

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

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

CRIMINAL APPEAL NO. 648 OF 2013

C/W

CRIMINAL APPEAL NO.866 OF 2013

Dated:17-07-2019

SMT. LALITHA vs. L.C. RAGHU and Others

## **JUDGMENT**

### **H.P.SANDESH**

These two appeals are filed by the complainant and also by the State against the judgment dated 30.03.2013 passed in S.C.No.167/2009 on the file of Principal Sessions Judge at Mandya acquitting the accused for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code.

2. The factual matrix of the case is that the deceased Chaitra was the daughter of C.W.5 Lalitha and C.W.19 Devegowda is resident of Mayannana koppalu village, Bindiganavile Hobli, Nagamangala Taluk. The deceased was engaged for marriage with accused No.01 three months prior to the alleged incident. On 19.07.2009 at about 10:00 a.m, the accused No.1 went to the house of C.W.1 Suresh, who is the

brother-in-law of the deceased in whose house she was there since 15 days prior thereto and took her on motorbike saying they would go to a temple at Sravanabelagona; thereafter, at about 4.00 PM C.W.1 received a phone call from one Kumara informing that Chaitra has died due to accident and her body was on tank bund of Agalaya in K.R. Pete Taluk. C.W.1 and others rushed to the spot, found the dead body of his sister-in-law Chaitra. C.W.1 also noticed injuries on the dead body and further the motorbike of accused No.1 and his helmet was lying there. Further, accused Nos.2 and 3 were also there. The body was shifted to the village of the deceased. C.W.1 suspected that the injuries noticed on the body was not the result of an accident instead, must have been of homicidal. When he went to Bindiganavile police station to lodge the complaint, he was directed to approach K.R. Pete police within whose jurisdiction the body was found. Therefore, he lodged the complaint in terms of Ex.P1 with K.R.Pete police on 20.07.2009 at 03.15 p.m. and also shifted the body to mortuary of K.R.Pete Hospital.

3. The Police based on the complaint have registered the crime and conducted the inquest panchanama as per Ex.P11 and subjected the body for autopsy. The Police have conducted the investigation and filed charge sheet against the accused persons for the offences punishable under sections 302 and 201 read with Section 34 of Indian Penal Code. That accused No.1

committed the murder by strangulation and also hit on her head created a scene that it was a case of road accident by keeping the dead body on the road and the motor bike and helmet on road side in lying position. He also got himself admitted to S.S.M.Hospital at Hassan for the injuries purported to have sustained.

4. The allegation against accused Nos.2 and 3 is that they being aware of the murder of Chaitra by accused No.1 with the intention of screening him from legal punishment and in furtherance of such common intention to screen evidence of offence to put up the show of Road Traffic Accident by placing the motor bike on the road side to believe that death of Chaitra was on account of motor bike accident.

5. The prosecution in order to prove the charges levelled against accused Nos.1 to 3 examined PWs.1 to 30 and got marked Exhs.P1 to P72 and also got marked M.O.Nos.1 to 14. The defence also got marked M.Os. 1 to 2. While cross examining the witnesses. The defence did not adduce any evidence. The Court below recorded the 313 statement of accused persons and thereafter heard the arguments of both the prosecution and also the defence counsel. The Court below after considering the

material on record acquitted all the accused. Being aggrieved by the judgment of acquittal the complainant i.e., the mother of the deceased who has been examined as P.W.7 filed Crl.A.No.648/2013 and the State has filed Crl.A.No.866/2013.

6. The grounds urged in the appeal filed by the complainant is that accused No.1 took the deceased with him is not in dispute. The opinion of the Medical Officer who conducted the autopsy over the dead body of the deceased had issued report in terms of Ex.P28 which clearly shows that the death of the deceased was due to combined effect of asphyxia consequent to ligature pressure over neck and coma consequent to head injury sustained. From the above reasoning, it is a clear case of homicidal death and accused ought to have explained the circumstances under which death of the deceased has occurred and the same has not been done. The learned trial Judge has committed an error in acquitting the accused persons. Accused Nos.2 and 3 who have shared the common intention along with accused No.1 in screening the evidence have committed the offence under Section 201 of Indian Penal Code and the same has not been considered by the learned trial Judge. The learned trial Judge has mechanically considered the material on record and failed to

assign the proper reasons while acquitting the accused persons. Hence the judgment requires interference on the ground that the same is perverse, unjust, illegal and improper. Hence, prayed to set aside the judgment of learned trial Judge.

7. Learned counsel for the appellant also, in his arguments, vehemently contended that the trial Judge has committed an error and failed to take note of the fact that on the very same day, the accused took the deceased in his motorcycle and he pretended as though it was an accident, but in fact he had committed the murder. The opinion of the Doctor, who conducted the autopsy, has categorically deposed that it is the case of homicidal and not an accidental death and the trial Judge failed to appreciate the same.

8. The State, in the appeal No.886/2013, contended that the Court below has committed an error in appreciating the relevant material adduced by prosecution and failed to evaluate the circumstances put forth to bring home the guilt of the accused. Though the case rests on the circumstantial evidence, the learned Judge failed to take note of the conduct of accused Nos.2 and 3 in collusion with accused No.1 tried to screen the evidence against the accused No.1. The Postmortem Report at Ex.P.28 categorically establishes that number of injuries

were noticed on the dead body, which are antemortem in nature and cause of death was due to combined effect of Asphyxia consequent ligature pressure over neck and coma consequent to head injury.

9. The evidence of prosecution, particularly, P.W.1 goes to show that accused No.1 who took the deceased on 19.07.2009 at about 9.30/10 a.m. on a motorcycle stating that they are going to temple. That clearly shows and establishes the involvement of accused No.1 in the homicidal death of the deceased. P.Ws.2 and 3 have categorically deposed that they heard the cry, which also fortifies that it was not a case of accident but it was a case of murder. The evidence of P.W.4 goes to show the presence of accused No.1 near the scene and P.W.6 has also spoken about the deceased going along with accused No.1 on a bike at about 10.00 a.m. The doctor, who conducted autopsy, has been examined as P.W.27 and stated that if there is a scuffle between two or more, there is possibility of sustaining the injury Nos.5 to 8. The injury Nos.5 to 8 are Imprint abrasion at the lateral angle of right eye, two circular contusions with multiple circularly placed imprint abrasions along with lateral aspect and posterior aspect of middle of left arm, grazed abrasions over lateral aspect right buttock and posterior lateral aspect of upper part of right thigh and Grazed abrasions over front of middle of right leg and lateral malleolus of right foot. The Court below

failed to consider the last scene circumstances and presence of accused No.1 having established near the scene of occurrence and also homicidal death. Accused has not given any explanation and instead he went and admitted in the hospital pretending that he has also sustained injuries on account of the accident. All these surrounding circumstance gives link that the accused only has committed the murder and hence, prayed this Court to convict the accused persons for the aforesaid offences.

10. The learned counsel appearing for State i.e., Additional SPP - Sri.I.S.Pramod Chandra, in his arguments, vehemently contended that P.W.1 who is brother-in-law, and also sister of the deceased, have deposed before the Court that accused No.1 only took the deceased in his motorcycle on the date of accident at 10.00 a.m. and also says that the deceased has spoken to P.W.7 over the phone. On enquiry, she informed that she is coming home for lunch. But when they did not come, accused No.1 was contacted over phone, but he did not respond to the phone and hence, SMS was sent as "call me" and he did not make any response. One person at around 4.00 p.m., called and informed that Chaitra is dead in a road accident and immediately, P.W.1 and others rushed to the spot. In the meanwhile, body was shifted by accused Nos.2 and 3. The learned counsel would contend

that the police during the course of the evidence have collected call detail records of accused Nos.1 to 3. In terms of Ex.P.58, it clearly shows that the call made by the accused No.2 on the previous night and he had spoken to accused No.1 at 10.30 p.m. for a period of 281 seconds and again, accused No.1 called P.W.1 at 9.28 a.m. and also accused No.2 called accused No.1 at 10.31 a.m. and thereafter, accused No.1 called P.W.1 at 1.20 p.m, by which information was sent that they were coming to house for lunch and then, at 2.17 p.m. accused No.1 called accused No.2 and accused No.2 called accused No.1 at 2.30 p.m. and thereafter, accused No.1 called accused No.3 at 4.11 p.m. When P.W.1 called accused No.1 from 4.44 p.m. to 6.19 p.m., he did not receive any phone call and send a message stating "call me". Learned counsel would contend that accused Nos.1 and 3 are residents of Lalankere and accused No.2 is not a resident of Lalankere. Learned counsel would contend that after committing the murder, accused No.1 took the assistance of accused Nos.2 and 3 to screen the evidence available against accused No.1. Hence, accused Nos.2 and 3 have committed the offence punishable under Section 201 of Indian Penal Code. The medical records also disclose that it is the case of homicidal and not a case of accidental

death on account of injuries sustained to head and forcible compression on the neck and strangulation. All these circumstances goes against accused No.1 and in spite of the same, the trial Judge has committed an error.

11. The learned counsel appearing for accused, in his arguments, vehemently contended that the Court below meticulously considered the evidence available on record and the case rests upon the circumstantial evidence and there are no eye witnesses to the incident. Accused No.1 has also sustained injuries in the accident and hence he went and admitted in the hospital. This is a case of accident and not a case of homicidal death. Apart from that there are no chain of circumstances. In the case of circumstantial evidence, there must be a link to each of the circumstances and if any single link is missing, the accused cannot be connected in the case on hand. The prosecution has failed to connect the accused persons for the charges levelled against them and the Court below in detail discussion formed its opinion that the prosecution has failed to prove the case against the accused persons and has given benefit of doubt in favour of the accused persons. Hence, there are no grounds to reverse the finding of the trial Court and prayed this Court to dismiss the appeal filed by P.W.7 – mother of the deceased and also the appeal filed by the State.

12. Having heard the arguments of both appellant counsel and also the counsel appearing for State and so also the arguments of respondents/accused counsel, the following points would arise for our consideration:

1. Whether the Court below has committed an error in acquitting the accused No.1 for the offences punishable under Section 302 of Indian Penal Code?
2. Whether the Court below has committed an error in acquitting accused Nos.2 to 3 for the offences punishable under Section 201 read with Section 34 of Indian Penal Code?

13. Point No.1:- We would like to consider the material on record keeping in view the contentions urged by respective appellant counsel and also the defense counsel. Before appreciating the same, we would like to discuss in short the evidence of prosecution. The prosecution examined P.Ws.1 to 30 and got marked Exs.P.1 to 72 and also MOs.1 to 14. Before considering the evidence available on record, we would like to mention in brief the case of prosecution and the charges levelled against the accused persons particularly against accused No.1, who committed the murder of deceased – Chaitra. Thereafter, he took the assistance of accused Nos.2 and 3 to

screen the evidence. It is also the charge that accused No.1 pretended it as an accident. The prosecution mainly relies upon the evidence of P.Ws.1 to 4, 6 and 7 and also evidence of Doctor – P.Ws.27 and 28 and so also the evidence of the Investigating Officer, in order to connect the accused i.e., recovery as well as collection of callrecords details of the accused. The prosecution also relied upon the evidence of panch witnesses and other witnesses.

14. Now, let us examine the evidence available before the Court. P.W.1 is the brother-in-law of the deceased, who in his evidence, has categorically stated that the deceased is his wife's sister. P.W.6 is his wife. Both of them, in their evidence, say that marriage of the deceased was engaged with accused No.1. Hence, deceased came to their house 15 days prior to the incident. Both of them, in their evidence, says that accused No.1 came to their house on 19.07.2009 at about 9.00 a.m. and took the deceased stating that they are going to temple at Shravanabelagola. Both of them went in a motorcycle. At around 1.30 p.m., Chaitra called over phone. At around 4.00 p.m., accused No.2 called and informed to P.W.1 that both of them have met with an accident on the tank bund. As a result, Chitra died. Immediately, both of them went to the spot and found the

dead body on the tank bund. The accused Nos.2 and 3 and P.W.5 were there at the spot and they did not notice any damage to the motorcycle. The accused Nos.2 and 3, when P.W.7 was crying, lifted the dead body to Autorikshaw and sent them along with body in the said Autorikshaw to the house of P.W.7. Both of them says that helmet was lying at the spot. Accused No.3 drove the Autorikshaw. They noticed the injury on the back side of the head and also found the injuries on the neck. Both accused Nos.2 and 3 kept the body in front of the house and informed that she died in the accident. P.W.1 and their family members said that it is not an accident, but it is a murder. They did not conduct any panchayath in the night as there was noelectric power in the night and took the body to K.R.Pete Police Station. Accused No.1 was in love with C.W.12. When the marriage was engaged with the deceased, accused No.1 planned to eliminate the deceased and accused Nos.2 and 3 were identified by both witnesses in the chief evidence through P.W.1. Material objects are also marked as M.Os.1 to 14. In the cross-examination of P.W.1, it is elicited that he got the complaint - Ex.P.1 written through one Prasanna of Nagamangala and he read the contents of Ex.P.1. He did not mention from how long the deceased was staying in

his house. They did not take the body, when they went to Bindiganavile police station. The police told that the incident has taken place within the jurisdiction of K.R.Pete Police Station and therefore complaint has to be given in the said Police Station and hence, complaint was given to K.R.Pete Police Station. They went along with dead body and body was not taken inside the Police Station, but it was taken to mortuary. When he was about to lodge complaint, at that time the scribe of the complaint came. He himself decided to lodge a complaint to police. He admits that the engagement had taken place on 19.04.2009 and there are no documents. It is suggested to him that he had an intention to marry the deceased and hence, he had brought her to his house and the said suggestion was denied. It is further suggested that in this regard, galata had taken place in the house on 19.07.2009 and hence, she left the house and committed the suicide and the said suggestion is denied. It is suggested that on 19.07.2009, the accused did not come to his house to take the deceased in his motorcycle. He admits that at no point of time, accused No.1 called him over phone and he has also not spoken to him. He admits that accused No.1 is agriculturist and accused No.3 was doing autorikshaw business. He further admits that

the deceased only told that accused No.1 was coming to their house and deceased herself spoke to him. He further admits that at around 4.00 p.m., he received a call from accused No.2 informing about the accident. Immediately himself and his wife went to spot and found the motorcycle where he suspected the murder. Both accused Nos.2 and 3 shifted the body in the Auto rickshaw belonging to accused No.3 and his wife accompanied the body in the Auto rickshaw. He admits that while giving complaint, he did not mention that the deceased had called and told his wife that they are coming to lunch. He also did not mention in the complaint that accused No.2 told that accused No.1 also sustained injury and he may also die. He further admits that in Ex.P.1, he did not mention that motor cycle and helmet was lying at the spot and there was no damage to motorcycle.

15. The evidence of P.W.6 is similar to the evidence given by P.W.1. In the cross-examination, it is elicited that as on the date of death, the deceased was in her house and she came to her house 15 days prior to the incident. It is suggested that accused No.1 was interested to marry her sister and talks were held and her parents

had enquired her husband and the same is admitted. It is suggested that accused No.1 did not come and take his sister in the motorcycle and the same was denied. However, she admits that the same was witnessed by herself and her husband and not seen by anybody else. At around 1.30 p.m., her sister called and told that they are coming back for lunch. She tried to contact accused No.1 and her sister and sent the message as "call me". P.W.6 reiterates that at around 4.00 p.m., accused No.2 called and told that both of them met with an accident and accused No.1 was sent to hospital for treatment. The body of the deceased was shifted in the Auto rickshaw belonging to accused No.3 and accused No.2 followed the said Auto rickshaw in his motorcycle. In the cross-examination of P.W.6, it is suggested that her husband was having relationship with her sister and in this connection, galata had taken place between them in the house on 19.07.2009 and the said suggestion was denied.

16. Now let us see the evidence of P.W.2 who is the circumstantial witness. In her evidence, she says that at around 1.30 p.m. herself and P.W.3 were grazing the cattle near the wetland and heard the screaming sound as "kapadi kapadi". After hearing the said screaming sound, they went little ahead and did not find anybody and came back. This witness is treated as hostile by the Public Prosecutor. In the cross examination she admits that the said screaming sound

was heard in the garden land of Nagaraj where Banana and Arecanut plants had covered the area. She further admits in the presence of public, she told that some one screamed.

17. The evidence of P.W.3 is also similar to the evidence of P.W.2. At around 4.00 p.m., she saw the dead body, and she did not find the presence of the accused persons at the spot. But, she claims that she told the public who gathered at the spot that she heard the screaming sound. This witness was also treated as hostile and cross-examined by the Public Prosecutor where she denied the suggestion that on hearing the screaming sound, questioned what they are doing.

18. P.W.4 is another witness. In his evidence, he says some one came in motorcycle and enquired that an accident had taken place and he replied that he did not notice any such accident. The said person went little ahead and get down from the motorcycle. When he questioned him, he asked to bring water and hence, he brought some water by wetting his towel and put the water to the mouth of the boy, who was lying and found another girl was lying. He did not enquired, whether she was alive or injured. But, an auto rickshaw came to spot and that boy was sent to hospital in the auto rickshaw and the person who enquired about him about the accident told that an accident has taken place. But, he does not

know his name and he says that he also found the motorcycle and identifies the same and also identifies the accused saying that accused No.1 is the person who drank the water and also he identifies the accused No.2. He says that he himself and accused No.2 only lifted the accused No.1. He was also treated as hostile. In the cross-examination, he admits that accused No.2 is the person who enquired about the accident. It is suggested that he also made attempt to provide water to the said girl, the water came out from her mouth. But, he claims that he did not go towards the said girl. However, he admits that accused No.2 told him that she had already died. In the cross-examination, he admits that accused No.2 did not seek any help to identify the place of accident and also he admits that he did not seek the help of anybody else. He volunteers that no one was there at the spot. He says that accused No.1 was near the place of land of Nagaraj. Motorcycle was lying on the tank bund and it was near the fencing. He claims that when the people came near the spot, he informed about the enquiring of a person, helping the said person and sending him in Auto rickshaw. But, he claims that he only told the Auto rickshaw Driver to take other person to the hospital. It is suggested that there was an ill-will between P.W.1 and accused Nos.1 and 3 in connection with politics, hence, he was deposing falsely before the Court and the said suggestion was denied. It is suggested that he is falsely deposing that accused No.2 enquired and sought his help and the said suggestion was denied.

19. P.W.5, in her evidence say that accused No.1 is her brother's son and accused No.3 is also her brother's son and both of them are agriculturists. They were having an Auto rickshaw. She did not support the case of the prosecution and she has turned hostile. In the cross examination, she admits that accused No.1 was staying in her house for studies and she does not know about the engagement that took place between him and the deceased.

20. P.W.7 is the mother of the deceased. In her evidence, she says that engagement had taken place between her daughter and the accused No.1 and she was in the house of P.W.1, 15 days prior to the incident. Later she came to know that accused No.1 went and took his daughter in the motorcycle. In the cross-examination, it is elicited that the deceased went to the house of P.Ws.1 and 6 fifteen days prior to the incident. It is suggested that his daughter was very close to her son-in-law, hence, he was insisting her to be with him as he intended to break down the engagement and the said suggestion was denied. It is further suggested that on the date of incident, galata took place between her son-in-law and two daughters, hence, the deceased had sustained injuries in the said incident and the same has been denied. P.Ws.8, 9 and 10 are the residents of

Ranganathapura, Garudanahalli and Vijayanagara, Bengaluru respectively. They have not supported the case of the prosecution. P.W.11 is the Inquest Mahazar witness and he says that he found the injuries on the dead body and mahazar was drawn in terms of Ex.P.11. The police seized the motorcycle in terms of Ex.P.12. He was treated as partly hostile. In the cross-examination, he admits that C.W.16 is the uncle's son of P.W.7. He came to know about the death of the deceased and P.W.7 is his relative. P.W.12 also did not support the case of the prosecution regarding the seizure of motorcycle. But, he claims that police came and took the motorcycle which he got released from KR Pet Court. P.W.13 is the hearsay witness, who gave the evidence in the line of evidence of P.Ws.1 and 6. In his evidence, he also says that he came to know that accused Nos.2 and 3 took the dead body and told that accused No.1 also sustained injuries. Hence, he was taken to Hassan Hospital and people, who were there at the spot informed the same. In the cross examination, he admits that when he went to the spot, the dead body was not found and he only enquired the people who gathered near the spot. When they went to lodge the complaint to the police, the body was near his brother's house. It is elicited that when he enquired near the place, people told that an accident had taken place. He claims that when the body was subjected to bath, he noticed the injuries near the neck and also the burn injuries on the leg. He informed the same to the police.

21. P.W. 14 only says about bringing the body near the house of the parents of the deceased. In the cross-examination, it is elicited that about two to three days prior to the death of deceased, she went to the house of her sister. He does not know how she passed away and the body was taken in the auto rickshaw.

22. P.W. 15 is the mahazar witness in respect of Ex.P.6. In the cross examination, he says that when he went to the spot already 50 to 60 persons had gathered and police were drawing the mahazar. He cannot tell who has signed Ex.P.6 other than him.

23. P.W. 16 is the resident of village of accused No.1. He did not support the case of the prosecution. So also P.W.17. P.W.18 is the mahazar witness regarding seizure of the stone and says accused no.1 produced the same from the bush. He is an attesting witness to Ex.P.21. In the cross examination, he admits that when he went to spot, only Police and accused No.1 were there. He came to know that the said garden land belongs to Nagaraj, son of Karigowda and he does not know whether he was there at the spot or not. The Police read the contents of the mahazar and took his signature. No conversation had taken place between him and accused No.1.

24. P.W. 19 did not support the case of the prosecution. He claims that in his presence motor cycle was not seized. However, in Ex.P.12, he identifies his signature. In the cross examination, a suggestion was made that in his presence motor cycle was seized and he denies the same. P.W.20 is the mahazar witness to Ex.P.12. He supports the case of the prosecution. In the cross examination, he admits that the distance between his village and the place of mahazar is 15 kms. He claims that he was taken from K.R.Pet to the said spot and motor cycle was standing in front of the house. P.W.21 is the mahazar witness in respect of seizure of helmet. He claims that accused no.1 produced the same. In the cross examination, it is elicited that police took him from Mayannana koppalu and he cannot tell who are residing in the said house, but there were some persons. The said helmet was in that house. It is suggested that he signed Ex.P.23 in the police station and the same was denied. It is stated that accused No.2 was not present and did not produce the helmet. He denies that in his presence Ex.P.23 was not drawn.

25. P.W.22 is the mahazar witness to the seizure of Auto Rickshaw in terms of Ex.P.15. He identifies his signature. In the cross examination, he admits the

distance between his village and K.R. Pet is 30 kms. He was taken from Mayannana Koppalu to K.R.Pet. He admits that before he went to police station, auto rickshaw was brought to the police station and he does not know who brought the same.

26. P.W. 23 claims that his signature was taken in the police station. He has turned hostile. In his cross examination, nothing is elicited. P.W. 24 also did not support the case of the prosecution. He claims that police took his signature when he went to police station. Though he was subjected to cross examination, nothing is elicited. In respect of Ex.P.24, suggestion was made that mobile was seized from accused No.2 and the same was denied.

27. P.W. 25 is the Assistant Engineer, PWD who prepared the sketch in terms of Ex.P.25. He was not subjected to cross examination. P.W. 26 is the Assistant Director of Forensic Science Laboratory. After examining, he gave the opinion that the blood stains on M.O.s 1, 3 to 8 relates to 'O' group. He was also not subjected to cross examination. P.W. 27 is the doctor who conducted autopsy and mentioned there were 10 injuries which were ante-mortem. According to him, the death was due to combined effect of asphyxia consequent ligature pressure over neck and coma consequent to head injury. He further

says that injury No.5 and 6 noted in the PM report could have been caused due to perpendicular force by any hard object. He cannot say whether the pressure over neck was earlier or injury to head. He further says that injury No.7 and 8 being in the nature of abrasions could have been caused due to parallel motion of skin against rough surface. In the cross examination, it is elicited that when he conducted autopsy her stomach was empty. He admits that he has not stated in Ex.P28 that there was food in semi solid state in small and large intestine. He says that it was possible that the deceased used to similar to an act like sexual intercourse. It is always not necessary that Hyoid and Thyroid cartilage should break in all homicide hangings. If a dead body is rolled down from a height on thorny place or object, necessarily there would be multiple abrasions on the body. But no such specific abrasions were noticed on the dead body of the deceased. If there was manual strangulation, the imprints of fingers or palm or even nail markings could be noticed on the neck. On dissection of neck also the imprints of manual strangulation could be seen.

28. P.W.28 is the doctor who treated accused No.1 at SSM Hospital. He says that accused No.1 voluntarily came to hospital on 19.07.2009 at 7.30 p.m. and he did

not notice any injury. He claims that he was having pain in the muscles and he was in the hospital for two days. He gave the wound certificate at the request of police. The same is marked as Ex.P.31. In the cross examination, it is elicited that it is a private hospital. They used to keep the records for having admitted him to hospital and the same would be available in the office of the hospital. He admits that the police have not recorded his statement. It is suggested he gave Ex.P.31 at the request of the police and the same is created, is denied.

29. P.W. 29 - PSI registered the complaint Ex.P.1 and sent the FIR in terms of Ex.P.32. He went and conducted the inquest. He found the injuries on the back side of the head, on the neck, bitten injuries on the left arm and lacerated wound on the thigh, left hand, fore-arm and right knee. Blood was oozing from the mouth. He also says that he also recorded the statement of relative witnesses. He was subjected to cross examination. He admits that he did not record the further statement of the complainant and delay has been explained in the complaint Ex.P.1. He admits that he did not enquire at what time the body was kept in the mortuary. He admits that before receiving Ex.P.1, he came to know about the death and he received the information on the previous day at 5.30 p.m. over the phone as accident. He went and did not notice any persons

on the spot.

30. P.W.30 is the Investigating Officer who conducted further investigation. He claims that he recorded the further statement of the witnesses, went to the spot, drew mahazar and seized motor bike and the helmet. He conducted the spot mahazar, apprehended accused, recorded the voluntary statements of accused and other witnesses, proceeded to spot and recovered the stone at the instance of the accused. In his further evidence, he says that the auto-rickshaw was also seized and accused No.3 voluntarily surrendered before him. He also says that he voluntarily shifted the body in his auto rickshaw. He secured the details of mobile calls of accused No.1 which is marked as Ex.P.58. He further says that accused No.2 has produced the said mobile which was used by accused No.1. P.W.30 further says accused No.1 in his voluntary statement has stated that he was in love with Nagarathna and forcible engagement was made with Chaitra on 19.04.2009, at the instance of his maternal uncle Yogesh. He claims that deceased was proceeding along with her brother-in-law Suresh and the same was witnessed by some people. He also witnessed the same and he was suspecting her. Even after engagement, when she was proceeding with him, he did not bring it to the notice of his maternal uncle being afraid of him. She was also making phone call through her sister's

mobile. On the previous day also, she gave missed call and thereafter he called her over the phone. She called him to go to the place of her sister taking the motor cycle of accused No.2 – brother, went to the house of P.W. 1 and deceased told him to go to Chunchanagiri but he had planned to go to Shravanabelagola. He pretended and called accused No.2 and informed him that accident has taken place and Chaitra passed away. After 45 minutes, he came to spot. He pretended that he had lost his conscious and thereafter he was sent to hospital. He was arrested by the Police. He was subjected to cross examination wherein it is elicited that the incident did not take place in the land of P.W. 15 i.e., Survey No.311/1. He did not investigate the place of incident which is mentioned in Ex.P.25. He also did not visit the hospital wherein accused No.1 took treatment. He did not visit Shravanabelagola Hospital and also did not record further statement of P.W.1. He admits Ex.P.58 has not been attested. No endorsement that it requires any attestation. He claims that the same was received at the instance of SP. He did not produce the documents evidencing the same that the same was received from the SP. He further admits that he did not seize the mobile of P.W. 1 and P.W. 6. He did not collect the details of phone calls of P.W.1 and accused No.6.

31. Having considered the evidence of prosecution witnesses P.Ws.1 to 30 and also Ex.P1 to Ex.P72 and Material Objects which are marked on behalf of the

prosecution, this Court has to analyze the material available on record whether it connects the accused in committing the murder.

32. Before going into the other material on record, first we would like to consider the evidence of P.W.27, who conducted the autopsy of the dead body and in his evidence, he has narrated that he found total ten external injuries and also on dissection of body, skull showed depressed fracture measuring 3 centimeter x 2 centimeter situate at left side of occipital region corresponding to injury Nos.1, 2 and 3 and brain covered with subdural and subarachnoid hemorrhage all over. According to P.W.27, the death was due to combined effect of asphyxia consequent ligature pressure over neck and coma consequent to head injury, sustained. On perusal of the Post Mortem Report Ex.P28, it is clear that death was due to combined effect of asphyxia and it is the evidence of the doctor that injury Nos.5 and 6 could have been caused due to perpendicular force by any hard object. Injury Nos.5 to 8 could have been caused, if a dead body were to roll on the rough surface. No doubt, in the cross-examination, it is elicited that, it is always not necessary that hyoid and thyroid cartilage should break in all homicidal hangings and in a scuffle between two or more, there is possibility of a

person in the scuffle sustaining injury Nos.5 to 8. Hence, it is clear that injury Nos.5 to 8 could have been caused due to scuffle between two or more persons. Regarding strangulation is concerned, it is elicited that imprints of finger or palm or even nail markings could be noticed in the neck. In the cross-examination, the learned counsel for the accused did not dispute the fact of the deceased sustaining injuries i.e., injury Nos.1 to 10 and also did not dispute the fact of depressed fracture situated at left side of occipital region i.e., corresponding injury Nos.1 to 3.

33. It is the specific evidence of the doctor that due to combined effect of asphyxia consequent ligature pressure over neck and coma consequent to head injury, the death has occurred. No where in the cross-examination of P.W.27-Doctor, it is suggested that these type of injuries could be caused on account of the accident. The defence is also not specific in the cross-examination and the same is total denial. When such being the circumstance, the evidence of P.W.27 is clear that the death is due to asphyxia consequent ligature pressure over neck. Hence, it is clear that it is a case of strangulation and also on account of injuries sustained to the head.

34. It is pertinent to note that in the cross-examination of P.W.7, learned counsel for the accused suggested that there was an incident of galata between

the husband and wife i.e., P.Ws.1 and 6 and also the deceased and in that incident, the deceased had sustained injuries and the very same suggestion was denied by P.W.6 and also an attempt is made that there was an closeness between P.W.1 and the deceased and the same had come to the notice of P.W.6 i.e., the wife of P.W.1 and as a result, she committed the suicide.

35. In one breath, it is suggested that accidental injury has taken place in the scuffle between P.Ws.1 and 6 and in another breath, it is suggested that she committed suicide and there is nothing on record to substantiate the same. Hence, it is a clear case of homicidal death and death is not account of accidental injuries.

36. Before considering the evidence of other witnesses, we would like to rely upon the judgments of Hon'ble Apex Court. The Hon'ble Apex Court in the recent judgment reported in *(2018) 1 SCC (CRI) 452* in the case of *STATE OF HIMACHAL PRADESH VS. RAJ KUMAR* principles are summarized that in a case of circumstantial evidence, circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Those circumstances must be conclusive in nature unerringly pointing towards guilt of the accused. Moreover, all circumstances taken cumulatively should

form a complete chain and there should be no gap left in the chain of evidence and the same must be consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence. Principles are also summarized as to how an approach should be while appreciating evidence of a witness. While appreciating an evidence of a witness, approach must be, whether evidence of witness read as a whole appears to be truthful in the given circumstances of a case. Once that impression is formed, it is necessary for Court to scrutinize the evidence more particularly keeping in view the drawbacks and infirmities pointed out in evidence and evaluate them to find out whether it is against the general tenor of prosecution case. If prosecution establishes the circumstances by cogent and convincing evidence, circumstances cumulatively taken, form a complete chain, pointing out that murder was committed by accused and none else. Burden under Section 106 of the Evidence Act, not discharged by accused also to be taken note of. Principles are also summarized with regard to failure of accused to explain incriminating circumstance against him and what is the effect. If accused does not throw light on fact which is within his knowledge, his failure to offer any explanation would be a strong militating circumstance against him. The Hon'ble Apex Court has taken note of the lacuna on the part of accused that he did not satisfactorily explain the missing of the deceased.

37. The Hon'ble Apex Court in the judgment reported in *(2012) 1 SCC (CRI) 1* in the case of *JASPAL SINGH, DEPUTY SUPERINTENDENT OF POLICE VS. STATE OF PUNJAB* in Paragraph Nos.78 and 79 held that the conduct of the accused subsequent to the commission of crime may be relevant. If there is sufficient evidence to show that the accused fabricated some evidence to screen/absolve himself from offence, such circumstance may point towards his guilt.

38. We also would like to refer the judgment of the Hon'ble Apex Court reported in *(2015) 1 SCC (CRI) 663* in the case of *STATE OF KARNATAKA VS. SUVARNAMMA AND ANOTHER*. In this judgment, the Hon'ble Apex Court has held with regard to the defective or illegal investigation, unfair conduct of Investigating Agency/suppression of material, the role of Court whether the infirmities in investigation and discrepancies pointed out in the prosecution evidence make out a ground for rejecting the prosecution version. It is held that though the Investigating Agency is expected to be fair and efficient, any lapse on its part cannot *per se* be a ground to throw out prosecution case when there is overwhelming evidence to prove the offence. The Hon'ble Apex Court in this judgment has also held regarding conduct of accused, falseplea taken by the accused, inference of adverse inference that may be drawn and also discussed with

regard to Section 106 of the Evidence Act and held, once the prosecution probalises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. It is however discussed, though Article 20(3) of the Constitution incorporates the rule against self- incrimination, the scope and content of the said rule does not require the Court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused. The Hon'ble Apex Court also observed in the judgment that, in an appeal against acquittal, if a possible view has been taken, no interference is required, but if view taken is not legally sustainable, Court has ample powers to interfere with order of acquittal. The Hon'ble Apex Court has also held regarding appreciation of evidence, discrepancies, contradictions and embellishments in inessential parts, reappraisal or re-appreciation of evidence in the context of minor discrepancies, capacity of witness to observe and to explain falsus in uno, falsus in omnibus. The Hon'ble Apex Court also summarized the principles of Evidence Act, 1872 of Sections 165 and 155 and held that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize

the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

39. We would also like to cite the judgment in the case of *SHARAD BIRDHICHAND SARDA VS. STATE OF MAHARASHTRA* reported in *AIR 1984 SC 1622* wherein the Hon'ble Apex Court has held regarding interested witnesses. Appreciation of evidence of close relatives of the victim have tendency to exaggerate or add facts, the Court should examine there evidence with great care and caution. The circumstances not put to accused cannot be used against him. It is also held that in a case of circumstantial evidence, onus is on prosecution to prove that chain is complete and infirmity or lacuna in prosecution cannot be cured by false defence or plea. The Hon'ble Apex Court in this judgment with regard to Section 3 of Evidence Act in a case

of circumstantial evidence laid down certain conditions:

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) The circumstances should be of a conclusive nature and tendency.
- (4) They should exclude every possible hypothesis except the one to be proved, and.
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction.

40. The Hon'ble Apex Court also in the recent judgment in the case of *SUKHPAL SINGH VS. STATE OF PUNJAB* reported in 2019 SCC ONLINE SC 178 regarding

motive is concerned has observed that it is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime, it will undoubtedly strengthen the prosecution version, based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the Court by way of circumstantial evidence be fatal to the prosecution.

41. Now let us examine the material available on record both oral and documentary evidence in the case on hand, keeping in view the principles laid down in the judgments referred to supra. It is the case of the prosecution that the accused came and took the deceased from the house of P.Ws.1 and 6, who are the husband and wife and their case is that the deceased was in their house from last 15 days. On the date of the incident, the accused No.1 came and took the deceased at 10.00 a.m. in his motor cycle. The witnesses P.Ws.1 and 2 have

spoken consistently with regard to the accused No.1 taking the deceased from their house. It is further important to note that, it is the evidence of P.Ws.1 and 6 that at around 1.30 p.m., the deceased called and told that she is coming to lunch but, she did not and they waited till 2.30 p.m. They again called the accused from the mobile of P.W.1. The accused No.1 did not respond to the phone call and hence, message was sent "call me". But again, there was no any response from the accused. However, at 4.00 p.m. P.W.1 received a phone call from accused No.2 that an accident has taken place and the sister of P.W.6 is no more and the injured i.e., accused No.1 was taken to hospital. The prosecution, in order to prove the said fact relied upon Ex.P58 i.e., call record details. The phone number of the accused is '9482106653'. It has to be noted that the incident has taken place on 19.07.2009 and that on 18.07.2009, accused No.1 sent the SMS to P.W.1 from 10.05 p.m. to 10.16 p.m. It is pertinent to note that on that very same night, accused No.2 spoke to accused No.1 for a period of 281 seconds from 10.30 p.m. It is also pertinent to note that on 19.07.2009, accused No.1 called the P.W.1 in the early morning at 9.28 a.m. that is just prior to visiting the house of P.W.1 and again accused No.2 has spoken to accused No.1 on the same day at 10.31 a.m. It is pertinent to note that, call was made from accused No.1 to P.W.1 at 1.20 p.m. It is also the evidence of P.Ws.1 and 6 that a call was made by the deceased in the phone of accused No.1 that they are arriving for

lunch and told to prepare the food. It is further important to note that accused No.1 called accused No.2 at 2.17 p.m. and so also accused No.2 called accused No.1 at 2.23 p.m. Hence, it is clear that accused No.1 was in touch with accused No.2 from the previous day. It is pertinent to note that P.W.1 sent SMS at 3.33 p.m. when they did not turn up. P.W.6, who is the sister of the deceased in her evidence, categorically states she had sent a message 'call me' when her calls were not attended to by the deceased and accused no.1. Calls were also made by accused No.1 to accused No.3 on the same day at 4.11 p.m. and P.W.1 called accused No.1 from 4.44 p.m. to 6.12 p.m. and also accused No.1 called P.W.1 at 6.19 p.m. It is pertinent to note that, P.Ws.1 and 6 in their evidence have categorically said that accused No.1 came and took the deceased and also about the phone calls made by the deceased at 1.20 p.m. to P.W.1 further strengthens the case of the prosecution that the deceased spoke to P.W.6 in the mobile of accused No.1. Hence, it is clear that they were together at 1.30 p.m. on the same day. It is pertinent to note that P.Ws.2 and 3, who are not relatives either to the accused or to the deceased in their evidence have categorically said that both of them have heard the screaming sound in the land of Nagaraj. When they made an attempt to see what is going on, there was no response. Though P.Ws.2 and 3 have turned hostile, in the cross-examination, it is elicited that they heard the screaming sound in the place where the dead body was found. It is also important to note that P.W.4,

who is also the circumstantial witness in his evidence categorically says that he saw the accused No.2 when he enquired P.W.4 as to where the accident has taken place, P.W.4 replied that he did not notice any accident. But accused No.2 went little ahead and got down from the motor cycle and told him that an accident has taken place and sought the help of P.W.4 to bring water from the pond and provided water to accused No.1 and also found a girl lying in the garden land but, he did not verify whether she was alive or not. Further, when the auto rickshaw came, accused No.1 was sent to hospital. He also identified accused No.1 and also identifies accused No.2 and both of them were there near the place of alleged incident. In the cross-examination also, nothing is elicited to disbelieve the evidence of P.W.1 that he found accused Nos.1 and 2 at the spot. Though this witness turned hostile to some extent, in the cross-examination made by the Public Prosecutor, he categorically identifies accused No.2 and also accused No.1. But only in the cross-examination of defence counsel, it is elicited that when he went near the spot, accused No.2 was there in the land of Nagaraj and he found the motor cycle which was in the down gradient place. He also contends that no one accompanied accused No.1 in auto rickshaw in which accused No.1 went to the hospital. But claims that he only told him to go to the hospital. He reaffirms in the cross-examination that, accused No.2 enquired him about the accident spot and he helped him and he told the same to the villagers, who had arrived to the spot. In

the cross-examination of P.W.4, it is suggested that there was ill-will between P.W.1 and also accused Nos.1 and 3 family and he categorically denies that he is not aware of the same. Nothing is elicited from the mouth of P.W.4 to disbelieve the evidence of P.W.4, who found accused Nos.1 and 2 at the spot. The defence also did not dispute the fact that the body of the deceased was transported in an auto rickshaw belonging to accused No.3.

42. The other chain of circumstances to be taken note of is that accused No.1 went to hospital and took treatment in the private hospital at Hassan. As held by the Hon'ble Apex Court in the judgments referred supra, i.e, *(2012) 1 SCC (CRI) 1* in the case of *JASPAL SINGH DEPUTY SUPERINTENDENT OF POLICE VS. STATE OF PUNJAB* and also in the case of *STATE OF KARNATAKA VS. SUVARNAMMA AND ANOTHER* reported in *(2015) 1 SCC (CRI) 663*, the conduct of the accused is very important. The Doctor, who treated the injured has been examined before the Court as P.W.28. The evidence of P.W.28 is clear that accused No.1 voluntarily went to hospital and told that he met with an accident. On examination, he did not find any external injuries but, only accused No.2 claims that he has got pain in his muscles and he was inpatient for a period of two days from 19.07.2009 to 21.07.2009. In the cross-examination of P.W.28, nothing is elicited except suggesting that Ex.P.31 was given at

the instance of police and the same is false document which was denied by the Doctor. The treatment given to accused no.1 is not disputed, except suggesting that Ex.P.31 is created.

43. It is pertinent to note that when the deceased died at the spot, accused No.1 did not sustain any external injuries and there was no need to go to hospital. According to him, it was an accident. The very conduct of the accused is important as he stayed in the hospital for 2 days without any injuries and also the fact that the deceased is none other than a person who was engaged with him. Though the defence disputes that there was any such engagement, in the cross-examination of P.W.6, sister of the deceased, a suggestion was made that when accused No.1 had intended to marry her sister and marriage talks were held, the parents of the deceased enquired with her husband about the said alliance and these are the answers elicited from P.W.1 also by the defence itself and the very suggestion clearly discloses that marriage talks were held between the accused No.1 and the deceased. Hence, the very defence that there was no such engagement cannot be accepted. When the deceased was with the accused and when she sustained injuries which are mentioned in Ex.P.28 – Post Mortem Report i.e., 10 in numbers and suffered the fracture at the occipital region, accused No.1 did not make any efforts either to shift her to the hospital or to take the dead body and instead, he himself gets admitted in the

hospital. The very conduct of the accused is doubtful and in the case of circumstantial evidence, the conduct of the accused also has to be looked into. It is for the accused to explain under Section 106 of the Evidence Act, what happened when the deceased was along with him and it is not the case of the defence also that both of them were not together. P.W.28 categorically says that he went and admitted to the hospital with the history of an accident and accused pretended as if they met with an accident. The telephone calls made between accused Nos.1 and 2 and also accused No.3 makes it clear that immediately after the incident of committing the murder, he called accused No.2 and also called accused No.3. Though the defence counsel disputed that Ex.P.58 is not attested document, there is no explanation on the part of the accused regarding making of phone call, in the cross-examination of witnesses that too particularly P.W.30 no suggestion was made to the Investigating Officer that no phone calls are made by accused No.1 either to P.W.1 or to accused Nos.2 and 3. It is further pertinent to note that there is no explanation on the part of accused Nos.1 to 3, how accused Nos.2 and 3 came to spot and who informed about the same. Accused, in the 313 statement also, nothing is stated with regard to, how accused Nos.2 and 3 arrived at the spot. We have already pointed out that it is a case of homicidal and not a death by accident as per Medical Evidence. Accused No.1 did not take the injured to the hospital and the very reason for not taking the injured to the hospital is

that he was confirmed that she is no more by his act of committing the murder and instead he pretended at the spot that it was an accident. He makes telephone calls to accused No.2 and the very presence of accused Nos.1 and 2 was identified by P.W.4 who helped accused No.2 to provide water to accused No.1. In the case on hand, P.Ws.1 and 6 have spoken that accused No.1 came and took the deceased in the Motorcycle and the telephone call made at 1.30 p.m. confirms that the deceased was along with accused No.1. The incident has taken place between 2.00 to 3.00 p.m. and accused No.2 went to spot at 4.00 p.m. on the basis of phone call of accused no.1 and he makes a phone call to P.W.1 informing about the accident and the death of the deceased. There is no explanation on the part of the accused as to how accused No.2 came to know about the telephone number of P.W.1. If the deceased was not taken along with accused No.1 in the motorcycle as disputed in the cross-examination, there is no explanation about accused Nos.1 and 2, how can they came to know about the telephone number of P.W.1.

6. Apart from that accused No.1 did not reply to the phone call of P.Ws.1 and 6 and message "call me" instead, accused No.1 gets himself admitted to hospital voluntarily. It is further important to note that the defence in the cross-examination has suggested that P.W.1 was very close to the deceased and he was interested to break the said engagement and further goes to the extent of

suggesting in the cross-examination of P.W.7 that on the date of incident, galata had taken place between P.Ws.1 and 6 and the deceased sustained injury to head which has been categorically denied by P.W.7 and no explanation as to how the deceased has sustained ten external injuries, including the fracture on the Occipital region. Further, there is no defence as to which weapon the assault was made to the deceased in the house of P.W.1 which is an additional link to the circumstantial evidence of the prosecution, since false defence was taken. It is contended that the death is due to suicide in one breath and in another breath that she has sustained the injury when the galata had taken place between P.W.1 and But, no cogent material is produced to this effect. On the evidence of the Doctor, who has been examined as P.W.27, it is clear that it is a case of homicidal death since death is due to Asphyxia consequent to ligature pressure over neck and coma consequent to head injury. It is further important to note that P.W.27 says that he cannot say whether the pressure over neck was earlier or injury to the head, as the time gap between the two was very short. Hence, it is clear that causing of injury to the head and also causing pressure over the neck was simultaneous and hence, it is a clear case of murder committed by accused No.1 and thereafter, he pretended as though it was an accident

and called accused Nos.1 and 3 to the spot. Accused No.1, without any reasons even though he has not sustained any external injuries, he left the place to take the treatment and he was an inpatient in the hospital for two days. Apart from that, police have also recovered the stone at the instance of accused No.1 which was used to assault on her head. The mahazar witnesses P.Ws.20 and 21 also support the case of recovery of stone at the instance of the accused no.1 which was there near the bush. The evidence of P.W.30 and mahazar witnesses categorically says that stone was recovered at the instance of the accused. Mobile was also recovered at the instance of the accused No.2. Phone details are collected in terms of Ex.P.58. A perusal of Ex.P.58 confirms the call made by the deceased to P.W.1 at 1.20 p.m. through the mobile of accused No.1 and also sending of SMS to the mobile of accused No.1 and further supports that accused No.1 made call to P.W.1 at 9.28 a.m. and took the deceased at 10.00 a.m. in the morning. Further, phone call confirms that phone was made to P.Ws.1 and 6 at 1.30 p.m. When they did not come back, several calls were made to accused No.1 by P.W.1 and the same were not answered. All these conduct discloses that accused No.1 has committed the murder of the deceased and tried to screen away the evidence pretending that it was an accident and gave the information to accused Nos.2 and 3 over phone and the fact that accused Nos.2 and 3 shifted the body to the house of parents of the deceased is also not in dispute.

45. Having considered the material on record i.e., the evidence of P.Ws.1, 4 and 6, who identified accused Nos.1 and 2 at the spot, coupled with medical evidence of P.Ws.27 and 28, the recovery, motive for committing the murder of the deceased, the prosecution undoubtedly proved the case against accused No.1 since the deceased and accused No.1 were last seen together. No doubt, prosecution did not examine any witness before the Court, in order to prove the fact of motive of the accused No.1. In the recent judgment stated supra, reported in 2019 SCC ONLINE SC 178 in the case of *SUKHPAL SINGH VS. STATE OF PUNJAB*, the Hon'ble Apex Court has observed that motive is necessarily required in the case of circumstantial evidence. But, the same cannot be a sole material. When the other circumstance supports the case of the prosecution, the Court has to evaluate the same. The Hon'ble Apex Court has further observed that it is undoubtedly true that question of motive may assume significance in a prosecution case based on circumstantial evidence. But, the question is whether in a case of circumstantial evidence, inability on the part of the prosecution to establish a motive is fatal to the prosecution case. It is true that if the prosecution establishes a motive for the accused to commit a crime, it would undoubtedly strengthen the prosecution version, based on circumstantial evidence, but that is for cry from saying that absence of motive for the

commission of the crime by the accused will irrespective of other material available before the Court by way of circumstantial evidence be fatal to the prosecution.

46. In the case on hand, the material available before the Court points out the very role of the accused No.1 and the very conduct of the accused also to be taken note of, as observed by the Hon'ble Apex Court in the above decisions. The false plea in the cross-examination of witnesses is also an additional factor to strengthen the case of the prosecution that the accused only committed the murder and thereafter, disappeared from the spot making arrangement calling upon the accused Nos.2 and 3, who shifted the dead body of the deceased to their parental house stating that it was an accident.

47. Having discussed the material evidence available before the Court and also taking the surrounding circumstantial evidence and no explanation on the part of the accused in 313 statement, we are of the opinion that the prosecution was able to prove the case against accused No.1 and the trial Judge has committed an error in considering the evidence available on record both oral and documentary and the same is not in the right perspective. There is a force in the contention of the complainant's counsel and also the State counsel that in spite of voluminous evidence

available before the Court, the trial Judge has committed an error in not appreciating the material in the right perspective. No damage is caused to the motorcycle in which accused No.1 and deceased travelled and the same also supports the case of the prosecution that if really an accident has taken place, there would have been damages to the motorcycle and the same is also one of the circumstance which goes against the accused in proving the case against accused No.1 by prosecution. The Court below has committed an error in not considering the evidence of P.Ws.1 and 6 with regard to both the accused and deceased last seen together. The Court below also did not consider the evidence of P.Ws.1 and 6 that just prior to committing the murder, the deceased called P.Ws.1 and 6 told them that they are coming for lunch. The Court below also did not consider the conduct of the accused No.1 and also the evidence of P.W.28 - Doctor, who deposed that the accused No.1 though had not sustained the injury got admitted in the Hospital for two days. The Court below also did not consider the fact that accused No.1 called accused Nos.2 and 3 to the spot and made arrangements to shift the body to the house of parents of the deceased. All these factors connect to each of the circumstances that accused No.1 himself has committed the murder. Hence, the Court below committed an error in appreciating the material evidence and hence, the findings of the trial Court is erroneous. Hence, we are of the opinion that it requires the interference of this Court by re-

appreciating the evidence available on record in the light of the principles laid down by the Hon'ble Apex Court in the judgments referred to supra and the very conduct of the accused No.1 without any explanation as envisaged under Section 106 of Evidence Act is significant. Hence, we are of the opinion that it is a fit case to convict accused No.1 for the offence punishable under Section 302 of Indian Penal Code by reversing the Judgment of the trial Court. Accordingly, we answer point No.1 as 'affirmative'.

48. Point No.2:- The further case of the prosecution is that accused No.1 committed the murder and accused Nos.2 and 3 also by sharing the common intention in order to screen the evidence, which is available against accused No.1 helped him and thus they have committed the offences punishable under Section 201 read with Section 34 of Indian Penal Code.

49. In order to prove this fact, there is no material before the Court that accused Nos.2 and 3 were aware of the fact that it is not an accident, but it was a murder. The fact that accused No.1 called accused No.2 and informed can be confirmed by looking into Ex.P.58 call details. But, there is no material that accused Nos.2 and 3 were aware of the fact that it was a murder. They might have shifted the body on the instruction of accused No.1, that does not mean that they shared the common intention in order to

screen the accused. None of the witnesses have spoken that both accused Nos.2 and 3 knowing fully well that accused No.1 had committed the offence, shifted the body. An ordinary prudent man knowing about the fact of accident, shifts the body to the parental house of the deceased and the same has been done. In the absence of any cogent evidence before the Court, it is not appropriate on the part of this Court to come to a conclusion that accused Nos.2 and 3 have committed an offence under Section 201 of Indian Penal Code. We are of the opinion that it is not a fit case to invoke the penal provisions of Section 201 against accused Nos.2 and 3. Hence, there are no reasons to interfere with the findings of the trial Court as against accused Nos.2 and 3. Accordingly, in view of the discussions made above, we pass the following:

#### ORDER

- i) Criminal Appeal Nos.648 of 2013 and 866 of 2013 are allowed in part.
- ii) Accused No.1 is convicted for the offence punishable under Section 302 of Indian Penal Code. He is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,00,000/- payable to P.W.7 – mother of the deceased. In case of default of payment of fine, he shall undergo further imprisonment for a period of one year.
- iii) The trial Court is directed to secure

accused No.1 and subject him to serve sentence.

- iii) The judgment of acquittal passed by the trial Court dated 30.03.2013 in S.C.No.167 of 2009 against accused Nos.2 and 3 is hereby confirmed.
- iv) Needless to state that if accused No.1 was in custody during the period of trial, he is entitled for the benefit of set off under Section 428 of Cr.P.C.