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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2020

PRESENT

THE HON'BLE MR. JUSTICE S.N.SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE H.P. SANDESH

CRL.A.NO.470/2014(A)

BETWEEN

THE STATE OF KARNATAKA
BY DODABALLAPURA
TOWN P.S. -561 203

...APPELLANT

(BY SRI VINAYAKA.V.S, HCGP)

AND

1. MAHESH KUMAR
S/O VENKATESH
AGED ABOUT 27 YEARS
R/AT ROJIPURAPALAYA
DODDABALLAPUR TOWN-561 203
2. P R RAKSHITH
S/O P S RAGHAVENDRA
AGED ABOUT 23 YEARS
R/AT NO. 1220
KUCHAPPANAPET
DODDABALLAPUR TOWN-561 203
3. KIRAN
S/O RAVI KUMAR
AGED ABOUT 23 YEARS

R/AT SHANTHINAGAR
DODDABALLAPUR TOWN-561 203

4. SHIVANANDA
S/O SATHYANARAYANA
AGED ABOUT 24 YEARS
R/AT MALLATHALLI
KASABA HOBLI
DODDABALLAPUR
TALUK-561 203
- ...RESPONDENTS

(BY SRI HASHMATH PASHA, SENIOR COUNSEL FOR
SRI KALEEM SABIR, ADVOCATE FOR R1
SRI MADHUKAR DESHPANDE, ADVOCATE FOR R2 & R3
SRI M.R.C.MANO HAR, ADVOCATE FOR R4)

THIS CRL.A. IS FILED U/S.378(1) AND (3) OF CR.P.C
PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE
JUDGEMENT AND ORDER OF ACQUITTAL DATED
26.10.2013 PASSED BY THE IV ADDL.DIST. AND S.J.,
DODDABALLAPURA, BANGALORE RURAL DIST.,
BANGALORE IN S.C.NO.6/2011 -ACQUITTING THE
RESPONDENT/ ACCUSED FOR THE OFFENCE P/U/S 143,
147, 148, 302 AND 201 R/W 149 OF IPC. AND U/S 235(1)
OF CR.P.C.

THIS APPEAL COMING ON FOR FURTHER
ARGUMENTS THIS DAY, SATYANARAYANA J., DELIVERED
THE FOLLOWING:

JUDGMENT

This appeal is by the State represented by
Doddaballapur Town Police in challenge to the judgment
and order of acquittal dated 26.10.2013 passed in
SC.No.6/2011.

2. The aforesaid proceedings is initiated pursuant to the complaint filed in Crime No.98/2010 registered on 30.8.2010 as a missing complaint. Subsequently, on a further complaint given on the same day at about 2.10 pm., it is registered for the offences punishable under Sections 302 and 201 of IPC. In both the complaints accusation is against unknown persons but, after investigation, the police have filed charge sheet on 8.11.2010 for offences punishable under Sections 143, 147, 302, 201 r/w 149 of IPC against accused Nos.2 to 5 and other two persons (accused Nos.1 and 6).

3. Incidentally, accused Nos.1 and 6 were minors as on that day. Hence, they are considered as juvenile offenders and their case was separated and sent to Juvenile Court for consideration in accordance with law. So far as accused Nos.2 to 5 are concerned, charge sheet which was filed was committed to Sessions Court, where the same was registered in SC.No.6/2011. In the said proceedings, the accused persons who were already in custody were secured before the Court below,

subsequently charges were framed, for which they pleaded not guilty and prayed to be tried. Thereafter, the matter went into trial.

4. In the proceedings before the Sessions Court, the prosecution examined in all 30 witnesses as PWs.1 to 30, got marked as many as 36 documents at Exs.P1 to P36 and relied upon material objects marked at MOs.1 to 12. However, the defence did not choose to lead any evidence and did not mark any document in support of their case.

5. From the material available on record, it is seen that majority of the witnesses, except the family members and few others, turned hostile resulting in the judgment and order of acquittal being rendered on 26.10.2013, which is the subject matter of challenge before this Court in this appeal.

6. In this appeal, paper books are filed and thereafter, the matter is taken up for final hearing. After hearing the learned counsel for the parties and perusing the material available on record, to the shock and surprise

of this Court, it is seen that from the beginning of the alleged offence investigated by the Investigation Officer Sri.S.T.Siddalingappa – PW.28, is riddled with full of loopholes, the investigation is done totally in a listless direction inasmuch as the basic things which are required to be done by the Investigating Officer are not done by him. To list a few of them, they are as under:

In this case the victim – boy was missing at 8.30 pm., on 29.8.2010. Thereafter, missing complaint was lodged with the police on 30.8.2010 morning at about 9.30 a.m., vide Ex.P3. It discloses that in the course of the day, Doddaballapur Town Police with whom missing complaint was lodged received an information regarding body of a male person being found near Government Mortuary with 50% of body being eaten away by the dogs and other animals in exposing the skeleton upto torso or otherwise middle section of the body. It is based on the said information collected by police, the uncle of victim went along with the police to ascertain whether the body is that of his nephew. The complainant – father of the victim also followed them. When they all went and saw the

mutilated body, they could identify the said body as that of the victim. Immediately, they came back and lodge a complaint with the police for the offence of homicidal death under Sections 302 and 201 of IPC on the same day at about 2.20 pm. In fact, the complaint which was taken on the same day in the morning session for missing was converted into a complaint of murder and FIR was registered under same crime number.

7. With this, in all fairness the police should have commenced investigation without losing any time in trying to gather information from the place where the body of victim was found. However, in the instant case it is seen that the Investigating Officer has not taken any interest to identify the place where the crime has taken, how the body was moved to the place where it was found and what was the stage of body with reference to time of crime, which are all not properly recorded. It is also seen that the Investigating Officer has not pressed into service the dog squad to identify whether any evidence could be recovered with reference to the crime and the place of

offence/crime, which is not ascertained properly. Further, though the inquest was conducted between 2.45 p.m., and 5.45 p.m., spot mahazar is delayed upto 8 p.m., to 8.45 p.m., During which time, panchanama regarding seizure of material on body was also drawn. Thereafter, nothing is done until 10.9.2010.

8. It is on 10.9.2010 the Investigating Officer seized car bearing No.KA.17/M 303 by arresting accused No.2 and he also recovered a petrol can from him on that day. Thereafter, he has seized another vehicle belonging to accused No.3 on 11.9.2010 bearing No.KA.50/J.1326 through accused No.3. On the same day (11.9.2010) he has conducted another spot mahazar and drawn panchanama with the help of accused Nos.1 to 6, where he seized the knives used for commission of offence. Subsequently, another motor cycle bearing No.KA-6/Q.7093 is recovered on 11.9.2010 through another seizure mahazar. On that day itself, the mobile phone of accused No.3 is seized with its IMEI No.356380010004220 without *sim* being provided to that. Though the said

mobile phone is seized, there is nothing on record to show what information was collected by the Investigating Officer with reference to *sim* number, ownership of said instrument and statement of the owner. It is seen that no attempts were made to ascertain which *sim* number was provided to instrument bearing IMEI No.356380010004220 by taking necessary assistance from the concerned telephone authority.

9. Coming to seizure of knives, though the Investigating Officer has seized the same which was as alleged to be used to cause 28 injuries in commission of offence by the accused, he has not seized the remaining clothes which were on the body of the victim, he has not seized the clothes which the accused were wearing on the date of the incident when they were taken into custody. Though he had seized the clothes of deceased and knives used for commission of offence, the same was not sent to FSL for verification immediately and allowed that to be sent in a leisure manner, thereby valuable evidence which was available at the initial stage is missing.

10. It is seen that in the course of investigation, the Investigating Officer gathered information from PW.6 regarding accused No.3 – Rakshith requesting PW.6 to provide him a pant on the same night and receiving it from him. When such valuable information is received from PW.6 in his statement, the same is not pursued in seizing the pant which was worn by accused No.3 at the relevant time of incident as well as the pant which he has received from PW.6 and they are not produced before the Court.

11. Further, though the statements of the sisters, namely Smt.Madhu w/o Sudeep Jain and Smt.Rekha w/o Shainik Kumar Jain of deceased were recorded on 31.8.2018, where there is a clear accusation by them in indicating that accused No.3 along with his friends were demanding Rs.1,00,000/- from deceased which it appears the deceased had informed to his sisters and that the victim went out of the house only at the repeated telephone calls of accused No.3, the Investigating Officer has not bothered to investigate into the same until 11.9.2010. It is also seen from records that the further

statements of the mother of deceased as well as various other persons are recorded by him after 11.9.2010.

12. In fact, this Court is unable to understand, when the sisters of victim informed the police on 31st itself about the involvement of accused No.3 in the missing and murder of their brother, surprisingly, the Investigating Officer has not done anything for about 10 days thereafter. Incidentally, accused No.3 is none other than the immediate neighbour of the victim, residing in a house situated exactly opposite to the house of victim. It is also seen that accused No.3 was allowed to move around freely for 11 days without even conducting basic investigation regarding correctness or otherwise of the accusation made against him and his friends, who are accused Nos.1, 2 and 4 to 6 in the charge sheet which was filed by the police at a later stage.

13. Indeed, the investigation which is conducted by the Investigating Officer appears to be half hearted inasmuch as, when he collects the call records of the phone which was said to be belonging to the victim,

wherein though there is reference to several telephone calls being made from the phone of accused No.3 as identified by the sisters of the victim, he has not made any investigation and has not secured the call records of the telephone of accused No.3. Coming to call records which he has secured, produced and marked as Ex.P8, it is incomplete, and inasmuch as he has not secured information as to in whose name the said connection was registered with the service provider and produced before the Court. Thereby the entire set of documents with reference to the registered owner of the document at Ex.P8 and call records of the concerned accused is not at all traced and particulars are not secured. So also with regard to the instrument recovered from accused No.3 is found to be without *sim*, no efforts are made to know about the particulars thereof from the concerned accused and ascertain the number from him as well as the call records of the telephone which he was using at the relevant point of time.

14. All this clearly indicates that there is total lacuna in the investigation which is conducted. In fact, this Court would observe that in almost all the sessions cases barring one or two here and there, in majority of the cases the manner in which investigation is done, is of the same quality and nothing better is seen from this Court. Coming to instant case, when accused No.3 being an immediate neighbour of victim and his name being indicated by the family members on the next day, after the death of victim, the Investigating Officer has not at all made any attempt to either apprehend him or even to interrogate him with reference to the allegations and accusations made by the family members against said person and his friends. Ultimately, after commencing investigation with delay of 11 days, the police would come to a conclusion that it is accused No.3 and his friends, who are accused Nos.1, 2 and 4 to 6, are the persons who have committed the homicidal death of victim – Mahaveer Jain. If only the Investigating Officer had commenced the investigation with right earnestness, at the earliest point of time, the result would have been different. It is because

of the lethargic attitude of the Investigating Officer – PW.28, the Sessions Court left with no other option had to give the verdict of acquittal in the instant case.

15. To add to the deliberate lapses on the part of the Investigating Officer, though he has seized two scooters and also a car, he has not secured documents pertaining to said vehicles as to in whose name they are standing, how they were in the custody of accused persons and what was the role of said vehicles in the murder of victim, are also not properly brought out on record.

16. In effect, the entire investigation appears to be more accused friendly than in securing relevant records to bring guilty to the book. After noticing all this, this Court secured presence of the Investigating Officer – PW.28, who is presently working in the State Intelligence Investigation Wing, Karnataka Police, having its office at Nurpathunga Road, ADGP's office. When his presence was secured before the Court, he was asked to look into the record and explain as to why investigation was not done by him properly and why there are several lacunas as seen by this

Court, referred to supra, as well as by the learned HCGP who is representing the State. For that, the said officer had no answer. He would only submit that there is mistake on his part and he seeks apology of the Court for his mistake. However, this Court is not inclined to accept the same and allow the order of acquittal to be affirmed in a mechanical manner.

17. In the meanwhile, it is seen that the Sessions Court also has equal apathy in conducting the case, i.e., it has given finding on the aspects which are not borne out from the record and it refers to non existing knives, it refers to several accusations which are not attributable to anybody and in the result would benevolently try to give verdict of not guilty to accused Nos.2 to 5 before the Sessions Court. When all these things are looked into, this Court felt that this kind of callous attitude on the part of the Investigating Officer and also Sessions Court should not be tolerated and there should be an end to that.

18. It is in this background, this Court felt that the matter requires reconsideration either in the form of re-

investigation, further investigation or *de novo* investigation. Hence, this Court called upon the learned Senior Counsel Sri.Hashmath Pasha, who is appearing on behalf of the counsel appearing for accused No.2 to assist this Court in that behalf. True to the spirit of his status as Senior Counsel and Counsel of the Court, he assisted this Court by bringing to its notice the inherent power this Court enjoys under Section 482 of the Code of Civil Procedure which is akin to Article 226 of the Constitution of India and the circumstances under which this Court can exercise power to order for further investigation, fresh investigation or re-investigation/*de novo* investigation by producing several judgments in support of the same.

19. Before exercising the powers for further investigation, fresh investigation or re-investigation/*de novo* investigation or for any other appropriate orders, we feel that it is necessary to have a look on the principles laid down in the judgments of the Apex Court.

20. Sri Hashmath Pasha, learned Senior Counsel appearing for respondent No.1 while assisting this Court, referred to the following Judgments:

- (i) In the matter of ***Mithabhai Pashabhai Patel and others v. State of Gujarat***, reported in ***(2009) 6 Supreme Court Cases 332***, learned Senior counsel brought to our notice paragraphs No.12, 13 and 15 of the Judgment, which read as follows:

“12. This Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India did not direct reinvestigation. This Court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.

13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency.

Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* [(2008) 5 SCC 413 : (2008) 2 SCC (Cri) 631] opined as under: (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation.

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

- (ii) In the matter of ***Babubhai v. State of Gujarat and others***, reported in **(2010) 12 Supreme Court Cases 254** the learned Senior counsel would bring

to our notice paragraphs No.37, 38 and 41 and 42 of the Judgment, which read as follows:

"37. This Court in *K.Chandrasekhar v. State of Kerala* (1998) 5 SCC 223; *Ramachandran v. R.Udhayakumar* (2008) 5 SCC 413; and *Nirmal Singh Kahlon v. State of Punjab* (2009) 1 SCC 441; *Mithabhai Pashabhai Patel v. State of Gujarat* (2009) 6 SCC 332; and *Kishan Lal v. Dharmendra Bafna* (2009) 7 SCC 685 has emphasised that where the court comes to the conclusion that there was a serious irregularity in the investigation that had taken place, the court may direct a further investigation under Section 173(8) Cr.P.C., even transferring the investigation to an independent agency, rather than directing a re-investigation. "Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction." (*Mithabhai Pashabhai Patel case, SCC p. 337, para 13*)

38. Unless an extra ordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. Thus, in case of a mala fide exercise of power by a police officer the court may interfere. (vide: *S.N.Sharma v. Bipen Kumar Tiwari*, AIR 1970 SC 786).

41. The expression "ordinarily" means normally and it is used where there can be an exception. It means in the large majority of cases

but not invariably. "Ordinarily" excludes "extraordinary" or "special circumstances". (vide: *Kailash Chandra v. Union of India*, AIR 1961 SC 1346, *Eicher Tractors Ltd., Haryana v. Commissioner of Customs*, AIR 2001 SC 196; and *State of A.P. v. Sarma Rao*, (2007) 2 SCC 159).

42. Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances."

- (iii) In the matter of ***Vinay Tyagi v. Irshad Ali alias Deepak and others***, reported in **(2013) 5 Supreme Court Cases 762**, paragraph No.43 of the Judgment is brought to our notice, which reads as follows:

"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with

the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

- (iv) In the matter of ***Chandra Babu alias Moses v. State through Inspector of Police and others***, reported in ***(2015) 8 Supreme Court Cases 774***, it is brought to our notice that, in this Judgment, the Apex Court held that, fresh/de novo investigaton/reinvestigation or investigation by a different agency reiterated that it can be directed only by superior Courts and not by Magistrate. Magistrate can only direct 'further investigation' and that too by same agency. The superior Courts alone have the jurisdiction under Section 482 of Cr.P.C, or under Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation".

21. Apart from the citations given by the learned senior counsel, we would also like to rely upon certain

judgments, *suo motu*, which were warranted in the case on hand having considered the factual aspects of the case, are as follows:

- (i) In the matter of ***Himanshu Singh Sabharwal v. State of M.P. and Ors.*** reported in ***AIR 2008 Supreme Court 1943***, the relevant paragraphs No.8, 12, 13 and 16 read as under:

"8. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the

future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

12. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial.

13. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition

and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

16. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness." (emphasis supplied)

- (ii) In the matter of ***Gajoo v. State of Uttarakhand***, reported in ***(2012) 9 Supreme Court Cases 532***, the Apex Court noticing the defects in the investigation directed the Director General of Police, Uttarakhand, to take disciplinary action against the Investigating Officer is concerned, the relevant paragraph No.22 reads as follows:-

"**22.** For the reasons aforerecorded, we dismiss this appeal being without any merit. However, we direct the Director General of Police, Uttarakhand, to take disciplinary action against Sub-Inspector Brahma Singh, PW 6, whether he is in service or has since retired, for such serious lapse in conducting investigation. The Director General of Police shall take disciplinary action against the said officer and if he has since retired, the action shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules. The ground of limitation, if stated in the relevant rules, will not operate as the inquiry is being conducted under the direction of this Court."

- (iii) In the matter of ***Dayal Singh and others v. State of Uttaranchal***, reported in ***(2012) 8 Supreme***

Court Cases 263, the Apex Court in paragraphs

No.30 and 34 held as under:

“30. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a “fair trial”, the Court should leave no stone unturned

to do justice and protect the interest of the society as well.”

- (iv) In the matter of ***Bablu Kumar and Others v. State of Bihar and another***, reported in **(2015) 8 Supreme Court Cases 787**, with regard to the Judgment of acquittal giving direction for retrial and discussed when it is warranted, and also giving direction for conclusion of trial within a fixed duration, held, does not mean mechanical conclusion of trial anyhow, regardless of whether justice is miscarried. We would like to quote the relevant paragraph Nos.22 and 23, which reads as follows:

“**22.** Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. The law does not

countenance a "mock trial". It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The Court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The Court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

23. In the case at hand, it is luculent that the High Court upon perusal of the record has come to hold that the notices were not

served on the witnesses. The agonized widow of the deceased was compelled to invoke the revisional jurisdiction of the High Court against the judgment of acquittal as the trial was closed after examining a formal witness. The order passed by the High Court by no stretch of imagination can be regarded as faulty. That being the position, we have no speck of doubt in our mind that the whole trial is nothing but comparable to an experimentation conducted by a child in a laboratory. It is neither permissible nor allowable. Therefore, we unhesitatingly affirm the order passed by the High Court as we treat the view expressed by it as unexceptionable, for by its order it has annulled an order which was replete with glaring defects that had led to the miscarriage of justice.”

(emphasis supplied)

- (v) We also would like to quote the judgment of the Apex Court in the matter of ***Zahira Habibulla H. Sheikh and another v. State of Gujarat and others***, reported in ***(2004) 4 Supreme Court Cases 158***, which is also known as “Best Bakery Case”. The Apex Court in this judgment discussed the scope and power of the Courts and held that failure of State machinery to protect citizens’ life, liberties and property, and investigation conducted in

a manner helpful to accused persons. Duty of Courts arising therefrom to maintain confidence of the public in the judicial system. Courts to ensure that accused persons are punished and the might and authority of the State are not used to shield itself or its men. Deficiencies in investigation or prosecution to be dealt with an iron hand, appropriately within framework of law. Judicial criminal administration to be kept clean and beyond the reach of whimsical political wills or agendas and property insulated from discriminatory standards of the type prohibited by the Constitution. Role of State Government in not getting the offenders to book deprecated in the strongest terms.

22. The Apex Court also in this Judgment, elaborately discussed with regard to the scope of Section 173(8), which permits further investigation, and even de hors any direction from the court as such it is open to the police to conduct proper investigation even after the court has taken

cognizance of any offence on the strength of a police report submitted earlier.

23. The Apex Court also in paragraphs No.2, 78 and 60 held that, the role of the investigating agency is perceived differently by the parties, but there is unanimity in their stand that it was tainted, biased and not fair. While the accused persons accuse it for alleged false implication, the victims' relatives like the appellant, allege its efforts to be merely to protect the accused. It would be desirable for the investigating agency or those supervising the investigation, to act in terms of Section 173(8) of Cr.P.C. as the circumstances seem to or may so warrant. The Director General of Police, Gujarat is directed to monitor re-investigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant.

24. The Apex Court in this judgment in paragraphs No.30, 35, 36, 42 and 49 held that, the concept of fair trial entails the familiar triangulation

of interests of the accused, the victim and society, and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as *persona non grata*. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused. In this courts have a vital role to play. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Supreme Court has often emphasized that in a criminal case the fate of the proceedings cannot always be left entirely in the

hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general.

25. The Apex Court in this Judgment also discussed with regard to the role of the Presiding Judge and held that, it is the discovery, vindication and establishment of truth. Hence, the trial should be a search for the truth and not about over technicalities. Presiding Judge must cease to be spectator and a mere recording machine. He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community.

26. Further, the Apex Court held that, there cannot be a straitjacket formula or rule of universal application when alone it can be done and when not.

Whether the appellate court maintains or upsets verdict of trial court depends upon relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused. This is not a factor in determining the admissibility of additional evidence sought to be adduced.

27. The Apex Court also in this Judgment held that, with regard to retrial when to be ordered, no straitjacket formula of universal and invariable application can be formulated. Ultimately courts must keep in view their very *raison d'être*, that is to find out the truth and dispense justice impartially. In this regard, it is further held that, on facts, the case found to be one writ large with serious infirmities, telltale even to the naked eye of an ordinary man, arbitrariness, where truth had become a casualty, without parallel, and which stood on its own as an exemplary one, special of its kind, necessary to prevent its recurrence and therefore fit and proper

for retrial. It is further held that, a retrial in the case on hand was essentially called for, in order to save and preserve the justice-delivery system, unsullied and unscathed by vested interests and retrial directed to be taken up on a day-to-day basis.

28. The Apex Court held in this judgment held that, accused not be acquitted solely on account of the defect in investigation. To do so would tantamount to playing into hands of investigating officer if investigation is designedly defective and perpetuating the designed mischief and held that, the only purpose of such an investigation cannot be false implication, but equally it is possible that the investigating agency was trying to shield the accused.

- (vi) We would also like to quote the judgment in the matter of ***Joshinder Yadav v. State of Bihar***, reported in ***(2014) 2 Supreme Court Cases (Cri) 255***, where the Apex Court, while expressing its anguish, highlighted the duties of investigating

officer, prosecutor and court and issued necessary directions with regard to role of Presiding Judge in criminal trial. It is further observed that vigilance to ensure fair trial, held that, the criminal court must be alert, it must oversee the actions of prosecution and investigating agency, in case it suspects foul play, it must use its vast powers and frustrate any attempt to set at naught, a genuine prosecution is required.

- (vii) We would also like to quote the judgment in the matter of ***State of Gujarat v. Kishanbhai and others, reported (2014) 2 Supreme Court Cases (Cri) 457***, where the Apex Court in paragraphs – 19 to 25 has observed that, a very heinous case ended in acquittal due to lapses in investigation and prosecution and the lapses committed by investigating and prosecuting agencies, stringently deprecated. Having observed the same, directions are issued for purposeful and decisive investigation and prosecution. Apart from that, it is suggested that a training programme to be put in place within six

months to ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Further, direction was given to Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers.

29. Having considered the principles laid down in the judgments referred by the learned senior counsel as well as the judgments *suo motu* referred by this Court, this Court has to analyse the material available on record, considering the facts and circumstances of the case on hand.

30. At the same time, the learned HCGP Sri.Vinayak also submitted that in the instant case the Court should consider re-investigation in the light of judgments referred by the learned Senior Counsel. At this juncture, this Court also *suo motu* looked into several judgments of the Apex Court, some of which would support that in such circumstances where gross abuse of

power is seen from the Investigating Officer, this Court cannot be a silent spectator and allow the injustice to go unnoticed when this Court has extraordinary power to revoke the same to ensure that guilty is brought to book. At the same time, this Court would also notice that the Apex Court time and again has stated that the power of re-investigation is not given to any Court except the superior courts, namely the High Court and Supreme Court, where under extraordinary circumstances which are not ordinarily seen, the said power is required to be exercised.

31. In the instant case, we notice that the victim is an adolescent, aged 19 years. Incidentally, he is from an upper middle class family where he is brought up at affluent circumstances in a small town and where the social status of the family and their wealth is all known to others. In fact, in the instant case, the prime accused is accused No.3 – Rakshith, who is none other than the childhood friend and classmate of the victim. The records would indicate that accused No.3 and victim were classmates right from 1st standard to 10th standard and

accused No.3 who is physically and mentally a stronger person would use his influence on the victim right from his childhood for extortion of money for his expenses. It is seen that though initially it was in extorting small amount for his eat-outs and other small things, subsequently he has joined the group of seasoned criminals particularly, accused No.4 in the instant case who was involved in a murder case and when he was in jail for 3 years, he has joined the company of such persons and other school drop out urchins, who formed a group and tried to extort money from the victim in lakhs in the form of cash as well as gold ornaments in view of the fact that victim's father was a Jeweler. It is in this background, it is seen that the victim was subjected to harassment by his childhood friend. However, when it has reached unbearable level, the involvement of seasoned criminals has taken the small time extortion to the level of holding the victim for higher ransom and finally putting an end to his life for not entertaining their illegal demands.

32. Further, the manner in which the crime is committed by accused Nos.1 to 6 in the charge sheet if it is seen, it would put any seasoned criminal to shame inasmuch as accused Nos.1 and 6 who are minors at the relevant point of time are said to have stabbed the victim 28 times above waist, as stated supra, the portion below waist is completely eaten away by the dogs. How the lower portion could be eaten away by the dogs is also seen from their explanation, in that, when the crime was committed by them there was an attempt on their part to dispose off the body and for that, they used petrol to soak the body and thereafter it is stated that they have lighted it. It is in this context, the body of victim is burnt upto waist, which is subsequently eaten away by dogs and what could be seen is half portion of the body and remaining half portion in the condition of skeleton as could be seen from photographs, Exs.P4 to 7, which depicts the mental condition of accused in putting an end to the life of victim and in trying to dispose off his body. In spite of noticing such ghastly act on the part of accused Nos.1 to 6, the Investigating Officer is unmoved. He has taken the entire

facet so casually that he has not made any attempt to bring them to book. On the contrary, his lethargic attitude has allowed the case to be closed with a verdict of acquittal, which any person of conscious cannot accept.

33. Therefore, in the instant case, this Court would not jump into conclusion that accused Nos.1 to 6 should be punished instead, this Court feel that there should be a fair trial where all attempts should be made to bring the alleged guilt of accused Nos.1 to 6 to book, for which no attempt is made by the Investigating Officer. In this background, we feel that the judgment and order of acquittal rendered by the Sessions Court in SC.No.6/2011 on 26.10.2013 is required to be set aside and the matter requires further consideration. However, further consideration, whether it should be re-investigation or further investigation/*de novo* investigation is required to be considered on the basis of the judgments which are cited by the learned Senior Counsel Sri.Hashmath Pasha and the judgments on which this Court *suo motu* referred by this Court in this proceedings.

34. Having considered the material on record and this Court has listed out aforesaid defective or illegal investigation done by the investigating officer and having considered the principles laid down in the judgments referred (supra), the Apex Court categorically held that the Presiding Judge also must be alert, and it must oversee the actions of prosecution and investigating agency and if the Court comes to a conclusion of any foul play by the investigating officer or by the prosecution agency it must use its vast powers and to see that a genuine prosecution is made and certain directions to be issued both to the Home Department and also to the prosecution Department as well as to the Presiding Judge, how to ensure the Justice.

35. We have already listed out the illegal and defective investigation in the case on hand and prosecution also did not take any necessary steps to cure the defective investigation and the Presiding Judge also not vigilant in complying the principles laid down in the Judgment of the Apex Court, particularly, rendered in ***Joshinder Yadav***

(supra). Hence, it is an appropriate case to order for further investigation to meet the lapses on the part of the Investigating Officer as done in the case on hand. Hence, it is a fit case to order for further investigation and so also to issue necessary direction to the concerned Department to monitor further investigation within the time bound investigation to meet the justice. It is also appropriate to direct the prosecution department and also the learned trial Judges, who are handling the sensitive cases and to act diligently and to exercise its vast powers whenever the Court finds foul play and tune the prosecution to rectify the error committed by the investigation and to make use of the material to bring the culprit within the parameters of law in accordance with law to hold the dignity of the Court to ensure that the victim family should not be subjected to miscarriage of justice.

36. In view of the discussions made above, we pass the following:

ORDER

- (i) The appeal is allowed.

- (ii) The judgment and order of acquittal dated 26.10.2013 passed in S.C.No.06/2011 by the IV Additional District & Sessions Judge, Doddaballapura, Bangluru Rural District, Bangalore, is hereby set aside and the matter is remanded for fresh consideration.
- (iii) While doing so, it is ordered that, the Director General and Inspector General of Police (DG & IGP) of the State is directed to appoint a fresh Investigating Officer within one month from the date of this order and further direction to direct the Investigating Officer to further investigate the matter within three months from that date and to submit further report.
- (iv) DG & IGP, is directed to monitor the further investigation and to see that the report is filed within the time stipulated.
- (v) The Presiding Judge of the concerned Court is directed to record the further evidence based on the further investigation report filed by the Investigating Officer and if necessary to give an opportunity to both the prosecution as well as to the defence to adduce further evidence.

- (vi) The Presiding Judge is also directed to reconsider the matter within six months from the date of submitting further investigation report and dispose of the same in accordance with law.
- (vii) The DG & IGP is directed to initiate the disciplinary proceedings against the Investigating Officer, who conducted the defective or illegal investigation and take appropriate action against the Investigating Officer, in accordance with law.
- (viii) This Court has issued guidelines to the DG & IGP to supply the copy of this Judgment to the Investigating Officers throughout the State and shall give training to the Investigating Officers within six months to ensure that the proper investigation is conducted in heinous offences, which takes place.
- (ix) The Director of prosecution is directed to instruct all the public prosecutor, who are working in the State, if any, foul play is found in the investigation, bring it to the Court notice and make necessary applications to rectify the

mistakes committed by the Investigating Officer in order to render justice if necessary seeking further investigation.

- (x) The Presiding Judges, who are taking up the criminal trial should be vigilant in ensuring the fair trial.
- (xi) The Criminal Court must be alert, it must oversee the actions of prosecution and investigating agency and if the Court suspects the foul play, it must use its vast powers to see that a genuine prosecution is conducted in the case.
- (xii) The Criminal Courts also to achieve the proper prosecution participating in the trial, must be alert and it should not be a mute spectator and to see that to find out the truth in order to bring home the real culprit and should not be allowed to escape from the clutches of law.
- (xiii) The Registrar General is directed to circulate the copy of this Judgment to the trial Judges to comply the guidelines.

The Registry is directed to send the Trial Court records forthwith to consider the matter afresh as observed in this judgment.

Sd/-
JUDGE

Sd/-
JUDGE

*nd/cp**