complainant suspected that accused and some other persons had conspired to commit the murder of the deceased and have assaulted him either by means of some weapon or stone and crushed his head. The complainant lodged the complaint before Sub-Inspector of Police, Hosahalli police Station on 14.11.2008.

4. PW.14-M.B.Golasangi who was Police Sub-Inspector at the relevant point of time at Hosahalli police station received the said complaint and registered the same in Crime No.186/2008 for the offences under Section 143, 147, 148, 302 r/w Sec 149 of IPC at about 9.30 p.m on 14.11.2008 and commenced the investigation.

5. PW.18-M.S.Patil, Inspector of Police took up investigation from PSI-Golasangi. He

deputed his staff to the scene of occurrence for watching the dead body. He secured the dog squad and finger print expert. On 15.11.2008 at about 6.30 a.m., PW.18 visited the spot and secured the panchas. The dog squad was made to smell the scene of occurrence and the weapon namely an excel blade lying at the spot. The said dog after smelling the weapon straightaway went to the house of Manjunatha S/o. Nagappa, accused No.6 and started barking in front of his house. Thereafter, the dog went to the house of Mahalingappa-accused No.1 and started barking in front of the said house also. But Mahalingappa-accused No.1 was not found in the house. Thereafter, the dog did not continue to trace the smell. PW.18 also conducted the inquest mahazar on the dead body of the deceased and secured the photographer and obtained photographs of the scene of occurrence

and conducted the spot mahazar and seized the blood stained mud, unstained mud, one beedi pack, one match box, one gel pen, one Excel blade about 1 foot in length, blood stained cash consisting of four notes of Rs.100/- denominations and one note of Rs.50/- denomination, one small note book, one small phone diary, five burnt match sticks, three burnt beedis, one blood stained stone and a pair of nine number chappel under the mahazar-as per Ex.P.5 in the presence of the witnesses. The clothes of the deceased were brought after postmortem examination of the dead body and the same was seized by PW.18 under the mahazar. PW.18 also recorded the statement of certain witnesses namely CWs.14, 15, 18, 25, 26 and 33.

6. On 16.12.2008, at about 8.00 a.m, accused Nos.1 to 3 were produced by the staff and PW.18 arrested them. Another ASI and his staff produced accused Nos.4 to 7 who were also arrested by PW.18. Accused Nos.1 and 6 were interrogated who gave their voluntary statements, in pursuance of which, PW.18 along with panchas went with accused Nos.1 and 6. Accused No.1 got down from the jeep and took the police party near his house and produced one polyester full shirt and one white cotton lungi, one excel blade about one feet in length kept in the cattle shed at the southern corner. PW.18 seized the said articles under mahazar in the presence of panch witnesses. In pursuance of the statement given by accused No.6-Manjunatha @ Hasimuragi Manjappa, latter took the police party to his house and from the heap of his groundnut fodder by the side of his house he

produced blood stained full shirt which was seized by PW.18. Thereafter, PW.18 took the panchas with the staff to the spot and conducted the spot mahazar in the presence of accused. PW.18 thereafter requested PWD engineer to prepare sketch of the spot and called for the property extract from the Secretary of the Grama Panchayath. On 19.11.2008, PW.18 received the postmortem report and sent 14 articles to the Regional Forensic Science Laboratory, Davanagere for analysis. He requested Tahalishar, Kudligi to furnish rough map of the spot and received the map from the Tahsildar who has stated that the scene of occurrence is situated in Survey No.1135 and 1157. PW.18 thereafter received sketch prepared by PWD Engineer and also the certified copy of the Judgment in OS No.16/2003 in the Kudligi Court between the accused and the complainant party

regarding the pathway lying towards survey No.1146 and 1147. After completion of investigation, the charge sheet came to be filed against the accused. On receipt of FSL report on 19.03.2009, the same was produced before the Court along with the opinion of the medical officer with regard to the sized stone and excel blade.

7. The learned JMFC, Kudligi took cognizance of the offences after charge sheet is filed and committed the matter to the Court of Sessions at Bellary for trial in accordance with law. Accused were heard regarding the charges to be framed against them and charges were framed for the offences under Section 120-B, 143, 147, 148, 302 r/w Sec 149 of IPC. All the accused have pleaded not guilty to the charges framed against them.

8. The prosecution in order to prove the charges leveled against accused persons examined in all 19 witnesses and got marked Exs.P1 to 28 and produced Mos.1 to 21. The defence of the accused was one of total denial and they have got marked Exs.D.1 to 14, during the course of cross-examination of the witnesses. The trial Court summoned doctor-Suresh as a Court witness and got marked Ex.C1, a certificate. The trial Court after hearing prosecution and defence held that the prosecution has not proved the case beyond all reasonable doubt against the accused persons and acquitted all the accused of the offences for which they stood charged.

9. The complainant has filed this appeal challenging the order of acquittal passed by the

learned Sessions Judge under Section 372 of Cr.P.C.

10. On the date of hearing, learned Additional Government Pleader, Sri.Raviraj, submits that, even to this date, the State has not preferred any appeal challenging the order of acquittal passed by the learned Sessions Judge, whereas the victim has filed this appeal.

11. Heard Sri.Yadrami, learned counsel appearing for the appellant, Sri.Neelendra, learned Counsel for Sri.Gangadhar appearing for the respondent Nos.1 to 7 and Sri.Raviraj, learned Additional Government Advocate for respondent No.8/State.

12. The learned Counsel for the appellant submits that, there is an overwhelming evidence tendered by the prosecution to show that, there

was criminal conspiracy entered into between the accused to commit the murder of the deceased Kubreappa. It is also his submission that, in the evidence tendered by the prosecution it clearly establishes that accused Nos.1 to 7 were in bitter enmity with the deceased in connection with cart track in respect of which there was civil disputes between the parties. It is also his submission that, it is alleged that the deceased was having illegal intimacy with the wife of accused No.1 and therefore, with these motives, all accused Nos.1 to 7 have conspired together to commit the murder of the deceased Kuberappa.

13. The learned Counsel for the appellant further submits that, the evidence of PW.1 and the evidence of the Investigating Officer-PW.18 coupled with other evidences on record clearly establishes that accused have committed the

offences against the deceased. At the outset, on the date of the incident itself, PW.18 had summoned dog squad and the dog had straight away gone to the house of accused No.6 Manjunatha and accused No.1-Mahalingappa respectively and stood there by barking on their door steps. This act of the police dog has been witnessed by many witnesses and the police officers. Therefore, prima-facie it is clear that accused Nos.1 and 6 are involved in the murder of the deceased. It is his further submission that, the evidence of other witnesses with regard to recovery of clothes worn by the deceased as well as the clothes of accused Nos.1 and 6 also clearly establishes that, the clothes worn by accused Nos.1 and 6 were stained with blood which belongs to the blood group of the deceased-Kuberappa. Hence, links in the case of the prosecution have been completely established

by the prosecution, which point out at the guilt of the accused in respect of the murder of the deceased. It is further submitted that, the recovery of an excel blade from the house of accused No.1-Mahalingappa further point out to the guilt of the accused and the FSL report in this connection with respect of the said excel blade, which is marked as item No.13 establishes that the said item No.13-excel blade was stained with "B" group blood, besides, item No.4, which is also another excel blade and the same was also stained with "B" group blood which belongs to the deceased. It is not the case of the accused that they were also injured or that the blood found in item No.13-excel blade belongs to some other person. Under the circumstances, he submits that, the appeal may be allowed and the order of acquittal be set aside and accused may

be convicted for the offences charged against them and may sentence them accordingly.

14. On the other hand, learned Counsel appearing for the respondent/accused submits that, the learned Sessions Judge has carefully scrutinized the evidence on record and has held that the prosecution has not been able to establish the link between the act of murder of the deceased to the accused and therefore, the learned Sessions Judge has rightly given benefit of doubt to the accused. It is his further submission that, the very prosecution story that the dead body of the deceased-Kuberappa was found at about 4.00 pm on 14.11.2008 itself is doubtful, having regard to the fact that the dead body of the deceased was lying in the open place under the water tank. The said place is not covered by any compound wall and that the place

is visible to the road users by the side of the said land. Therefore, it is submitted by him that, the very case of the prosecution that the dead body was found at about 4.00 p.m, on 14.11.2008, whereas the alleged incident has happened during the night of 13.11.2008 itself is doubtful.

15. It is his further submission that, according to PW.6- he saw accused Nos.1 and 6 coming by the side of the scene of occurrence at the night of the incident is a doubtful circumstance, since in the cross-examination, PW.6 has admitted that, the said person were wearing sweater, whereas the police have seized the shirts alleged to have been worn by accused Nos.1 and 6 respectively, when they were fighting at the scene of occurrence. Further, the say of PW.6 that, he saw accused Nos.1 and 6 in the light of the head light of his motor cycle is also

doubtful and the said circumstances cannot be held against accused. It is also submitted by him that, even if it is taken that the incident has happened in the night of 13.11.2008 there is a substantial delay in lodging the complaint before the Hosahalli police station. The complaint has been lodged at about 9.30 p.m., on 14.11.2008. Hence, he submits that in view of enmity between accused and complainant, after due deliberation, a false case has been registered against the accused. It is also his further submission that, the learned Sessions Judge having rightly acquitted the accused and further having regard to the fact that, the State has not preferred any appeal against the order of acquittal and this being an appeal against acquittal, the Appellate Court may be slow in reversing the order of acquittal and convert the same into one of conviction, unless the Judgment

of acquittal passed by trial Court is shown to be perverse or against the settled principles of law or is not based on the evidence on record and there being no such ground available in this case, he submits that, the order of acquittal passed by the learned Sessions Judge may not be disturbed and the appeal may be dismissed.

16. The prosecution in this case commenced with the filing of the complaint by K.Doddappa-PW.1 before the Hosahalli police Station on 14.11.2008 at about 21.30 hours. In the said complaint, it is stated that, he is residing in Hosahalli village and his parents have begotten three female and seven male children, in all 10 children. All the children are residing separately. He is the eldest son and Kuberappa is his ninth brother, who is aged about 37 years. Kuberappa has married Vanajakshamma, who is the

daughter of Jayamma, who is his own sister. Kuberappa has begotten four children and he was carrying on the profession of a driver and also residing by the side of NH-13 along with his family. All the houses of his brother are situated side by side. On the night of 13.11.2008, at about 9.30 p.m., deceased Kuberappa had gone along with his friend Lambani Srinivas after taking food in the house. But he did not return till the next day morning. His brother by name Manjappa called to the mobile of deceased Kuberappa for about 10-12 times. However, the said mobile was switched of. On 14.11.2008, at about 5.00 p.m., one Revanna S/o.Marappa of their village came to their house and informed him that his brother Kuberappa has fallen dead near the water tank behind Sophia Convent school in Hosahalli and that one Suresh-water man of Hosahalli has seen the dead body at

about 4.00 p.m. for the first time, hence, he came and informed the fact. Immediately, all the family members went to the scene of occurrence and observed that the deceased Kuberappa's dead body had fallen near the water tank and his head was crushed and blood had fallen on the ground. There was also profuse bleeding near his genital part and his nicker was blood stained. It is further stated that, since about four to five years, the complainant and one Mahalingappa-accused No.1 and his party were having misunderstanding in respect of cart track and in this connection, there was physical and verbal fight and also Court cases between them. Accused No.1 and others were pronouncing in the village that he would beat the complainant and others. The complainant has given names of all the seven accused persons in the complaint and has stated that all the seven persons have

joined together and they are suspected to have assaulted his brother either by a stone or by any other heavy weapon and have committed the murder of his brother. Hence, he requested to take action against the said persons. PSI-M.B.Golasangi-PW.14 received the aforesaid complaint at 9.30 p.m. on 14.11.2008 and registered the same in Crime No.186/2008 for the offences under Section 143, 147, 148, 302 r/w Sec 149 of IPC and commenced the investigation. PW.18-Police Inspector continued the investigation and filed the charge sheet, the particulars of which is mentioned in detail in the upper part of this Judgment.

17. PW.1 is the complainant. He has reiterated the version contained in the complaint. He has narrated the dispute between his family and family of accused No.1 with regard to cart

track situated in the property. He has also stated with regard to the fact that, the deceased came out of the house during night on 13.11.2008 and about the information he received at about 4.30 p.m., on the next day regarding finding of the dead body of the deceased Kuberappa near the water tank and also the fact of the injuries sustained by the deceased on his head and private part and the complaint given by him and his assistance to the investigation conducted by PW.18. In the cross-examination, it is suggested that, he is deposing falsely before the Court due to the enmity and that the averments made by PW.1 before the Court is far from truth. It is also suggested to PW.1 that, after taking considerable time and after due deliberation, complaint has been filed belatedly before the police and that he has deposed falsely in order to take vengeance against accused Nos.1 and 6, as a civil dispute

between them is pending in the Court. However, PW.1 has denied all the suggestions.

18. PW.2- Prakash is a witness to Ex.P.3, which is a spot mahazar.

19. PW.3- Mohammed is a pancha to the inquest proceeding-Ex.P.4 and also a witness to the panchanama-Ex.P5.

20. PW.4-Thippeswamy is a witness to the recovery panchanama-Ex.P6 under which accused No.1-Mahalingappa has led the police party to his house, whereafter, an excel blade, clothes worn by him was seized by police. He is also a witness to Ex.P7 under which accused No.6 led the police party for the seizure of clothes worn by him at the time of the incident. PW.4 has also identified the articles namely MO.1- Excel blade, MO-14-Clothes, MO.15-Lungi

worn by accused No.1, so also the clothes worn by accused No.6 and recovered at his instance.

21. PW.5-Srinivasa has deposed before the Court that, he is residing in Hosahalli Village and that at about 7.30 p.m., on the previous day, both the deceased Kuberappa and he had gone to the house of the deceased and thereafter himself and Kuberappa went to his garage. He has stated that the deceased Kuberappa was coming to his shop every day at night and even on that day, it was about 9.30 p.m., when he reached his shop. He has further stated that, accused No.6 had called Kuberappa on that day and came in front of his shop. Accused No.6 had informed that, some elders were calling Kuberappa and hence, deceased went along with the said accused No.6. On next day, he came to know that the deceased has been murdered and that his dead body is

found near the water tank. This PW.6 has been thoroughly cross-examined by the defence advocate with reference to the evidence which he has deposed before the Court that, he has seen accused No.6 taking the deceased in the night on 13.11.2008 on the pretext of some labourers calling the deceased-Kuberappa. It is elicited in the cross-examination that, even after his coming to know about the death of the deceased, PW.5 has not volunteered to go to the police station and inform the police about his seeing the deceased with accused No.6 on the previous night at about 10.00 p.m. However, he has stated before the Court that, at about 11.00 a.m, the next day morning on 14.11.2008, he had informed PW.1 about his seeing the deceased going along with accused No.6 on the previous night.

22. PW.6-Nagesh is also resident of Hosahalli village. He has stated that on the night of the incident, he had gone at about 11.00 p.m., in the night in his motor cycle, since he was in the village on the said night. Accused Nos.1 and 6 and others were going towards the village from the tank side and he can identify only accused Nos.1 and 6. At that time, they were in a hurry. Since, he was knowing accused No.6 from the beginning, he enquired accused No.6, as to why he is going in such a hurry, for which accused No.6 has stated that, he had gone to lunch to a dabha. On next day, he came from his farm and learnt that, some body's dead body had fallen near the tank. At about 4.30 p.m. when he went to see the dead body, the dead body was that of Kuberappa and the same had sustained injuries on his head and his private part was cut off. Police had come to the spot. It is elicited in the

cross-examination that, he does not know the name of the wife of PW.1 nor number of brothers and sisters of PW.1 and he is also not aware of the name of the father of the deceased. Since he was seeing Kuberappa in the village, he knew about his family. However, he does not know the name of the wife of the deceased-Kuberappa. It is suggested to him that, he is deposing falsely at the instance of PW.1. It is further elicited in the evidence of PW.6 that, on the night of the incident, both accused Nos.1 and 6 were wearing sweater and lungi. However, he does not know the colour of the sweater. It is also further suggested to him that, there was no impediment for him to disclose the fact of seeing accused Nos.1 and 6 and others in the night of the incident, even after police coming to the spot. It is suggested to him that, he is the brother-in-law of PW.1, being brother of Bangaramma-wife of

the PW.1. However, PW.6 has denied the said suggestion in the cross-examination.

23. PW.7 Suresh has stated that, he has observed the dead body on 14.11.2008 and has informed about the same to PW.1. He has also stated that, there were certain articles like telephone diary, pen, beedi, matchbox, excel blade at the scene of occurrence near the dead body.

24. PW.8-Mareppa is an Official of GESCOM and he has stated that, on the intervening night of 13th and 14th November, 2008, according to the Station Log Book, there was no stoppage of current in all, near the place of occurrence as per Ex.P9, a letter written by their Department to the police department.

25. PW.9-R.Basava Reddy, Junior Executive Engineer has prepared the sketch of the scene of occurrence on the request of police.

26. PW.10-Nagaraj is an Advocate by profession. It is stated that, he has drafted the complaint on the request of PW.1. He has identified the complaint as per Ex.P1.

27. PW.11- Dr.Kambali Math, Medical Officer, Primary Health Centre has conducted postmortem examination of the dead body of the deceased-Kuberappa, who has stated that the deceased had sustained the following injuries:

- i) *Lacerated wound over left Maxillary area, measuring 4 c.m x 1 cm x bony dept. Fracture of left maxillary bone noticed.*
- ii) *Lacerated wound left temporal area measuring 6 c.m x 2 cm x 3 cm depth*

- iii) *Laceration at left parital area measuring 7 c.m x 3 c.m x skull bone exposed, fracture of left parital bone noticed*
- iv) *Laceration over supra public area measuring 6 c.m x 2 c.m x muscle depth.*
- v) *Laceration at supra public area below wound No. x 2 cm x 1 cm x ½ cm*
- vi) *Laceration posterior aspect of shaft of pennis 4 c.m x 2 cm x skin depth*
- vii) *Laceration over scrotum (anterior aspect) 5 c.m x 3 cm x 1 cm. On opening of scrotum hematoma noticed.*
- viii) *Laceration right maxillary area 2 c.m x 1 c.m x ½ cm*
- xi) *ENT bleeding noticed*

2) *One opening cranium comminuted fracture noticed at both Fronto Parital areas. Membrane beneath fracture site*

lacerated perictal Hematoma noticed at frontal area.

3) Abdomen distended.

PW.11 has given his opinion regarding the cause of death after the investigation Officer produced an excel blade which was sent before him for his opinion. He has stated that, the injuries caused on the dead body of the deceased was possibly caused by the articles produced by the Investigating Officer before him. He has also stated that the injuries caused on the external genital areas of the deceased could have been caused by an excel blade produced by the Investigating Officer for his opinion.

28. PW.12-Manjunatha, photographer has taken photographs of the scene of occurrence which are marked as Exs.P2(1) to P2(9).

29. PW.13- Virupakshagowda is the Shirestedar of Kudalgi Taluk Office and he has produced Ex.P14 being a certified copy of the survey sketch of the land of the complainant-PW.1

30. PW.14-M.B.Golasangi is the Sub-Inspector of Police who has received the complaint from PW.1 and registered the case on 14.11.2008 at about 9.30 p.m., in Crime No.186/2008 and transmitted FIR to the Court. PW.14 has been cross-examined at length, so far as the delay in receiving the complaint. It is also suggested to PW.14 that in order to book a false case, delay is caused in registering the same by him.

31. PW.15-Siddappa has stated that, he has signed Ex.P17, which is a panchanama regarding the seizure of articles MOs.17 to 21 respectively

found on the dead body of the deceased Kuberappa.

32. PW. 16- Shashikumar, police constable of D.A.R, Bellary who was working in the dog squad. He has stated that, on 15.11.2008 at about 10.00 p.m., he received an information for arrival at the scene of occurrence and dogs trained by the police office were directed to follow the smell and trace the accused. Accordingly, dogs trained had smelled the weapon as well as the scene of occurrence and had gone straightaway to the house of accused Nos.6 first and then to the house of accused No.1 and started barking in front of their houses.

33. PW.17 -Devendrappa- Police constable had transmitted FIR to the Court. It is suggested to him that, he is deposing falsely in order to cover the delay caused in filing of the complaint.

34. PW.18-M.S.Patil is the Investigating Officer, whose evidence has been discussed above.

35. PW.19-Dr.Lingegowda is the Scientific Officer of Forensic Science Laboratory who has issued a report Ex.P26 regarding the articles MOs.1 to 26.

36. After closure of the evidence, the trial Court had summoned Dr.Suresh as a Court witness and Ex.C1 certificate of the blood has been marked through him. In the evidence of Dr.Suresh, it is stated that, he is working in the Government Hospital, Hosahalli and he has conducted the blood test of accused No.1-Mahalingappa for ascertaining the blood group as per the directions of the Court in the open court. He has stated that the blood group of accused

No.1 is "B" Rh Positive. Accordingly, he has given certificate as per Ex.C1.

37. After closure of the evidence of the prosecution, accused were questioned regarding their involvement in the case and all the accused have denied their complicity in the crime. Thereafter, accused have examined two witnesses namely DW.1- K.Pompapathi, who is ARTO, Hospet, who has stated that the vehicle bearing registration No.35-E-3047 is a scooter which belongs to one Koteswara of S.R.Nagar, Hospet. He has marked Ex.D3, a certificate regarding registration of the said vehicle.

38. Accused No.1-Mahalingappa has examined himself as DW.2. He has stated that his blood group is of "B" group.

39. It is from the above materials and from the records that the learned Sessions Judge has found that the prosecution is not been able to prove the offences against the accused beyond reasonable doubt. The learned Sessions Judge has held in para 66 of the Judgment that, on scrutinizing all the statements of the witnesses and the evidence tendered by the prosecution, the same is not only inconsistent with their statements recorded under Section 161 of Cr.P.C, but there are also material contradictions in the evidence of PWs.4, 5 and 14. He has further stated that, PW.18 has not conducted the investigation after looking into the matter properly and he has further found that, except accused Nos.1 and 6, other accused are not connected with the case nor any material is produced to connect these accused namely accused Nos.2 to 5 and 7 in the crime. Further

the evidence of all the witnesses are inconsistent and has therefore found that the accused are not guilty of the offences charged against them.

40. We have carefully gone through the evidence of the prosecution witnesses. At the outset, we are of the opinion that, there is inordinate delay in registering the complaint. While the deceased had gone from the house on the night of 13.11.2008 and had not returned till the next day morning on 14.11.2008, no efforts has been taken to register the complaint of missing person before the police station till 5.30 p.m., when PW.1 was informed about the finding of the dead body near the water tank, behind Sophia Convent School, Hosahalli. In view of the fact that, there was bitter enmity between accused Nos.1 and 6 on the one hand and the deceased and his family members on the other,

nothing prevented PW.1 or his other brothers in approaching the police for assistance till dead body was found near the water tank. This delay in our opinion has not been properly explained by the prosecution. So far as the scene of occurrence is concerned, it is observed that, it is an open place and the dead body was visible to the passers by. The incident was on a working day and the people would have frequented right from the morning on 14.11.2008 and there is some doubt regarding tracing of the dead body at about 4.00 p.m by some person and the information reaching PW.1 at about 5.30 p.m., Therefore, on this aspect also there is no proper explanation given either by PW.1 or by PW.18, as to how such long delay happened in a busy place like the one where the water tank is situated which is used for public benefit and also near

the school where number of children were present.

41. Under the circumstances, we are of the opinion that the circumstances regarding finding of the dead body is also not far from doubt. Further, the complaint/FIR has reached the police station on 14.11.2008 at about 9.00 p.m, whereas the distance between the scene of occurrence and the police station is only 2½ kms and even if PW.1 came to know about the incident at about 5.30 p.m. he could have filed the complaint at the earliest point of time. But, there is an inordinate delay in filing of the complaint. It is in the evidence of the prosecution that, the compliant is drafted through a lawyer-PW.10 who is practicing at Kudligi. His evidence discloses that, on 14.11.2008, at about 7.30 p.m. to 8.00 p.m.,

PW.1 approached to his office and that the complaint was prepared in his office. We are of the opinion that launching of the complaint before the police is belated and there is scope for doubt regarding deliberation and manipulation before the complaint is drafted.

42. As rightly pointed out by the learned Sessions Judge, there is absolutely no reason why accused Nos.2 to 5 and 7 have been included in the complaint and that there is absolutely no material to lug in them. It is also needless to say that the prosecution has failed to establish the conspiracy said to have been entered between the accused. Under the circumstances, this being an appeal against the order of acquittal, we are of the view that, the Appellate Court in the appeal against acquittal should be slow to reverse the order of acquittal

and no order of conviction can be passed unless the judgment is perverse or against the settled principles of law or against the evidence on record and there being no such ground available in this case and also since the State has not preferred any appeal against the order of acquittal, we are of the considered opinion that, there is no material to reverse the order of acquittal passed by the learned Sessions Judge and in that view of the matter, there is no merits in this appeal. Hence, the appeal is liable to be dismissed.

Accordingly, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**