

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st 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.403 OF 2018 (C)

BETWEEN:

SUBRAMANYA H.T. @ LORRY SUBBANNA
AGED ABOUT 52 YEARS
S/O. BASAVA POOJARI
OCCUPATION: DRIVER
RESIDENT OF RAMA COMPLEX, 2ND CROSS
(GURUBHAVAN ROAD)
MARIGUDDA, HOSANAGAR TOWN
SHIVAMOGGA-577 418
KARNATAKA.

...APPELLANT

(BY SRI HARISH KUMAR M.C., ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH HOSANAGAR POLICE
REPRESENTED BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU-560 001.

...RESPONDENT

(BY SMT. RASHMI PATEL, H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 19-1-2018 PASSED BY V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, SITTING AT SAGAR, IN SESSIONS CASE NO.10017 OF 2017, THEREBY, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 20-1-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, 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 VENKATESH NAIK T)

The appellant has filed this appeal challenging the judgment of conviction and order on sentence passed against him in Sessions Case No.10017 of 2017 on the file of the learned V Additional District and Sessions Judge, Shivamogga, Sitting at Sagara.

2. The appellant was the sole accused and the respondent-State was the complainant before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.

3. Accused was tried and convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') on the charge that the accused and Nagarathna (hereinafter referred to as, 'deceased') were husband and wife, respectively, and they had four children, namely, Vidhey (PW1), Arjun (PW2), Abhinandhan (PW3) and

Vidhyarthi (DW1). The accused, being the driver of a lorry, often used to pick up quarrel with the deceased and children, and used to assault his wife. In the year 2016, DW1 purchased second-hand lorry and at that time, the deceased paid a sum of Rs.1.00 lakh to him, which was given by the accused. In that regard, there was scuffle between the husband and the deceased and on 14.4.2017 at 11:15 p.m. in their house, the accused with an intention to cause the death of the deceased, assaulted her with axe-MO1 on her left portion of the neck and back, thereby caused severe bleeding injuries, as a result of which, the deceased breathed her last. Hence, PW1 lodged a complaint on 15.4.2017 at 1:00 a.m. against the accused. A case has been registered; the Investigating Officer conducted investigation and filed the charge-sheet against the accused for the offence punishable under Section 302 of IPC.

4. After initiation of the charge-sheet, the committal Court took cognizance of the offence and case was committed to the Court of Sessions for trial. The trial Court on hearing both side, framed the charge against the accused for the offence punishable under Section 302 of IPC. As the accused denied the charge, the trial was conducted. In support of the case of the prosecution, PWs.1 to 13 were examined, Exs.P1 to

P34 and MOs.1 to 8 were marked. The trial Court examined the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and he did not lead any defence evidence.

5. On hearing the parties, the trial Court by the impugned judgment and order convicted the accused for the offence punishable under Section 302 of IPC and sentenced him for life imprisonment with fine of Rs.10,000/-.

6. The trial Court held that the charge against the accused was proved by the evidence of eyewitnesses, medical evidence and recovery of axe at the instance of the accused. Accused has preferred the above appeal questioning the said order of conviction and sentence.

Submissions of Sri Harish Kumar M.C., learned counsel for the appellant/accused:

7. The trial Court committed an error in convicting the accused without appreciating the entire evidence on record. The oral testimonies of PWs.1 to 3 are not corroborated with other witnesses. The accused is falsely implicated in the case. The entire case is based on evidence of interested witnesses and there is no material to connect the accused to the crime.

The trial Court has not properly considered and appreciated the inconsistencies, contradictions, and improvements in the evidence of the alleged eyewitnesses. The alleged mahazar drawn is created only for the purpose of this case and the trial Court convicted the accused on the basis of unreliable evidence of the witnesses. He further contended that injuries sustained by the deceased cannot be inflicted by the weapon like axe-MO1 and the time of death is not proved by the prosecution. The evidence adduced by the Doctor is inconsistent with the prosecution version. There is delay in registering an F.I.R. and the delay is not explained. The F.I.R. was registered after completion of investigation, which is not permissible in law. The impugned judgment passed by the trial Court is on the basis of conjecture and surmises and is not sustainable in law. Therefore, the alleged offence does not come within the purview of Section 302 of IPC and it may fall under Section 304 II of IPC. Hence, he prayed to allow the appeal.

In support of his arguments, the learned counsel for the accused relied on the following decisions:-

1. *Sukhbir Singh v. State of Haryana*, reported in (2002) 3 SCC 327.
2. *Virender v. State (NCT) of Delhi*, reported in (2002) 3 SCC 341.

Submissions of Smt. Rashmi Patel, learned High Court Government Pleader for the respondent-State:

8. The evidence of PWs.1 to 3 shows that the accused had ill-will with the deceased in respect of amount paid to DW1. Thus, on the day of the alleged incident, the accused scuffled with the deceased, assaulted her with axe-MO1 on her left portion of the neck and back, and caused four injuries, i.e., left posterior aspect of ear, lacerated wound on right backside of head, and incised wound on thoracic region (two injuries). Further, the children of the accused and the deceased, i.e. PWs.1 to 3, who are eyewitnesses to the incident, have clearly and consistently stated about the manner of assault made by the accused on the deceased. They have also stated that soon after the incident, they took their father, i.e. the accused, to the Police Station and handed over him to the Police and they have also stated about drawing of mahazar in their presence. She further contended that the oral evidence of PWs.1 to 3 is corroborated by the medical evidence and PW8-Dr. Lingaraju has clearly stated that he conducted autopsy on the dead body of the deceased and found four injuries and opined that the death of the deceased was due to hypovolumic and neurogenic shock as a result of injuries by axe. Further, the Investigating Officer seized bloodstained shirt-MO6 of the accused,

bloodstained nighty-MO7 of the deceased, bloodstained axe-MO1 and bloodstained gunnybag-MO2, which were sent to the FSL. As per the FSL report, these articles were stained with human blood with 'O' group. Hence, the oral testimonies of PWs.1 to 3 are supported by the medical and the scientific evidence. Therefore, the impugned judgment and order does not warrant interference of this Court. Thus, she prayed to dismiss the appeal.

9. On considering the submissions of both side and on examination of the material on record, the point that arises for consideration of this Court is:

"Whether the impugned judgment and order of conviction and sentence is sustainable?"

ANALYSIS

10. The case of the prosecution was based on:
- i. Motive;
 - ii. The evidence of eyewitnesses/PWs.1 to 3;
 - iii. Medical evidence; and
 - iv. Forensic evidence and the evidence of the Police officials.

Reg: Motive:

11. In a murder case, motive is the underlying reason that drives the act. While motive is not a legal requirement for conviction, especially when direct evidence is strong, it plays a significant, often psychological role in strengthening the case of the prosecution. Proof of motive provides additional support to findings of guilt, helping to connect the accused to the crime. If the eyewitness account is clear, reliable, and inspires confidence, the absence of motive is often considered irrelevant.

12. In the light of the above proposition, we have examined the evidence of the prosecution witnesses. As per the case of the prosecution, the accused was a lorry driver by profession. He handed over a sum of Rs.1.00 lakh to his wife, i.e. the deceased. In turn, the deceased handed over the said amount to her son, DW1-Vidhyarthi, for purchase of second-hand lorry. Hence, the accused was harassing the deceased mentally and physically. On the ill-fated day, the accused scuffled with the deceased, assaulted her with axe on her neck and back and thereby, caused her death.

13. In this regard, the prosecution examined PWs.1 to 3, who are eyewitnesses and children of the accused and the deceased. They have clearly stated that they are none other than the children of the accused and the deceased. DW1 is also one of their brothers. Prior to the incident, the accused was working as a lorry driver and he owned a lorry. There were frequent quarrels between the accused and the deceased. During such time, the accused used to stay outside the house. They further stated that on 14.4.2017 at 4:00 p.m., the accused picked up quarrel with the deceased and threatened her that he would eliminate her, if she fails to repay Rs.1.00 lakh to him, which was given to her son, DW1. On the same night between 10:30 p.m. and 11:15 p.m., the accused again came to the house, insisted the deceased to pay the money and as she tried to console him, he picked up axe-MO1, which was kept under the Godrej Almirah and assaulted on her neck and back. Nothing has been elicited to disbelieve the oral testimonies of PWs.1 to 3. Hence, the aspect of motive is proved and the evidence of the aforesaid witnesses regarding motive was rightly found credible by the trial Court.

Reg: The evidence of eyewitnesses/PWs.1 to 3:

14. In this case, the prosecution mainly rely on eyewitnesses account. Eyewitness testimony holds significant evidentiary value, providing direct evidence. The evidence of eyewitness requires the Courts to scrutinise factors like consistency, threats, and delays, though minor discrepancies do not automatically invalidate the entire account. However, the Courts often seek corroborating evidence to the evidence of eyewitness account. In essence, eyewitness testimony is powerful, but it requires careful judicial appreciation, balancing its direct insight with the known limitations of human perception and memory. The admissibility of eyewitness statement is based on the presumption that the witness speaking under oath is truthful, unless it is proved beyond reasonable doubt that the testimonies are untruthful and unreliable.

15. In this background, let us examine the evidence of the eyewitnesses. As per the prosecution, the accused (father of PWs.1 to 3) was harassing the deceased (mother) on silly reasons. The deceased paid Rs.1.00 lakh to her son, DW1, for purchase of second-hand lorry by collecting the amount from the accused, but DW1 failed to repay the said amount and

hence, the accused further ill-treated the deceased. On the date of the incident, PW1 and the deceased were in the house, PWs.2 and 3 were sleeping in the house of their grand-mother, which is adjacent to their house and DW1 was in Bengaluru.

16. To substantiate the same, the prosecution relied on the evidence of PW1. He has stated that he is the son of the accused and the deceased. His father, i.e. the accused, since beginning was harassing his mother, i.e. the deceased, for silly reasons. His mother made the accused to provide financial assistance to DW1 and accordingly, the accused paid a sum of Rs.1.00 lakh to DW1 for purchase of second-hand lorry, however, DW1 failed to repay the said amount to the accused. On account of this, the accused was ill-treating the deceased. He further stated that they have constructed the house in the site of their maternal grand-mother, Sharadamma (CW5) and their house is adjacent to the house of Sharadamma. He used to sleep in his house along with the accused and the deceased. His brothers, i.e. PWs.2 and 3, used to sleep in the house of Sharadamma. He further stated that on the date of incident, his brother, DW1, was in Bengaluru. On 14.4.2017, at about 4:00 p.m., the accused quarrelled with the deceased for repayment of Rs.1.00 lakh, which was given to DW1. Thus, the

accused made criminal intimidation to eliminate the deceased, if the amount of Rs.1.00 lakh is not paid and he proceeded to the market. Later, the accused came back to his house and between 10:30 and 11:00 p.m., he started quarrelling again with the deceased for repayment of money and stated that, since she is the root cause for all problem and if she is finished, all problems would be resolved and by saying so, he picked up axe-MO1, kept under the Godrej Almirah, and assaulted on left portion of her neck. Thus, PW1 held the hands of the accused, but the accused pushed him. Hence, PW1 screamed and at that time, PWs.2 and 3 came there and neighbour Shailesh-PW7, his grand-mother (CW5) and Shashikala (CW6) also followed them. When PWs.2 and 3 caught hold of the accused, even then, the accused again assaulted the deceased with axe on her back. Hence, the deceased suffered bleeding injuries. His further evidence is that, immediately, PW7 brought Omni Maruti van and CWs.5 and 6 also accompanied him to shift the deceased to the Government Hospital and PWs.1 to 3 took the accused to the Police Station and later, he came to know that his mother was dead, when she was taken to the Hospital. He further stated that on the same night, the Police came to the house, tied tape around the house, locked the house, took

photographs vide Ex.P2, drew spot mahazar vide Ex.P3 and seized MOs.1 to 5, i.e. axe, gunnybag, box containing dry blood oozing from the dead body, bloodstained pieces of cement, and without bloodstained pieces of cement, respectively. He further stated that on the same night, between 2:00 and 2:30 p.m., the Police called him to the Police Station and seized the shirt of the accused under seizure mahazar vide Ex.P19. According to PW1, the accused assaulted his mother with axe and committed her murder.

17. PW1 was cross-examined by the learned counsel for the accused. In his cross-examination, he has stated that the accused owned a lorry and was working as a driver of the lorry and often, he used to quarrel with the deceased. Whenever he used to quarrel with the deceased, he used to sleep outside the house and sometimes, inside the house. He categorically denied the suggestion that the deceased was suspecting the accused whenever the accused slept outside the house and in this regard, the deceased had filed application before the Santhvaana Kendra against the accused, wherein, the deceased was advised. He specifically stated that the accused was advised by Santhvaana Kendra. He further denied the suggestion that the deceased made the accused to give money

to DW1 for purchase of second-hand lorry and failed to repay the same, and the deceased had mortgaged her gold when finance people came to seize the lorry of DW1, as the deceased stood as a guarantor. However, he admitted that their house is at a distance of 30 feet from the house of their grand-mother (CW5).

18. He further stated that the accused was quarrelling with the deceased as DW1 did not pay the money and the deceased was not having any other source of income, except the income derived from her salary as she was working in Cashew Nuts Factory. He further stated that on the date of incident, between 3:30 and 4:30 p.m., there was quarrel between the accused and the deceased in respect of money. He further stated that the accused used to quarrel with the deceased frequently and he used to always show machete and axe during quarrel. He further admitted that after hearing the hue and cry of the deceased, neighbours did not come to his house as it was routine. However, when the accused was assaulting the deceased with axe, he did not try to snatch the axe, but he tried to hold his father's hand.

19. In order to corroborate the oral testimony of PW1, the prosecution examined PW2-Arjun, another eyewitness, who is also the son of the accused and the deceased. He has stated that the accused killed the deceased. Since beginning, the accused was harassing the deceased for silly reasons. He further stated that the deceased made the accused to part with Rs.1.00 lakh to DW1 for purchase of second-hand lorry, however, he could not repay it and hence, the accused ill-treated her. He further stated that on 14.4.2017, between 11:30 and 11:45 p.m., when PW3 and himself were about to sleep in the house of CW5, they heard hue and cry from their house. Thus, PW3 and himself went there and saw the deceased with bleeding injuries and the accused was holding axe-MO1. When they went to hold the accused, again the accused assaulted the deceased on her back. As a result, the deceased fell down in the pool of blood. Thus, PWs.1, 3 and himself caught hold of the accused and immediately, CWs.5, 6 and PW7 came there. PW7 brought his Maruti Omni van and CWs.5 and 6 took the deceased to the Government Hospital, Hosanagara. PWs.1, 3 and himself took the accused to the Police Station and later, he came to know about the death of

his mother. Thus, it is clear evidence of PW2 that the accused assaulted his mother with axe.

20. PW2 was cross-examined by the learned counsel for the accused and in the cross-examination, nothing was brought on record to discredit his testimony, his presence at the time of the incident and he trying to hold the accused while assaulting the deceased and later, his brothers and himself taking the accused to the Police Station. All other suggestions made by the learned counsel for the accused were denied by PW2.

21. In order to corroborate the oral testimonies of PWs.1 and 2, the prosecution examined PW3-Abhinandhan, who is also an eyewitness to the incident and the son of the accused and the deceased. In his evidence, he has reiterated the testimonies of PWs.1 and 2 and corroborated their evidence.

22. By looking into the evidence of PWs.1 to 3, it appears that on 14.4.2017 at about 4:00 p.m., the accused started quarrelling with the deceased in respect of non-payment of amount of Rs.1.00 lakh given to her and the accused also made criminal intimidation to eliminate her, if she does not repay the amount and he left the house. Again on the same day, between 10:00 p.m. and 12 midnight, the accused started scuffling with

the deceased stating that she is the cause for the problem and if she is eliminated, all problems will be solved and by saying so, he took axe, kept under the Godrej Almirah, and assaulted on her neck. Hence, PW1 tried to stop the accused and screamed, at that time, PWs.2 and 3 came there and neighbours Shailesh (PW7) and Hiriyanna (CW8), and grandmother, Sharadamma (CW5) also followed them. When PWs.1 to 3 tried to stop the accused, even at that time, the accused assaulted the deceased on her back. Then, they all caught hold of the accused and the deceased was retching from bleeding injuries. Hence, PW7 along with CWs.5 and 6 shifted the deceased to the Government Hospital and they took the accused to the Police Station. Later, they came to know that their mother was dead.

23. To corroborate the oral testimonies of PWs.1 to 3, the prosecution examined independent witness, Shailesh-PW7, who has stated that he is the neighbour of the accused and the deceased. There were frequent quarrels between the accused and the deceased. On 14.4.2017 between 11:15 p.m. and 11:45 p.m., when he was watching T.V. in his house, he heard sound from the house of the accused and the deceased. Hence, he rushed to their house, the deceased was lying in the

pool of blood, and the accused was holding axe-MO1, and PWs.1 to 3 were holding the accused. Hence, he immediately shifted the deceased in his Omni Maruti van to the Government Hospital, Hosanagara, along with Sharadamma (CW5) and Shashikala (CW6), where the Doctor declared the deceased brought dead. He further stated that the alleged incident occurred in respect of non-payment of amount by the deceased. In the cross-examination, nothing has been brought on record to disbelieve the testimonies of PWs.1 to 3 and 7 and there were no infirmities in their evidence, so also their presence at the scene of occurrence. Therefore, the prosecution can claim conviction based on their testimonies alone. The evidence of PWs.1 to 3 and 7, being eyewitnesses to the incident, remains unimpeachable and has been believed by the trial Court. Their evidence cannot be discarded only for the reason that they are the children of the accused and the deceased. Further, the location of the dead body, as mentioned by PW6-Chandrashekara B.E., Assistant Engineer, PWD, is undoubtedly corroborated by the sketch-Ex.P23 and inquest report-Ex.P28.

24. Perusal of evidence of PWs.1 to 3 and 7 goes to show that their testimonies are of paramount importance. Their

testimonies are deemed wholly reliable, credible, consistent with each other and unimpeachable. There was no delay in reporting the case to the Police. PWs.1 to 3 themselves handed over their father to the Police. PWs.1 to 3 are not interested witnesses, as they are the children of the accused and the deceased. There was no animosity between PWs.1 to 3 and the accused. Their testimonies are corroborated with independent witness, PW7. If we weigh the oral testimonies of PWs.1 to 3 and 7 alongside forensic and other circumstantial evidence, it satisfies the standard of proof beyond reasonable doubt.

Reg: Medical evidence:

25. Further, the prosecution relied on the medical evidence. PW8-Dr. Lingaraju conducted Post-Mortem examination on the dead body of the deceased and issued the report as per Ex.P25. As per the evidence of PW8 and Ex.P25, the deceased had suffered the following external injuries:-

1. *Left posterior aspect of ear measuring 12 c.m. x 3 c.m.*
2. *Lacerated wound on right backside of head measuring 7 x 3 c.m.*
3. *Incised wound on thoracic region (two injuries)*
 - a. *13 X 3 c.m. and 9 c.m. big*
 - b. *10 X 3 X 9 c.m. deep.*

Apart from external injuries, the Doctor also found internal injuries, viz., depressed fracture on left occipital region 5 x 3 c.m., injury to thoracic spinal bones T2 10-12 bones and fragment fractures.

The Doctor opined that the death was due to hypovolumic and neurogenic shock as a result of sustained injuries by axe-MO1.

26. The Doctor underwent intensive cross-examination by the learned counsel for the accused to explore as to under what circumstances oozing of blood would occur. However, nothing could be elicited during the course of cross-examination of Doctor so as to falsify his version. Learned counsel also tried to demonstrate that there is discrepancy in examining the weapon of offence, i.e. axe-MO1, but the defence could not elicit that there was no nexus between the injuries and axe-MO1. Even in the evidence of other witnesses, no other probable theory of death was elicited. Therefore, the trial Court was justified in holding that the death was homicidal.

Reg: Forensic evidence and the evidence of the Police officials:

27. In so far as recovery of incriminating article is concerned, the prosecution relied on the evidence of PW9-Manjunath, who has stated that on 15.4.2017, he had been to

Hosanagara Police Station in the morning, at that time, the accused was in the custody of the Police and Abhinandhan (PW3-son of the accused and the deceased) was also present, at that time, the Police seized bloodstained shirt of the accused-MO6 under seizure panchanama-Ex.P19 and the Police took photographs vide Ex.P18.

28. PW10-Surendra has stated that on 15.4.2017, the Police conducted spot panchanama vide Ex.P3 in his presence and seized MOs.1 to 5, i.e. axe, gunnybag, box containing dry blood oozing from the dead body, bloodstained pieces of cement, and without bloodstained pieces of cement, respectively, and the Police took photographs vide Exs.P5 to P14.

29. PW13-Manjunath M., Investigating Officer, has stated that he conducted investigation and during the course of investigation, he arrested the accused, seized bloodstained shirt of the accused under mahazar-Ex.P19 and conducted spot-cum-seizure mahazar-Ex.P3 and seized MOs.1 to 5 and sent the seized articles to the Forensic Science Laboratory for examination.

30. PW13-Investigating Officer, soon after the seizure of articles under Exs.P3 and P19, sent the same to the FSL for chemical examination and report. PW4-Dr. Chayakumari, Assistant Director, Forensic Science Laboratory, Davanagere, deposed that on 19.4.2017, she received seven sealed articles from the Investigating Officer for chemical examination and report. Thus, she opened the sealed cover, which contained the shirt, axe, gunnybag, box containing dry blood oozing from the dead body, box containing dry bloodstain pieces of cement, box containing without bloodstain pieces of cement, shirt of the accused and the nighty of the deceased. She examined those materials i.e., scrapings, mud samples, cuttings from the suspected areas were tested for blood by presumptive tests namely benzedine, phenolphthalein, leuko malachite-green tests. The presence of bloodstains was further confirmed by conducting Microscopic Test. The extent of the stains, their size and location were also noted. After conducting detailed examination, she was of the opinion that the articles sent to her viz., shirt, axe, gunnybag, dry blood scrapings, bloodstained cement pieces and the nighty were stained with 'O' group blood. She also conducted serology and as per her report, Item Nos.1, 2, 3, 4, 5 and 7 (MOs.6, 1, 2, 3, 4 and 7,

respectively), were stained with human blood and it is 'O' group blood.

31. Thus, MO6-shirt of the accused was stained with 'O' group blood. Therefore, the accused ought to have explained how his shirt was stained with 'O' group blood. It is not the case of the accused that his blood is also of 'O' group. The accused has not offered any explanation as to how his shirt was stained with 'O' group blood.

32. The evidence of eyewitnesses which is consistent and credible cannot be discarded on the ground of insignificant contradictions in their testimonies and in view of the fact that PWs.1 to 3 are sons of the accused and the deceased. PWs.1 to 3 are the eyewitnesses, who were present at the time of the incident, and throughout their lengthy cross-examination, they have not shaken their credibility. The accused has not raised any doubt as to the presence of PWs.1 to 3 at the scene of occurrence and at the time of incident. Thus, the trial Court based on the oral and documentary evidence on record, recovery, medical evidence and the FSL report rightly convicted the accused for the offence punishable under Section 302 of IPC.

33. In so far as the sentence is concerned, the learned counsel for the accused argued that as the occurrence had taken place without any premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel, the accused committed the offence and thus, he is entitled to the benefit of Exception 4 to Section 300 of IPC. Learned counsel further contended that the accused did not have any intention to cause death of his wife, as there were only three blows on the body of the deceased, which are neither cruel nor unusual to disprove him the benefit of the aforesaid Exception.

34. To avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in cruel or unusual manner. Exception is based on the principle that in the absence of premeditation and on account of total deprivation of safe control, but on account of heat of passion, the offence was committed, which the normal man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the Courts that a fight is not *per se* palliating circumstance and only

unpremeditated fight is such. The time gap between the quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder, but if the time gap is not sufficient, the accused may be held entitled to the benefit of this Exception.

35. In the instant case, concededly, there was enmity between the accused and the deceased in respect of non-payment of cash of Rs.1.00 lakh which was given to their son, DW1-Vidhyarthi, and there is allegation by the prosecution that before the occurrence, the accused had premeditated at 4.00 p.m. and on the same day, during night hours, the accused murdered his wife. As noted earlier, occurrence took place when the deceased, who conceded that in a couple of days, she would repay the amount. Thus, the accused immediately took axe-MO1 and assaulted her on the neck and back in the presence of their sons. Thus, the accused had clear intention to eliminate the deceased for non-payment of cash of Rs.1.00 lakh. Therefore, the time gap between the quarrel and the fight is stated to be long gap. So, Exception 4 to Section 300 of IPC is not amenable to the accused.

36. Harping back to the case of the prosecution for analysing the circumstances that gave rise to the occurrence of the incident, as per the evidence of PW1, the deceased never provoked the accused. But PWs.1 to 3 have clearly stated that the accused threatened his wife to eliminate her. These circumstances make it amply clear that there was no provocation by the deceased so as to say that the accused lost control over himself.

37. The case can be examined with reference to the nature of the injuries suffered by the deceased. Ex.P25 is the Post-Mortem report given by PW8-Doctor and the deceased sustained the injuries, i.e. 1. Left posterior aspect of ear measuring 12 cms x 3 cms, 2. Lacerated wound on right vertex 7 x 3 cms, and 3. Incised wound on thoracic region two in nos. (1. 13 x 3 cm and 9 cm deep and 10 x 3 x 9 cms deep). The Doctor has stated that the cause of death is due to hypovolumic and neurogenic shock as a result of sustained injuries by axe. As per his evidence, death might be possible soon after sustaining injuries as mentioned in the Post-Mortem report. Analysing of medical evidence of the whole case helps to draw inference that intention of the accused was to eliminate the deceased. Accordingly, the accused hit the deceased with

axe on her neck i.e. vital part and on her back on four occasions and allowed her to die at the spot. The intention of the accused is clear to takeaway the life. Thus, the trial Court has rightly convicted the accused considering the oral testimonies of the prosecution witnesses, especially PWs.1 to 3 and 7, the evidence of PW8-Doctor, Ex.P25-Post-Mortem report and Ex.P20-FSL report. Hence, we do not find any perversity in the order of conviction passed by the trial Court and the same is upheld. The sentence imposed by the trial Court commensurate with the gravity of the offence and the same also does not require any interference. Accordingly, we pass the following

ORDER

Criminal appeal is ***dismissed***.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK / MN