

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23rd DAY OF JANUARY, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1620/2025

C/W

CRIMINAL APPEAL NO.1905/2025

IN CRIMINAL APPEAL NO.1620/2025:

BETWEEN:

- 1 . SMT. N.V. LAKSHMI,
W/O LATE M. JAYARAM,
AGED ABOUT 48 YEARS,
R/AT NO.205,
SAI DEEP HORIZON APARTMENTS,
VINTENAL ROAD,
MURUGESHPALYA,
BENGALURU-560017. ... APPELLANT

(BY SRI. LEELADHAR H.P., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA,
BY HENNUR POLICE STATION,
BENGALURU-560043,

REPRESENTED BY SPP,
HIGH COURTS BUILDING,
BENGALURU-560001.

- 2 . RAJESH @ RAJI,
S/O LATE MUNIRAJU,
AGED ABOUT 38 YEARS,
R/AT NO.1/52,
VENUGOPALA SWAMY ROAD,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560084.
- 3 . NAVEEN KUMAR @ NAVEEN,
S/O T.N.GOWDA,
AGED ABOUT 39 YEARS,
R/AT NO.25, 2ND CROSS,
KANAKADAS LAYOUT,
NEAR DON BOSCO CHURCH,
LINGARAJAPURAM,
BENGALURU-560084.
- 4 . MOHAN,
S/O J. OM PRAKASH,
AGED ABOUT 30 YEARS,
R/AT NO.13, 2ND CROSS,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560 084.
- 5 . YOGARAJ @ YOGI @ RAJU,
S/O SATHYANARAYANA,
AGED ABOUT 30 YEARS,
R/AT NO.2/15,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560084.

... RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1;
SMT. URMILA A. PULLAT, ADVOCATE FOR R2 AND R3;
SRI. CHANDRANNA N., ADVOCATE FOR R4 AND R5)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.PC (FILED U/S 419 BNSS) PRAYING TO SET ASIDE THE JUDGMENT AND ACQUITTAL DATED 13.06.2025 PASSED BY THE LXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, IN S.C.NO.1169/2017 AND PASS THE APPROPRIATE ORDERS BY CONVICTING THE ACCUSED PERSONS FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 120B, 450 R/W SECTION 34 OF IPC.

IN CRIMINAL APPEAL NO.1905/2025:

BETWEEN:

- 1 . STATE OF KARNATAKA,
BY HENNUR POLICE STATION, BENGALURU,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560001. ... APPELLANT

(BY SMT. RASHMI PATEL, HCGP)

AND:

- 1 . RAJESH @ RAJI,
S/O LATE MUNIRAJU,

AGED ABOUT 38 YEARS,
R/AT NO.1/52,
VENUGOPALA SWAMY ROAD,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560084.

2 . NAVEEN KUMAR @ NAVEEN,
S/O T.N.GOWDA,
AGED ABOUT 47 YEARS,
R/AT NO.25, 2ND CROSS,
KANAKADAS LAYOUT,
NEAR DON BOSCO CHURCH,
LINGARAJAPURAM,
BENGALURU-560084.

3 . MOHAN,
S/O J. OM PRAKASH,
AGED ABOUT 38 YEARS,
R/AT NO.13, 2ND CROSS,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560084.

4 . YOGARAJ @ YOGI @ RAJU,
S/O SATHYANARAYANA,
AGED ABOUT 38 YEARS,
R/AT 2/15,
NEAR SHALINI SCHOOL,
LINGARAJAPURAM,
BENGALURU-560084.

... RESPONDENTS

(BY SMT. URMILA PULLAT, ADVOCATE FOR R1 AND R2;
SRI. CHANDRANNA N., ADVOCATE FOR R3 AND R4)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.PC (FILED U/S 419 OF BNSS) PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 13.06.2025 PASSED IN S.C.NO.1169/2017 BY THE COURT OF THE LXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH-67), THEREBY ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 120-B, 450 R/W SECTION 34 OF IPC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.01.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

1. Heard the learned counsel for the appellant/complainant in CrI.A.No.1620/2025, the learned

counsel for the appellant/State in Crl.A.No.1905/2025 and the learned counsel for the respondents in both the appeals.

2. Crl.A.No.1620/2025 is filed by the complainant and Crl.A.No.1905/2025 is filed by the State challenging the judgment of acquittal dated 13.06.2025 passed by the Trial Court in S.C.No.1169/2017 for the offences punishable under Sections 302, 120B, 450 read with Section 34 of IPC.

3. The factual matrix of the case of the prosecution before the Trial Court is that accused No.1 Rajesh was inimical with the deceased Jayaram for the reason that he committed murder of his mother Smt.Chandramma, who is the sister of deceased Jayaram. Accused No.1 with that animosity, in order to take revenge against the deceased, hatched a criminal conspiracy with accused Nos.2 to 4 to commit the murder of Jayaram and in execution of the said conspiracy, with common intention, went to Indiganala Village and purchased chopper and sickle to assault the

deceased. That on 07.06.2017 at around 07.00 p.m., when the deceased was in his water filter plantation which is situated at Hennur Main Road, accused Nos.1 and 2 went inside the water plantation with a pretext to talk with the deceased and committed house trespass to murder him. Accused No.2 had brought chopper and handed over the same to accused No.1 and immediately accused No.1 assaulted on the head of Jayaram, due to which he fell down. Thereafter, accused Nos.1 and 2 assaulted the deceased with chopper and committed the murder of deceased and fled from the place with accused Nos.3 and 4, who were waiting outside armed with sickle.

4. The police investigated the matter and filed the charge-sheet. The accused were secured and the accused did not plead guilty and claims trial and hence, the prosecution examined P.W.1 to P.W.23 and got marked the documents at Exs.P.1 to 41(b). The defence have not led any evidence and only got marked the documents at

Exs.D.1 and 2. M.O.1 to M.O.11 are marked by the prosecution. The accused persons were subjected to 313 statement. The Trial Court having assessed both oral and documentary evidence, comes to the conclusion that the prosecution failed to prove the case against the accused and acquitted the accused persons.

5. The main contention of the learned counsel for the appellant/complainant is that the entire prosecution story come into existence on the basis of the evidence of P.W.1 Smt.Lakshmi, wife of the deceased, who at the earliest point of time informed in writing about the act of accused No.1 and wherein the name of accused No.1 was named and also she has supported the case of the prosecution in her chief examination. Ex.P.1 is admissible in evidence under Section 6 of the Evidence Act, 1972. The Trial Judge failed to consider the material aspect i.e., Section 6 of the Evidence Act. The evidence of P.W.2 and P.W.3, wherein P.W.2, who came to the spot earliest point

of time have also supported the case of the prosecution. Subsequently, as per the information, P.W.3 informed P.W.1. There is no any exaggeration or lawful contact on the part of P.W.1 to implicate accused No.1. The said material is also not properly appreciated by the Trial Court. It is also contented that P.W.20 doctor who held the post mortem, found that there are about 20 injuries found on the vital part of the deceased body and almost all are chop wound, stab wound, penetrating wound, incised wound on vital part of the deceased and this aspect has also not been properly considered by the Trial Court. The entire material on record, as discussed by the Trial Court from paragraph No.36 onwards, shows that the Trial Court failed to consider earlier information and injuries on the dead body and the Trial Court stated that the evidence of P.W.1 to P.W.3 in view of the facts and circumstances of the case, may not be eyewitness of the incident, but in the natural circumstances

of the case, there is no any suggestion/allegation that the complaint is motivated.

6. The Trial Court failed to consider the substantial evidence and the chain of incident is first seen by P.W.4 and informed to P.W.3, which is incorporated in the complaint Ex.P.1 and the same cannot be disputed. The learned counsel would submit that it is not the case of the prosecution that mahazar Ex.P.5 and Ex.P.7 seizure mahazar, wherein at the instance of the respondent police, the investigating agency seized weapon involved in the offence and P.W.23 has stated that blood stains found on the weapons of human origin 'O' group found in the said article. Then that means, blood stains in the weapon of M.O.2 and M.O.3 corresponds to blood stains found in M.O.7, M.O.8 and M.O.10. This evidence supports the case of the prosecution and M.O.2 and M.O.3 were recovered at the instance of the accused. P.W.21 Investigating Officer recorded the voluntary statement of accused No.1, who

stated participation of accused Nos.2 to 4 and on that basis, weapons have been seized and vehicle being used. As such Ex.P.7 corresponds to M.O.2 and M.O.3 and photographs are also produced. As such vehicle being used and weapon found in the dicky of the car is not in dispute. The learned counsel also vehemently contend that the reasoning given by the Trial Court that the evidence placed before the Court not inspires the confidence of the Court is erroneous. When the recovery was made at the instance of the accused under Section 27 of the Evidence Act, coupled with the evidence of P.W.1 to P.W.5, the story of the prosecution has not been discussed by the Trial Court.

7. The learned counsel would contend that the incident took place on 07.06.2017 and the examination of P.W.1 was held on 20.12.2021 and cross-examination was started on 29.12.2022 after lapse of five years and hence, naturally there will be a variance in the evidence and that variance cannot be considered as demeanor on the part of

P.W.1. Likewise, P.W.2 was examined on 18.02.2022 and the cross-examination was commenced on 19.01.2023 after lapse of one year and evidence was recorded after lapse of six years of the incident. There cannot be any mathematical niceties while considering the evidence of the prosecution witnesses. P.W.3 and P.W.4 are the husband and wife and employee of deceased Jayaram in the water plant. P.W.3 received earliest point of information from P.W.4 husband and went to the spot wherein P.W.4 claims to have seen accused No.1 coming out of the water plant with weapon. It was immediately conveyed to P.W.3. This evidence also was not considered properly by the Trial Court. The learned counsel would vehemently contend that the conclusion of the Trial Court is erroneous. The recovery witness P.W.11, when M.O.4 and M.O.5 shown to the witness naturally could not identify the weapon because the weapons are in common nature in the evidence tendered after lapse of five years. P.W.23 expert stated that blood

stains found on the deceased is 'O' group finding contra and taking the same, the Trial Court has come to the conclusion that the prosecution has failed to establish the same. Hence, it requires interference of this Court.

8. The learned counsel appearing for the State, in support of the arguments in Crl.A.No.1905/2025, would vehemently contend that the judgment and decree of the Trial Court is cryptic in nature and not properly appreciated the evidence in the right spirit. The Trial Judge grossly erred in acquitting the accused and not properly appreciated both oral and documentary evidence, which led to miscarriage of justice. The evidence of P.W.1, P.W.2 and P.W.3, coupled with the evidence of P.W.4, who is an eyewitness, corroborates each other that accused was at the scene of the offence. The Trial judge committed an error that the evidence is not adequate. The evidence of P.W.4, although he identified the assailant at the time of the incident and in the open Court, the Trial Court has not

considered his evidence genuinely. The learned counsel also vehemently contend that based on the voluntary statement of the accused, various articles used in the commission of the crime were recovered and the same were subjected to FSL examination and blood stains were found on them i.e., blood group of 'O' positive. The evidence independently supports the findings of the Investigation Officer and the same is corroborated by expert evidence. Therefore, the Trial Court should have considered the evidence from the expert, which supports the case of the prosecution. All these materials were not properly appreciated by the Trial Court and erroneously comes to the conclusion that the prosecution failed to establish the motive to commit the offence. Hence, it requires interference of this Court.

9. Both the learned counsel for the appellant and the learned counsel for the State would vehemently contend that it is a fit case for setting aside the judgment of

the Trial Court and to convict the accused for the offences punishable under Sections 302, 120B, 450 read with Section 34 of IPC.

10. Per contra, the learned counsel for the respondents/accused, in his arguments would vehemently contend that the Trial Judge having considered both oral and documentary evidence available on record, in detail discussed the evidence of each of the witnesses and not believed the evidence of the prosecution witnesses. The learned counsel would vehemently contend that P.W.1 is the wife of the deceased and P.W.2 is the daughter of the deceased and both of them are not eyewitnesses to the incident. P.W.3 is the tenant under the deceased and she received the information from P.W.4 and P.W.4 Rajendra is the husband of P.W.3 and also a tenant under the deceased. P.W.4 identifies accused No.1. But the evidence of these witnesses does not corroborate the case of the prosecution. Though the prosecution relies upon other

witnesses, totally 23 in number, but all these evidence not supports the case of the prosecution. The recovery mahazar witnesses are not proved and they have turned hostile and nothing is elicited from their mouth in the cross-examination.

11. The learned counsel would also vehemently contend that P.W.20, who conducted the post mortem examination, deposed with regard to the nature of injuries of 20 i.e., chop wound, stab wound and other nature of injuries and death was due to multiple chop and stab wounds and the medical evidence is not supported by the evidence of the prosecution witnesses. Only based on the post mortem report, the Court cannot convict the accused. The learned counsel would contend that the Trial Court having considered the evidence of P.W.1 to P.W.3, discussed the same in paragraph Nos.38 to 42. Though P.W.4 says that he is an eyewitness and identified accused No.1, the evidence of the prosecution witnesses is not

consistent and not trustworthy. The evidence of other witnesses is discussed in paragraph No.43. P.W.6 and P.W.7 are the seizure mahazar witnesses and witnesses to seizure of the weapons used for commission of the offence and they have turned hostile. They stated that no articles were seized in their presence at the instance of the accused and the same is discussed in paragraph No.43. The learned counsel submits that each and every evidence of the prosecution witnesses was considered by the Trial Court and comes to the conclusion that the evidence of sole eyewitness i.e., P.W.4 indicates that he was not present at the spot during the incident, which is corroborated by the evidence of P.W.3 and hence, the evidence of P.W.4 cannot be termed as eyewitness version and there are no eyewitnesses to the incident and circumstantial evidence also not proved and hence, the Trial Court rightly comes to the conclusion that not a case for conviction.

12. Having heard the learned counsel for the appellant, the learned counsel for the State and also the learned counsel for the respondents, this Court has to re-appreciate the material available on record. Having re-assessed the material available on record and keeping in view the arguments canvassed by the respective learned counsel, the points that would arise for the consideration of this Court are:

- 1) *Whether the Trial Court committed an error in acquitting the accused for the offences punishable under Sections 302, 120B, 450 read with Section 34 of IPC in coming to the conclusion that the prosecution failed to prove the case against the accused beyond reasonable doubt?*
- 2) *What order?*

Point No.1:

13. The very case of the prosecution is that the accused persons went and committed the murder of

Jayaram. It is also the case of the prosecution that the deceased Jayaram and P.W.1, who is his wife, were running water plantation. They were also having house property which they had rented out to 10 to 12 tenants. The accused No.1 Rajesh was inimical with the deceased Jayaram that he committed the murder of his mother Smt.Chandramma, who is the sister of deceased Jayaram. With that animosity, accused No.1 was waiting for an opportunity to take revenge. The accused Nos.1 to 4 conspired with each other and with the common intention had purchased chopper and sickle in order to assault the deceased and the same was kept in the car and the same is used for inflicting the injury.

14. The prosecution mainly relies upon the evidence of P.W.1, who is the complainant and wife of the deceased. Her case is that she received a phone call from Smt.Bharathi, P.W.3 who informed her about the murder of her husband inside the water plant. Immediately herself

and her daughter rushed to the water plant in an auto and found the blood inside the plant wall and ceiling, but they did not find the dead body and the body was shifted to the hospital and found the dead body in the mortuary of Bowring Hospital. The police enquired her and she gave her statement against the accused. She speaks about conducting of spot mahazar and collecting of blood samples and conducting of inquest. On the next day, the police showed four accused persons and with regard to producing of weapons, she made the statement. The accused led them to Ramamoorthy Nagar Ring Road where the car was parked in vacant space. Accused No.1 showed the said car, weapons and the cloth, which were kept inside the car. The same was seized by drawing the mahazar and also they revealed about purchasing of weapons in Indiganala Village and they showed the place where they had purchased the same and they saw two persons selling iron weapons under a tree and the accused persons showed them stating that

they have purchased the weapons from them and the police drawn the mahazar. She also says that accused No.1 was quarreling with the deceased in connection with the water plant.

15. The other witness is P.W.2, who is the daughter of P.W.1 and the deceased. She is not an eyewitness, but she accompanied her mother when the information was received from Bharathi. She reiterates the evidence of P.W.1.

16. The other witness is P.W.3, who was looking after the water plant on behalf of the deceased Jayaram and she is a tenant under the deceased. It is her evidence that she left the plant in order to go to her native place and her husband gave lift to her to Hennur bus stop. She says that she received a call from her husband informing about the murder of Jayaram. Immediately she came back to water plant and on enquiry, public revealed that four unknown persons murdered the deceased.

17. The other witness is P.W.4, who is the husband of P.W.3. According to the prosecution, he is an eyewitness to the incident. But in his chief evidence he says that, after dropping his wife he returned to the house and went for walk and while returning to home at around 7.00 p.m., he found public gathered near the water plant. He saw four male persons stepping down from Pavani Jaladare and they were having deadly weapons like macchu in their hands and they left the spot in the car and one among the four unknown persons was Rajesh.

18. The other witness is P.W.5, who is the spot mahazar witness and he did not support the case of the prosecution and turned hostile to the case of the prosecution and nothing is elicited from his mouth. P.W.6 and P.W.7 are the seizure mahazar witnesses and they have not supported the case of the prosecution and turned hostile and nothing is elicited from their mouth. P.W.8 and P.W.9 are also the mahazar witnesses and they have not

supported the case of the prosecution. P.W.10 is the inquest mahazar witness and he has not supported the case of the prosecution.

19. P.W.11 is the person from whom the accused purchased the weapons used for committing the offence. He has not supported the case of the prosecution and so also P.W.12 regarding purchase of weapon not supported the case of the prosecution. P.W.13 is inquest mahazar witness and he has not supported the case of the prosecution. P.W.14 is the spot mahazar witness and he has not supported the case of the prosecution.

20. P.W.15 is the Head Constable, who showed the spot of the incident. He says that he was on Hoysala duty on 07.06.2017 and at about 07.10 p.m., he received the message to the effect that there was a quarrel at Hennur Village near water plant. Immediately he rushed to the spot and saw that the public had gathered near the water plant and noticed that one person was murdered. The police

also came to the spot and shifted the body to Bowring Hospital. The Investigating Officer came to the spot and conducted the mahazar and he has signed the mahazar.

21. P.W.16 is the PSI, who sent the dead body to Bowring hospital. Having received the information, he visited the spot and proceeded to Bowring hospital and met the wife of the deceased and took her to the police station and recorded her statement and case was registered.

22. P.W.17 ASI apprehended the accused persons and produced them before C.W.27 and also visited Bowring Hospital and conducted inquest mahazar and found 11 injuries on the dead body. P.W.18 is the person who saw the dead body of the deceased in Bowring Hospital. P.W.19 Police Constable sent the seized articles to FSL and he was deputed to collect the post mortem report. P.W.20 is the doctor who conducted the post mortem. P.W.21 is the Investigating Officer, who conducted the investigation. His evidence is that he recorded the additional voluntary

statement of accused Nos.1 to 4 and recovery is made at the instance of the accused by securing panch witnesses and drawn the mahazar in terms of Ex.P.7. He recorded the statement of the witnesses and filed the charge-sheet. P.W.22 is the Police Inspector, who prepared the spot mahazar and apprehended the accused and conducted the mahazar. P.W.23 is the doctor who examined the articles, which were sent to RFSL and gave the report that blood stains of human origin of 'O' group is found in the said articles.

23. The Trial Court considered the overall evidence and observed that the evidence of P.W.4 is that he is an eyewitness to the incident. P.W.4 in his evidence says that when he went out for roaming and came back near Pavani Jaladare, he saw gathering of people and he also saw four male persons and found one Rajesh among the four. He says that he dropped his wife to Hennur bus stand and called her at 8.30 p.m. Till then he was not knowing about

the murder of the deceased Jayaram. He has categorically stated that he was at Hennur bus stop till his wife returned from Lingarajapuram at 9.30 p.m. When he reached the spot, the dead body was shifted. On perusal of the cross-examination of P.W.4, it indicates that till 9.30 p.m. on the day of the incident, he was in Hennur bus stop and hence, there was no occasion for P.W.4 to witness the incident, which took place at 7.30 p.m. in Pavani Jaladare water plant. The oral evidence of P.W.4 is corroborated by the evidence of P.W.3 insofar his presence in Hennur bus stop is concerned. P.W.3 says that she received the information from her husband and her evidence is very clear that her husband dropped her to the bus stop at 8.00 p.m. She has narrated that she reached Lingarajapuram at about 9.00 p.m. and her husband called her over phone at 9.00 p.m. She has categorically stated that at 9.00 p.m. her husband was at Hennur bus stop. Taking into note of the evidence of

P.W.3 and P.W.4, the Trial Court comes to the conclusion that this evidence cannot be accepted.

24. The learned counsel for the appellant/victim relies upon the judgment of the Apex Court reported in **2017 CRL. L. J 1143** while discussing Section 6 *Res gestae* i.e., statements forming part of transaction regarding source of knowledge about the crime and evidence of prosecution witnesses completely inconsistent with contemporaneous record, statements by mother found to be not so shortly after the incident to form part of transaction. Evidence of prosecution witnesses on that basis have to be rejected. The counsel referring this judgment would submits that in paragraph No.16 discussion was made that P.W.1 and P.W.2 after receipt of information about the crime, they had reached the spot. Thereafter, P.W.1 and P.W.2 along with Chait Ram went to the Police Station and at their instance information was recorded and the same is relevant feature regarding the crime.

25. The counsel also relies upon judgment reported in **(1991) 3 Supreme Court Cases 627** in case of ***Khujji @ Surendra Tiwari V/s State of Madhya Pradesh*** and brought to notice of this Court even in respect of hostile witness, merely because a witness declared hostile, his entire evidence cannot be treated as effaced from the record, his testimony to the extent found reliable, can be acted upon. The counsel appearing for the appellant relying upon this judgment would contend that even though P.W.4 turned hostile during the cross-examination, but he has supported the case of prosecution in the chief evidence and hence, invoke Section 6 of Evidence Act.

26. In keeping the principles laid down in the judgments referred supra, this Court has to consider the evidentiary value of P.W.4. No doubt P.W.4 in his evidence speaks about the very presence of accused Rajesh in his chief evidence that deceased was murdered around 7:00 p.m., in the water plant and he returned to home around

7:00 p.m., and public were gathered near the water plant and he saw four male persons and found the said Rajesh accused No.1 and also identifies the accused and immediately he called his wife and intimated her by phone with the help of the public and he called to 108 for Ambulance and shifted the injured to the Hospital, but he was not fully examined on that day, request was made by the Public Prosecutor and the same was deferred and on the next date of hearing that is on 21.07.2022, he says that he knows the accused No.1 Rajesh, but he do not know the accused Nos.2 to 4. The Police did not shown the accused No.2 to 4 in the Police Station and also he did not give statement having identified them in the Police Station and hence, this witness was treated as a hostile. Learned Public Prosecutor suggested that he identified the accused No.2 to 4 in the Police Station and the same was denied and also suggestion was made that he gave the statement in terms of Ex.P.4 and the same was denied. This witness was

subjected to cross-examination by the counsel appearing for accused Nos.1 to 4 and he admits that he did not visit Police Station and also he was not called to the Police Station and he did not see the accused in the Police Station. Further, he admits that he is seeing the accused for the first time before the Court. He admits that to reach the Lingarajapuram it requires half an hour and his wife might have reached Lingarajapuram at 8:30 and he called his wife at 8:30 and till then he was not knowing about the murder of the deceased Jayaram and completely he turned hostile in the cross-examination and nothing is in support of the prosecution and admits that public also did not disclose the name of the Rajesh.

27. The counsel appearing for the appellant relying upon Section 6 and citation would contend that Court has to appreciate the same. The Court while appreciating the evidence also take note of the evidence of P.W.3 who is none other than the wife of P.W.3, but she categorically

says that her husband gave lift to her to Hennur bus stop and thereafter, boarded the bus Lingarajapuram at around 7:30 p.m., and she had received the call from her husband and informed about the murder of the deceased. She was asked to come back and she informed P.W.1 about the same.

28. P.W.3 says that on enquiry, her husband revealed that four unknown persons murdered the deceased and went back and also enquired the neighbor came to know that one amongst the four unknown persons was the nephew of the deceased that is son of her elder sister by name Rajesh and his friends. But, her evidence is very clear that when she enquired her husband, he replied that four unknown persons have murdered, but public only informed about Rajesh and hence, the evidence of P.W.4, whether it inspires the confidence of the Court also to take note of it. No doubt the counsel appearing for the appellant brought to notice of this Court that the P.W.4 was cross

examined almost after 7 months and there was a gap between the chief evidence and cross examination and chief evidence was completed only in the month of July and the P.W.4 made the statement that he did not make the statement in terms of Ex.P.4.

29. It is also important to note that it is not the case of P.W.4 that immediately when he comes to know about the incident and he found the accused Rajesh along with other three persons that has been deposed in chief evidence, but he did not inform the Police about the incident and involvement of this accused Rajesh to the Police and Court has to take note of evidence of P.W.15 who has received the first information about the incident and Head Constable in his evidence, he says that he was on Hoysala duty and on the same day at 7:10 p.m., he has received the message from 100 control room stating that there is a quarrel at Hennur near water plant and immediately he rushed to the spot and public were

gathered and one person was murdered. It is not the case of P.W.15 that this P.W.4 was very much present at the spot when he had visited the spot and his evidence is also very clear that thereafter, higher official came to the spot and shifted the dead body to Bowring Hospital. He came to know about the incident from the public that the deceased name is Jayaram and he is the owner of the water plant. Hence, it is clear that he came to know about the name of the person who died through public only, not from P.W.4 and hence, he was very much present and he witnessed the Rajesh is doubtful. If P.W.15 is spoken that at the time of incident, he found the P.W.4 at the spot, then there would have been force in the contention of the counsel appearing for the appellant/victim. In the cross examination also P.W.15 says that he rushed to the spot within 5 minutes immediately after he has received the information from the 100 control room and only through control room, he came to know about the incident and not through the P.W.4.

30. The other witness is P.W.16 who has received the information through wireless and having received the intimation, he proceeded to the hospital at 8:15 a.m., and evidence of this P.W.16 is also missing with regard to the very much presence of the P.W.4 and having taken note of evidence of P.W.3, though she claims that she has received the information and her evidence is very clear that she boarded the bus at 7:30 p.m., and she was not having any information till 7:30 p.m., and then only she has received the information, but her evidence is also clear that she has not received the information from her husband that accused Rajesh was present, but only came to know through the public and also the evidence of P.W.15 and P.W.16 is also clear that no information from the P.W.4 and only information through control room as well as wireless, they came to know about the same. When such being the case, the very contention of the counsel appearing for the appellant that this Court can believe the evidence of P.W.4

cannot be accepted. Though P.W.4 stated that accused Rajesh was present along with other accused, but his presence was doubtful at the time of the incident when he came back to the spot and found accused Rajesh along with other 4 persons. The evidence of P.W.4 is that when he came to the spot, by that time general public already present, but no eye witnesses to the alleged incidence except claiming P.W.4 as eye witness. Hence, it is clear that he is a chance witness. No doubt the evidence of P.W.23 is clear with regard to the cause of death is concerned and the same is also not helpful to the case of prosecution and there are injuries found in terms of Ex.P.38 and so also the FSL report. In order to connect the accused and recovery is concerned and mahazar was drawn, persecution relies upon P.W.6 to P.W.9, P.W.11 and P.W.14 and they have turned hostile. The counsel would contend that accused did not deny the signature on the mahazar and this Court cannot appreciate the material as like civil case that there is a

signature of the accused on the mahazar, but the contents of the mahazar has to be spoken by the independent witnesses and the same is not spoken and all of them have turned hostile and there is no evidence with regard to recovery.

31. Having considered the evidence available on record, there is no any linking evidence and there are no any eyewitness and P.W.4 is only a chance witness and not an eyewitness. Having considered the evidence which has been discussed in detail taking into note of the evidence of P.W.3, P.W.15 and P.W.16. The P.W.15 who suddenly rushed to the spot within 5 minutes having received the information at 7:10 p.m and not found the P.W.4 and P.W.4 also did not inform the P.W.15 about the incident is concerned. When such being the case, there is no any material before the Court to connect the accused and no doubt P.W.20 speaks about Ex.P.26. The injuries found on the body i.e., 20 injuries and it is a brutal act, the Court

cannot be looked into only the brutal act and there must be sufficient material to connect the accused. The FSL report-Ex.P.38 also will also not comes to the aid of the prosecution since recovery witnesses turned hostile. Having considered overall evidence available on record, we do not find any ground to reverse the finding of the Trial Court.

32. The other appeal is also filed by the State challenging the acquittal. The counsel appearing for the appellant would contend that the judgment of Trial Court is cryptic in nature and not properly appreciated in a right perspective. The evidence of P.W.1, P.W.2 and P.W.3 coupled with the evidence of P.W.4, who is an eye witness, not corroborates each other and that accused was at the scene of the offence according to P.W.4 but not trustworthy and though vehemently contend by the counsel appearing for the State and relies upon FSL examination report, blood stains were found on them that is blood group of 'O' positive. There is no any proof regarding seizure and

mahazar witnesses have turned hostile. Having considered both oral and documentary evidence available on record, there is no any linking evidence to connect the accused and comes to a conclusion that guilt of the accused is proved beyond reasonable doubt by the prosecution and hence, both the appeals fails and we answer the point as negative.

Point No.2:

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

ORDER

Both the appeals are *dismissed*.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MD/RHS