

IN THE HIGH COURT OF KARNATAKA, BENGALURU

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

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

CRIMINAL APPEAL NO.473 OF 2013

STATE OF KARNATAKA

AND:

SUBRAMANYA SON OF LATE SANNENAIIKA

JUDGMENT

This appeal is filed against the judgment of acquittal passed in S.C.No.59/2011 by the Principal Sessions Judge, Chikmagalur vide order dated 20.12.2012.

2. The factual matrix of the case is that the Police have filed the charge sheet against accused Nos. 1 and 2 for the offences punishable under Sections 120B, 302, 379, 201 read with Section 34 of Indian Penal Code making the allegation that the deceased Kamamma was the second wife of Manjappa Naika, who was the father of accused No.2 Gowri @ Gowamma through his first wife. Kamamma was having two daughters i.e., CWs.7 and 8. C.W.7 has been examined as P.W.1 and other daughter has not been examined. The said Kamamma was residing alone at Hosamane at Horabylu village by the side of the house of accused No.2. The husband of accused No.2 was also no more and she was staying along with her two children. The case of the prosecution is that accused Nos. 1 and 2 were having illicit relationship for which the deceased Kamamma used to object and scold and she was an obstacle in their way.

3. The prosecution in order to arraign accused Nos. 1 and 2 has alleged that on 23.08.2010 both of them have agreed and conspired with each other to eliminate Kamamma and get rid of the obstacle for their relationship. On the same day, at about 9.00 PM, both of them entered the house of the deceased and near the cattle shed, assaulted Kamamma on her head and neck by club and committed her murder. It is also the case of the prosecution that thereafter they have stolen the gold chain, pair of ear studs, one gold ring and mobile belonging to the deceased. It is the further case of the prosecution that accused Nos. 1 and 2 with the assistance of accused No.3, tied the dead body with a saree and carried it to the land of one Dinamani which was situated by the side of a water channel and with the help of a crowbar dug a pit and buried the dead body of the deceased with an intention to screen the evidence of murder. It is the further case of the prosecution that Accused No.1 took the umbrella and threw it on the shelter of the bus stop at Kuppalli village and sold the gold

ornaments to a Jewelry shop at Rippanpet and sold the mobile to one Ashok @ Meeranath, who happens to be the resident of Surathkal. It is the case of the prosecution that on 24.08.2010, son of accused No.2 told C.W.1 Yogeesh that his mother-in-law deceased Kamamma is not found since 23.08.2010. After searching, he went to Koppa Police Station and filed a missing complaint. It is the case of the prosecution that on 09.12.2010 at about 9.30p.m accused No.3 met C.W.1 and informed him that about four months back accused Nos.1 and 2 by giving brandy, took him by saying that he had some work and told that they have committed the murder of the deceased and kept the body in the cattle shed and asked his help to carry the dead body. When he did not agree to the said work, they threatened that they will also take away his life and being afraid of the same, he went with them. Accused No.1 got removed the gold ornaments from the dead body and all of them carried the dead body and buried the same. Then CW.1 on 10.12.2010 went to the Police Station and filed the complaint. Thereafter C.W.42 was deployed to apprehend the accused. During the course of investigation, after apprehending the accused persons, on the basis of their voluntary statement golden ornaments which were sold and other incriminating materials were recovered. Accused Nos. 1 and 3 showed the place where they had buried the dead body. The same was exhumed in the presence of Sub-divisional Magistrate and the body was recovered and clothes were also found and thereafter body was identified as that of deceased Kamamma. The Police after investigation have filed charge sheet against accused Nos. 1 to 3. After filing the charge sheet, cognizance was taken and the matter was committed to the Sessions Court and the learned Sessions Judge after securing the presence of the accused framed the charges for the above offences and when the accused did not plead guilty and claimed for trial, the case was posted for evidence.

4. The prosecution in order to prove the case got examined PWs.1 to 19, got marked Exs.P1 to 30 and also marked M.Os.1 to 17.

5. After closure of the evidence of the prosecution, the accused persons were examined under Section 313 Cr.P.C. and their their statements statements were also recorded. Accused persons have denied the incriminating material stated against them. They did not choose to lead any defence. After hearing both the prosecution and the defence side, the Court below acquitted the accused persons of all the offences. Hence the present appeal is filed by the State.

6. Learned counsel appearing for the State in his arguments vehemently contended that the Court below. has erroneously acquitted the accused persons in coming to the conclusion that the prosecution failed to prove the case against the accused persons. Even though all the witnesses have supported the case of the prosecution, Sri Pramod Chandra, learned Additional State Public Prosecutor would submit that the Court below has failed to appreciate the evidence of prosecution in its proper perspective. P.Ws.1 and 7 have deposed before the Court that accused No.2 had illicit relationship with accused No.1. This fact was being spread by the deceased before the Public in the village. Hence the accused

Nos. 1 and 2 were having motive for committing the murder of the deceased. The Court below failed to take note of the fact that on the voluntary statement of accused Nos. 1 and 3, the dead body of the deceased was recovered. This fact is corroborated with the evidence of P.Ws. 2, 3, 7, 8 and 15 which clearly establishes that these accused persons after committing the murder of the deceased have buried the dead body with an intention to destroy the evidence in order to escape from the clutches of law. The same has not been properly appreciated by the learned trial Judge. Learned counsel in his argument would submit that in addition to the said fact, accused No. 1 after committing the murder took the mobile belonging to the deceased and the same was sold to P.W. 10. Further, the learned trial Judge has failed to appreciate the fact that at the instance of accused Nos. 1 and 3 the Police have seized the club and spade. The said fact is also established in the evidence of P.W. 6. The learned trial Judge also failed to appreciate the fact that at the instance of accused persons, the Police have seized the clothes of the accused in the presence of P.Ws. 4 and 5. The trial Court did not take the same into consideration while appreciating the evidence.

7. The other contention of the counsel that on the voluntary statement of accused No. 1, the Police have seized the gold articles and the said fact was also corroborated by the evidence of P.Ws. 2 and 9. Those articles were also identified by the complainant. P.W. 1 also identified that those gold articles belonged to the deceased. P.W. 1 is the daughter of the deceased. In spite of all these circumstances and evidence in favour of the prosecution, the learned trial Judge has committed error in acquitting the accused persons on the ground that the case rests upon the circumstantial evidence and the chain of circumstances has not been proved. Hence, the judgment of acquittal of accused persons is not proper and the same has to be intervened and it has to be reappreciated and accused persons has to be convicted for the charges leveled against them.

8. Per contra, the counsel appearing for the respondent accused in his argument vehemently contends that the learned trial Judge while appreciating the evidence available on record discussed in detail with regard to each circumstance. Since the case rests upon the circumstantial evidence and none of the circumstances supports the case of the prosecution, the trial Court has held that the prosecution has utterly failed to prove the case against the accused persons and acquitted the accused persons. The counsel would also submit that there is no link between each circumstances and the evidence which has been produced before the Court is only hearsay in nature and the Court cannot expect the truth that too from the mouth of the evidence of P.W. 7 with regard to extra Judicial Confession made by accused No. 3 with P.W. 7. The Court below has given anxious consideration to the evidence of prosecution in detail and has rightly formed its opinion that the prosecution has failed to prove the case. Hence, there are no grounds to interfere with the findings of the trial Court and no material is produced to come to the other conclusion that the prosecution has proved the case against the accused persons.

9. Having heard the arguments of both the learned counsel appearing for the State as well as the accused persons, the points that arise for our consideration are:

i) Whether the Court below has committed an error in acquitting the accused Nos. 1 and 2 of the offences punishable under Section 120B, 302, 379 read with Section 34 Indian Penal Code?

ii) Whether the Court below has committed an error in acquitting the accused persons for the offences punishable under Section 201 read with Section 34 Indian Penal Code?

Point Nos. 1 and 2:

Both the points are taken together for consideration since the allegations are interconnected. The case of the prosecution is that accused Nos. 1 and 2 have committed the murder conspiring with each other and thereafter they took the help of accused No.3 in destroying the evidence.

10. After having heard both the learned counsel, we have to consider both oral and documentary evidence available before the Court and this Court has to reappraise the evidence available on record. In order to come to the conclusion whether these accused persons have committed the murder of Kamamma and thereafter destroyed the body, the prosecution relies upon the evidence of PWs.1 to 19. Out of that P.W.1 is the daughter of the deceased.P.W.2 is the mahazar witness. In respect of discovery of the body, P.W.3 who was present at the time of exhumation of the body exhumed the body.P.W.4 is the mahazar witness in respect of seizure of clothes of Accused No.3 in terms of Ex.P5. P.W.5 is another mahazar witness who says that A.1 led near the house of Kamamma regarding seizure of his pant and shirt by drawing mahazar in terms of Ex.P6.P.W.6 says accused No.1 took out a club from the bush and produced the same before the Police and mahazar was drawn in terms of Ex.P8.P.W.7 has spoken with regard to Accused No.3 revealing about the burial of the body of the deceased and made extra judicial confession with him.P.W.8 is the witness of exhumation of the body and identification of the dead body of the deceased.P.W.9 is the jeweler who deposed with regard to accused No.1 has sold the jewels belonging to the deceased.P.W.10 is the mahazar witness for recovery of the mobile of the deceased.PW.11 is the doctor who conducted the PM and deposed that it is a homicidal death.P.W.12 is the mahazar witness for seizure of skull, femur, hip bone, nails, hairs, buried soil and clothes of deceased Kamamma in terms of Ex.P19.P.W.13 is the Junior Engineer who drew the spot sketch.P.W.14 is the PDO who gave the property extract of deceased Kamamma. P.W.15 is the Assistant commissioner in whose presence the body was exhumed and the scene of exhumation of the body was videographed.P.W.16 is the purchaser of the mobile phone.P.W.17 to 19 are the Investigating Officers who registered the case and conducted the investigation. Now let us appreciate whether the evidence of the above witnesses inspires confidence of the Court in order to come to the conclusion whether the accused persons have committed the offences charged against them.

11. The case of the prosecution is that the deceased was coming in the way of their illicit relationship and was publishing the same around the village, they committed the murder of the deceased Smt.Kamalamma.The further case of the prosecution is that after committing the murder of Kamalamma, the accused Nos. 1 and 2 have availed the services of accused No.3 to bury the deceased.When accused No.3 refused, they threatened him of serious consequences. Hence, accused No.3 being afraid, assisted both the accused in disposing the dead body and thereby committed an offence under Section 201 of Indian Penal Code.

12. Before analyzing the evidence, we would like to find out, at the first instance, whether the death of Smt.Kamalamma is homicidal or not? The Court below considering the material on record has come to the conclusion that the death of Smt.Kamalamma is homicidal.The reasonings of the Court below is contained in paragraph No.29 of the judgment while answering the point No.1.The Court below also considered evidence of P.Ws.1, 2, 7 and 8 with regard to the exhumation of the body of a female from Sy. No.121 of Horabylu village. So far as exhuming the body, there is no dispute and even the witnesses who have been examined have categorically spoken that the body was exhumed and the same was identified as that of deceased Kamalamma. The Doctor, who conducted post mortem is examined as P.W.11 and his evidence corroborates the evidence of above witnesses and says that cause of death is due to assault with the club. Even the DNA test held has given a positive result and in the cross-examination of the witnesses also, it has been not disputed that the same does not belong to Smt.Kamalamma. Considering the consistent evidence of P.Ws. 1, 2, 7, 8 and 11 and also the evidence of P.W.3, who exhumed the body in the presence of P.W.15 Assistant Commissioner and also the evidence of P.W.11, we also affirm the finding of the trial Court that the death of Smt.Kamalamma is homicidal one.

13. The Court below while considering the case of the prosecution and answering point Nos.2 to 5, since the entire case of the prosecution rests on the circumstantial evidence and while appreciating the circumstantial evidence comes to the conclusion that the prosecution has failed to prove all the chain of events and hence, same is to be re-appreciated by us. The case of the prosecution is that accused Nos. 1 and 2 have conspired each other to eliminate the deceased since she was coming in the way of their continuing illicit relationship. In order to prove the illicit relationship and to prove the motive to commit the offence, the prosecution mainly relied upon the evidence of P.W.1 who is the daughter of the deceased.P.W.1 in her evidence says that accused No.2 was residing by the side of the house of the deceased and her mother had two daughters, who were already married and residing separately. Accused No.2 is living along with her two children and her husband was no more.P.W.1 in her evidence says that her mother used to tell her that accused Nos. 1 and 2 were having illicit relationship for which her mother used to scold them. In the cross examination, P.W.1 admits that the father of accused No.2 has given a share to accused No.2 and she was getting good income and further, it is elicited in the cross examination that accused No.1-Subramanya is a distant brother of accused No.2 and there was a panchayath before the division of property between the deceased and accused No.2.P.W.1

also admits that she did not make any call to the mobile of the deceased-Smt.Kamamma after coming to know that she was missing.

14. The prosecution also relies upon the evidence of P.W.7 which is to the effect that accused No.3 told him that about 3 to 3 12 months back, accused No.1 had murdered Kamamma and in order to bury the dead body, asked his help by providing two bottles of brandy. When he refused, he was also threatened that he would take away his life as done to his brother-in-law Srinivase Gowda. Then, being afraid, he helped him in carrying and burying the dead body. In the cross-examination of P.W.7, it is elicited that he was not having any confidence in accused No.3. When he filed the missing complaint, at that time, he was knowing that his mother-in-law used to abuse accused No.2 for having illicit relationship with accused No.1. After filing the missing complaint, police made enquires with him whether he was having any doubt and at that time, he told about the said fact to police and the police recorded the names of accused Nos.1 and 2. When the police came, they did not make any enquiries with accused Nos. 1 and 2 as they were not available. He informed the police about the non-availability of accused Nos. 1 and 2 in the village.

15. It is the case of P.W.7 that accused No.3 only made extra judicial confession before him. Further, it is important to note that P.W.7 gave missing complaint at the first instance and thereafter, on receipt of the information from accused No.3, complaint was filed on 10.12.2010. It is to be noted that P.W.1 categorically stated that the deceased was telling about the illicit relationship between the accused Nos.1 and 2 and there was an ill-will between the deceased and accused Nos. 1 and 2. The trial Judge while considering the evidence with regard to the motive is concerned, did not rely upon the evidence of P.W.1. The P.W.7 in his cross-examination says that he was not having any confidence with accused No.3 and hence the Court below held when such being the circumstance, the Court cannot consider such evidence. It has to be noted that the murder has taken place in the month of August and almost after three months after the Smt.Kamamma through accused No.3 and no doubt, extra judicial confession is a weak piece of evidence. In the case on hand, it has to be noted that P.W.1 specifically stated that her mother was telling that there was an illicit relationship with accused Nos. 1 and 2 and she was scolding both of them about the illicit relationship. In the case on hand, it is also to be noted that body was discovered at the instance of accused Nos.1 and 3 and it was unearthed from the land bearing Sy.No.121 of Horabylu village. With regard to the illicit relationship, the Court cannot expect any of the witnesses to depose. The proving of illicit relationship is only the circumstances and direct evidence cannot be produced. The Court below has committed an error in coming to the conclusion that the prosecution has not proved the motive. It is the specific case of the prosecution that since the deceased was coming in the way of accused Nos. 1 and 2 to continue the illicit relationship, they have murdered the deceased. In order to prove the illicit relationship, the Court also cannot murder, P.W.7 came to know about the death of expect the witnesses to speak that they witnessed the act of both but, it has to weigh the evidence available on record taking note of the circumstances, under which the

murder has taken place and hence the very finding that there is no motive cannot be accepted.

16. We would like to refer to Section 27 of the Evidence Act, 1872 with regard to information received from the accused and in this case, based on the information given by accused Nos.1 and 3, body was recovered and Section 27 of the Evidence Act reads as follows:

" 27. How much of information received from accused may be proved.-Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. "17. We also like to refer to the judgment of the Apex Court in the case of Swamy Shraddananda @ Murali Manohar Mishra VS. State of Karnataka [(2008) 3 Crimes 215] wherein in similar circumstances, the body was recovered which was kept inside a large wooden box that he had earlier got made for the purpose and dropping the box into a pit that he had got specially dug up in grounds of his house just outside their common bed room. The Hon'ble Apex Court invoking Section 27 of the Evidence Act held that discovery and recovery of the exhumed body on the information given by the accused is to be taken into consideration. Hence, the above case is aptly applicable to the case on hand for the reason that accused Nos.1 and 3 have led the Police and body was exhumed in the presence of Assistant Commissioner who has been examined as P.W.15.

18. In the case of Asar Mohammad and Ors Vs. State of U.P. (AIR 2018 SC 5264), the Hon'ble Supreme Court has held as follows:

" Facts need not be self-probatory and word ' fact ' as contemplated in Sec.27 of Evidence Act is not limited to ' actual physical material object '.Discovery of fact arises by reason of fact that information given by accused exhibited knowledge or mental awareness of informant as to its existence at particular place. It includes discovery of object, place from which it is produced and knowledge of accused as to its existence. "

19. We would also like to rely upon the recent

judgment of the Apex Court in Patturajan Vs. State of Tamilnadu [(2019) 2 SCC (CrI) 354] wherein it is held that recovery and identification of dead body and articles belonging to deceased at the instance of accused and non explanation by accused links in the chain of circumstances firmly established against accused. The Apex Court also referring to Section 27 of the Evidence Act regarding discovery of fact held that recovery of incriminating article which revealed the relevant fact prior to accused having led Police to very same place from which the article was recovered earlier and recovery of dead body was made at the instance of accused. In the case on hand also, the recovery of dead body was made at the instance of Accused Nos.1 and 3. Further as held by the Apex Court that if a confession is made by

accused before Police and a portion of confession leads to recovery of any incriminating material, such portion alone is admissible under Section 27 of the Evidence Act. In the case on hand also, the accused persons have led the Police as well as the panchas and in the presence of P.W.15 Assistant Commissioner, the body was exhumed and hence the judgment of the Apex Court referred above is aptly applicable to the case on hand.

20. It is to be noted that Section 27 of the Evidence Act is clear that if it is discovered at the instance of the accused, the same has to be taken note. In the case on hand, it is to be noted that the evidence of P.Ws.1, 2 and 8 who are all the witnesses to exhumation of the body consistently depose before the Court that in their presence, P.W.3 helped to exhume the body in the presence of P.W.15 who is the Assistant Commissioner. It is the case of the prosecution that C.W.42 made the request to P.W.15 to exhume the body since accused Nos.1 and 3 have given voluntary statement that after committing the murder, the body was buried and showed the place. In the presence of all these witnesses, the body was exhumed and the same was identified that the body belongs to deceased Smt. Kamamma and DNA also proves that the said body belongs to Smt. Kamamma.

21. Accused No.1 after committing the murder, took the assistance of accused No.3 to screen the evidence of murder and after getting the assistance of accused No.3 buried the body. Thus it is clear that both of them were indulged in screening the evidence. Hence, Section 201 of Indian Penal Code gets attracted.

22. The other circumstances relied upon by the prosecution is that after the arrest of accused No.1, jewels belonging to the deceased were recovered at the instance of accused No.1 and P.W.2 specifically states that accused No.1 took them to Someshwara Jewellers and he asked the jewelry shop owner to give gold ornaments which he sold. The owner who has been examined as P.W.9 also says that accused No.1 came and sold the jewels. He identifies the accused and says that after purchasing the ornaments, he paid Rs.27,500/- to the accused. When the police asked him to return the said articles, P.W.9 returned the articles and the said jewels were also identified by P.W.1 daughter of the deceased. No doubt, in the cross examination, it is elicited that the said ornaments appear to be new one. P.W.1 in the evidence says that her mother was using the same rarely and categorically denied the suggestion that MOS.1 to 3 ornaments do not belong to the deceased Smt. Kamamma and the same have been newly prepared and the said suggestion was denied. The evidence of P.W.1 and other witnesses is specific that accused No.1 took the witness to the shop of P.W.9. P.W.9 categorically says that he took the ornaments from accused No.1 about 3 ½ months back by paying the amount. Nothing is elicited in the cross-examination of P.W.9 except the answer that he has not maintained any receipt for having purchased the gold and further not having any documents for having purchased the ornaments from accused No.1. The trial Judge while considering the evidence of P.W.1 failed to take note of the fact that when P.W.9 categorically deposed before the Court that he identifies accused No.1 and also categorically says that he received the ornaments from

accused No.1 and nothing is elicited in the cross-examination of P.W.9 that there was enmity between the accused and him and he has been falsely implicated in the case, merely not having any receipt or any document that itself cannot be fatal to the case of the prosecution, in spite of the prosecution proving the recovery of jewels from the jewelry shop which has been sold by accused No.1. The trial Court ought not to have disbelieved the evidence of P.Ws.1 and 9 regarding recovery of gold ornaments.

23. The prosecution also relied upon the other circumstances that the mobile phone of the deceased was sold and the same was recovered from P.W.16. P.W.16 says that he used to sleep with accused No.1. He further says that about two months prior to 14.12.2010, accused No.1, who was working as an Assistant to P.W.16 at Sharath Bar and Restaurant came and showed him a mobile and told that he is in need of money, as such he wants to sell the same. Since P.W.16 was also in need of mobile, he was purchased the same from accused No.1 by paying Rs.700/-. It was not having any Sim. He further says that he was called by the police station on 13.12.2010 where accused No.1 was also there. He has identified him and produced the said mobile in the presence of P.Ws.7, 10 and C.W.23. The same was seized by drawing a mahazar as per Ex.P12. In the cross examination, it is elicited that when accused No.1 gave the mobile i.e., M.O No.4-phone, it was not having any sim and also does not know whether he was using it or not. In his presence, no typing work was done in the police station, but it was written. He has not dictated the contents of the Mahazar under Ex.P.12. Apart from him, other three persons have also signed Ex.P.12. Except these answers, nothing is elicited from the mouth of P.W.16 to disbelieve the evidence of prosecution. Nothing is elicited from the mouth of P.W.16 about animosity between her and the accused No.1. Therefore, the recovery is also proved with regard to mobile which was sold to P.W.16 by accused No.1 and the same is also another circumstance to link the accused with the offence and the said fact is also not considered by the trial Court.

24. The other circumstances relied upon by the prosecution is the recovery of club and clothes of accused No.1 which were seized. In this regard, mahazars were also drawn in terms of Ex.P.1 i.e., seizer of ornaments from P.W.9 and P.W.2 categorically deposed the same. P.W.3 also in his evidence says that the body was exhumed by drawing the mahazar in terms of Ex.P.3 and he also categorically says that accused No.1 and 3 showed the place where they have buried the body of Smt.Kamalamma. Thereafter, Assistant Commissioner directed to exhume the body. P.W.4 categorically says that accused No.3 led them to his house at Kirankere and after going inside the house, accused No.3 produced a half shirt and a lungi and mahazar was drawn in terms of Ex.P.5. In the cross-examination of P.W.1, nothing is elicited with regard to the seizer of the clothes which belongs to accused No.3. P.W.5 in his evidence says that accused No.1 led near the house of Smt.Kamalamma and he has produced the clothes. The mahazar was drawn in terms of Ex.P.6 and red colour shirt and cement colour pant are marked as MO Nos.7 and 8. In the cross examination, he admits that in his presence, police have not enquired anybody and also he has not dictated

to the contents of Ex.P.6 and no written requisition was given to him by the police to act as a panch. In order to disbelieve the evidence of P.W.5 regarding the recovery is concerned, nothing is elicited, except the formal answers.

25. P.W.6 also says that accused No.1 took out the club from the bush and produced the same before the police. Club is marked as MO No.9 and he also categorically says that accused No.3 also went from the side of bush and he produced the spade which is marked as MO No.10. In the cross-examination of P.W.6, he also admits that no written notice has been given to him by the police to act as a panch and he also admits that during the month of August, there will be heavy rain and he further admits that due to heavy rain, the wood will be fungused and the colour turns black. Except these answers in the cross-examination of P.W.6, nothing is elicited to disbelieve the case of the prosecution that both accused Nos.1 and 3 led the panch witnesses and produced the respective clothes, club and spade which were used for burying the body. Though the recovery is almost four months after committing the crime, all the witnesses who have been examined before the Court have categorically supported the case of the prosecution regarding the motive, discovery of dead body at the instance of accused Nos. 1 and 3 and recoveries of jewels which were sold to P.W.9 and also club, clothes and spade. In spite of these materials available on record, the trial Judge committed an error in appreciating the evidence in the right perspective. The discrepancies which have been elicited in the cross examination are not fatal to the case of the prosecution and the trial Court committed an error in not appreciating the same and has erroneously come to the conclusion that the prosecution has not proved the case against the accused persons. However, it is to be noted that none of the witnesses have spoken with regard to the very participation of accused No.2. There is no any incriminating evidence as against accused No.2. It is to be noted that the discovery is made at the instance of accused Nos.1 and 3 and none of the witnesses have spoken that accused No.2 led the panchas to the spot. It is the case of prosecution that only accused Nos.1 and 3 led the panchas and body was recovered at the instance of accused Nos.1 and 3 and not at the instance of accused No.2. No recovery is made at the instance of accused No.2 and hence, we are of the opinion that the Court below has not committed any error in acquitting accused No.2, but committed an error in appreciating the evidence against the accused Nos. 1 and 3. Therefore, we are of the opinion that there are sufficient material to believe the case of the prosecution against accused Nos. 1 and 3.

26. The material on record would disclose that accused No.1 committed the murder and after committing the murder, he has taken the jewels belonging to the deceased and sold the same with P.W.9 and the same was also recovered and he also sold the mobile phone to P.W.16. All these linking evidence shows that accused No.1 only committed the murder and thereafter, accused No.1 took the assistance of accused No.3, in order to screen the evidence and bury the body of the deceased. The instruments which are used to assault the deceased and thereafter to bury the body viz., club and spade are also recovered. These factors have not been considered by the trial Court. Hence, we are of the opinion that the

judgment of the trial Court requires to be reversed in so far as accused Nos.1 and 3 are concerned.

27. Having taken note of the evidence available on record and giving anxious consideration to the circumstantial evidence, particularly discovery of body of the deceased at the instance of accused Nos.1 and 3 and no material is produced to show that accused No.3 participated along with accused No.1 in committing the murder of the deceased and he only helped to screen the evidence at the instance of accused No.1. Hence, he is liable to be punished under Section 201 Indian Penal Code and accused No.1 is liable to be convicted for the offences punishable under Section 302 as well as 201 of Indian Penal Code. There are no material to come to the conclusion that accused Nos.1 and 2 conspired each other in committing the murder of the deceased and there are no material to bring accused Nos. 1 and 2 within the purview of Section 120 (B) of Indian Penal Code as charged against the accused Nos. 1 and 2. With regard to other offence under Section 379 of Indian Penal Code, no doubt recovery of jewels was made and in order to bring the accused within the ambit of Section 379 of Indian Penal Code there are no materials. The same was included for making wrongful gain after committing the murder.

28. In view of the above discussion, we pass the following; i) The appeal is allowed in part.

ii) The impugned judgment of the trial Court dated 20.12.2012 is set-aside insofar as accused Nos. 1 and 3 are concerned.

iii) Accused No.1 is convicted for the offence punishable under Section 302 of Indian Penal Code. He is sentenced to undergo simple imprisonment for life with fine of Rs. 25,000/-. In case of default of payment of fine, he has to undergo simple imprisonment for a further period of six months. Accused Nos. 1 is also convicted for the offence punishable under Section 201 read with Section 34 of Indian Penal Code. Accordingly, he is sentenced to undergo simple imprisonment for a period of five years with fine of Rs. 5,000/-. In case of default of payment of fine, he has to undergo imprisonment for a further period of two months. The sentences shall run concurrently.

iv) Accused No.3 is convicted for the offence punishable under Section 201 read with Section 34 of Indian Penal Code. Accordingly, he is sentenced to undergo simple imprisonment for a period of three years with a fine of Rs.5000/-. In case of default, he has to undergo simple imprisonment for a further period of two months.

iv) Out of the fine amount of Rs.35,000/-an amount of Rs. 25,000/-is payable to P.W.1 and her other sister equally on proper identification.

v) The impugned judgment passed by the learned trial Judge against accused No.2 is hereby confirmed.

vi) The Court below is directed to secure accused Nos.1 and 3 and subject them to serve sentence. Needless to state that if accused No.3 was in custody during the course of trial, he is entitled for the benefit of set off under Section 428 of Cr.P.C.