CRL.A NO.100528/2024

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 17th DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRL.A NO.100528 OF 2024

BETWEEN

STATE OF KARNATAKA
BY BILAGI POLICE STATION,
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DHARWAD-580011.

...APPELLANT

(BY SRI M.B. GUNDAWADE, ADDL. SPP.)

AND

KARIYAPPA S/O HANAMAPPA MALAGI
AGE. 46 YEARS, OCC. LABOURER,
R/O. KOVALLI VILLAGE,
TQ. BILAGI, DIST. BAGALKOT-587101

...RESPONDENT

(BY SRI N.D. GUNDE, ADVOCATE)

SAMREEN AYUB DESHNUR
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Location: HIGH COURT OF KARNATAKA DHARWAD BENCH
Date: 2026.06.18 13:22:47 +0530

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 28.06.2023 PASSED IN SESSIONS CASE NO.92/2017 ON THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT BAGALKOT, THEREBY ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE U/S 302 OF IPC AND SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 28.06.2023 PASSED IN SESSIONS CASE NO.92/2017 ON THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT BAGALKOT, THEREBY ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE U/S 302 OF IPC, BY ALLOWING THIS CRIMINAL APPEAL AND CONVICT AND SENTENCE THE ACCUSED- RESPONDENT FOR THE AFORESAID OFFENCES IN ACCORDANCE WITH LAW, IN THE INTEREST OF JUSTICE AND EQUITY.

CRL.A NO.100528/2024

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE)

This appeal is filed u/s 378 of Criminal Procedure Code, 1973 (Cr.P.C. for short) directed against the judgment of acquittal dated 28.06.2023 passed by the II Additional District and Sessions Judge, Bagalkot, in S.C. No.92/2017, whereby the accused was acquitted of the offence punishable under Section 302 of the Indian Penal Code 1860 (IPC), in connection with Crime No.64/2017 registered by the Bilagi Police Station.

2. For the sake of convenience, the parties are referred to according to their ranks before the Trial Court. The appellant herein was the State, and the respondent herein was the accused.

3. The case of the prosecution, in brief, is as follows:

On 03.04.2017 at about 7.00 a.m., the deceased, Parasappa, aged about 26 years, was proceeding on his

motorcycle bearing Registration No. KA-29/EA-5549 to attend coolie work. When he reached the road near the land belonging to Parameshwar Sannelli i.e., on Anagawadi – Kataraki Road near Kovalli Village, the accused allegedly intercepted him and intentionally assaulted him with a sugarcane-cutting chopper on his head and neck, resulting in his death. Thus, the accused is alleged to have committed the offence punishable under Section 302 of the IPC.

4. After completion of the investigation, the charge sheet was filed before the jurisdictional Court. The Trial Court took cognizance of the offence and issued summons to the accused. The accused appeared through counsel. After compliance with Sections 207 and 208 of the Cr.P.C., and upon hearing both sides, a charge for the offence punishable under Section 302 of the IPC was framed against the accused. The accused pleaded not guilty and claimed to be tried. Accordingly, the case was taken up for trial.

5. In order to prove the guilt of the accused, the prosecution examined in all 15 witnesses as PWs.1 to 15, got marked 39 documents as Exs.P.1 to P.39, and produced and marked Material Objects M.O.1 to M.O.10.

6. After completion of the prosecution evidence, the accused was examined under Section 313 of the Cr.P.C, and his statement was recorded. The accused denied all the incriminating circumstances appearing against him in the prosecution evidence and did not choose to lead any defence evidence. However, during the cross-examination of the prosecution witnesses, the defence got marked 4 documents as Exs.D.1 to D.4.

7. Upon hearing both sides and after considering the oral and documentary evidence on record, the Trial Court passed the impugned judgment acquitting the accused of the charge levelled against him.

8. Being aggrieved by the impugned judgment of acquittal, the State has preferred the present appeal on the following grounds:

i. The impugned judgment is illegal, erroneous, contrary to law, evidence, and the material available on record, and is therefore liable to be set aside.

ii. The learned Trial Judge erred in acquitting the accused of the charge without properly appreciating the evidence on record, resulting in a miscarriage of justice.

iii. The prosecution case is based on the testimony of eyewitnesses examined as PWs.1, 2, 3, 5, and 7. Though PW.2 did not fully support the prosecution case, the other witnesses have substantially supported the prosecution and identified the accused. The Trial Court failed to properly appreciate their evidence.

iv. PW.4, the wife of the deceased, and PW.11 have deposed that they came to know that the accused had assaulted the deceased.

v. The bicycle belonging to the accused was found at the scene of occurrence and was seized under Ex.P.11 mahazar. PW.6, who was examined to prove the said mahazar, has supported the prosecution case. The bicycle was marked as M.O.6.

vi. Pursuant to the voluntary statement of the accused, the blood-stained weapon alleged to have been used in the commission of the offence was recovered under Ex.P.15 mahazar in the presence of PW.8.

vii. PW.4, the wife of the deceased, has deposed regarding the motive for the commission of the offence.

viii. Following the arrest of the accused, the weapon and clothes allegedly belonging to him were recovered and subjected to forensic examination, which revealed the presence of human blood of Group 'A'.

ix. The Trial Court failed to properly appreciate the aforesaid evidence and circumstances. Therefore, the

order of acquittal is unsustainable and liable to be set aside. Accordingly, the appellant-State has sought for allowing the appeal and convicting the accused for the offence punishable under Section 302 of the IPC.

9. We have heard the arguments of Sri M.B. Gundawade, learned Additional State Public Prosecutor appearing for the appellant-State, and Sri Neelendra D. Gunde, learned counsel appearing for the respondent-accused.

10. We have carefully perused the impugned judgment, the evidence on record, and the other relevant materials placed before us.

11. The arguments of the learned Additional State Public Prosecutor are as follows:

i. **Firstly**, it is argued that there existed a strong motive for the commission of the offence.

(a) According to the prosecution, the deceased Parasappa was having an illicit relationship with Nagavva, the wife of the accused, and used to visit her house frequently. The accused had noticed the close relationship between the deceased and his wife.

(b) It is further argued that about two to three months prior to the incident, the wife of the accused had picked up a quarrel with the accused. Being aggrieved by the conduct of the deceased and his wife, the accused developed animosity towards the deceased and decided to eliminate him. Accordingly, when the deceased was proceeding on his motorcycle, the accused allegedly restrained him on the road, picked up a quarrel, and assaulted him with a sugarcane-cutting chopper. Therefore, it is argued that the prosecution has established a clear motive for the commission of the offence.

ii. **Secondly**, it is argued that there are eyewitnesses to the occurrence. PW.1– Bheemrao Nayak, PW.2–Hanamant Ambiger, PW.3–Shivanand Sanneli, PW.5–Bheemappa Kanakappanavar, and PW.7–Manappa Mudakannavar have deposed that they saw the accused running away after assaulting the deceased. Though some of these witnesses were treated as partially hostile, their evidence, to the extent that it supports the prosecution case regarding the involvement of the accused, ought to have been considered by the Trial Court. However, the Trial Court failed to properly appreciate their evidence and erroneously disbelieved their testimony.

iii. **Thirdly**, it is argued that the incriminating circumstance relating to the recovery of the bicycle (M.O.6) belonging to the accused under Ex.P.11 Inquest mahazar has been duly proved through the evidence of PW.6. However, the Trial Court failed to properly appreciate this material evidence.

iv. **Fourthly**, it is argued that pursuant to the voluntary statement of the accused, the blood-stained weapon (M.O.1), Blue T-shirt (M.O.9), and towel (M.O.10) belonging to the accused were recovered. These articles were subjected to forensic examination, which revealed the presence of human blood of Group 'A', corresponding to the blood group of the deceased. This material evidence has not been properly appreciated by the Trial Court while passing the order of acquittal. On these grounds, Learned Additional SPP sought to convict the accused by allowing the appeal.

12. *Per contra*, learned counsel for the respondent argued that the trial Court rightly appreciated the evidence on record. The witnesses projected by the prosecution as eyewitnesses were, in fact, not eyewitnesses at all. There is no direct evidence connecting the accused with the offence, and the evidence of the prosecution witnesses is not sufficiently credible to warrant acceptance. The trial Court, having properly appreciated the evidence on record, rightly

concluded that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. Therefore, learned counsel for the respondent prayed for dismissal of the appeal and confirmation of the impugned judgment.

13. The learned counsel for the respondent has relied upon the following decisions in support of his submissions:

i. *Ravi Sharma Vs. State (Government of NCT of Delhi) and Another*[1]

ii. *Radheshyam Bhagwandas Shah Vs. State of Gujaraj and Another*[2]

14. Having heard the submissions of both sides, we have considered the evidence of the prosecution witnesses.

15. The point that arises for our consideration is:

"Whether the trial court was justified in acquitting the accused for the offence P/U/S 302 of IPC?"

[1] (2022) 3 SCC (Cri) 501

[2] (2022) 3 SCC (Cri) 517)

16. For better appreciation, the particulars of the witnesses examined by the prosecution and the substance of their evidence are as follows:

i. PW.1 – Bheemrao Narayan Nayak; According to the prosecution, this witness heard a quarrel between the accused and the deceased around 6:00 A.m. He stated that a tam-tam vehicle driver came running towards his house, and upon enquiry, he was informed that a person was lying on the road in a pool of blood. PW.1 then went to the spot and saw the deceased. He also gave a statement before the Magistrate under Section 164 Cr.P.C., marked as Ex.P1. As PW.1 did not fully support the prosecution version, he was treated as partly hostile.

ii. PW.2 – Hanamant Ramappa Ambiger, is the owner and driver of a tam-tam vehicle. He deposed that on 03.04.2017, while driving with PW.7-Manappa Mudakannavar, he saw a person lying on the road. Manappa Mudakannavar asked him to stop the vehicle, and upon stopping, he saw the deceased and a person running away wearing a blue T-shirt and black pant from the spot. He too was treated as partly hostile by the prosecution.

iii. PW.3 – Shivanand Mallappa Sanneli, at the time of the incident, was working in his land. On hearing a

commotion (ಗಲಾಟೆ), he went to the place of occurrence. The tam-tam driver informed him that the accused had run away from the spot. He also deposed that on the day of the incident, at about 4: 00 P.m. the PS1 came to the spot along with the accused who then handed over the weapon (M.O.1) which was thrown in the bush Sec. 164?

iv. PW.4 –Rekha W/o Prasappa Malagi, Wife of the deceased, stated that the accused had borrowed Rs.3,00,000/- from her husband. When the deceased demanded repayment, quarrels arose between them. On 03.04.2017, the deceased left home on his motorcycle at about 7.00 a.m. She later learnt from one Paravva CW – 13 who informed that her husband had been murdered and that the accused was responsible. Further she deposed that the complaint was written by C.W.14 and that the police never called her to the police station to record her statement. She was also treated as partly hostile.

v. PW.5 – Bheemappa Yankappa Kanakappanavar, stated that at about 7.00 a.m., while in his land, he heard a commotion (ಗಲಾಟೆ) and went to the spot along with CW.3 where he found the deceased lying dead on the road. He claimed to have personally seen the accused assaulting the deceased and then fleeing from the spot.

vi. PW.6 – Siddappa Sanneli, a panch witness to the inquest mahazar, (Ex.P11.) stated that the inquest was conducted at the spot and that the police also conducted a spot mahazar (Ex.P18) seizing the deceased's motorcycle and the accused's bicycle. The bicycle was marked as M.O.No.6, and photographs of the motorcycle were marked as Exs.P5 and P6.

vii. PW.7 – Manappa Bheemappa Mudakannavar, according to the prosecution, on the date of the incident at about 7.00 a.m., he was travelling with PW.2 near Kataraki Road. He claimed to have seen the accused assaulting the deceased and then running away after throwing the sickle into the bushes. He stated that the accused was wearing a blue T-shirt, which was marked as M.O.No.9.

viii. PW.8 – Kariyappa Pandappa Bilagi, is a witness to the seizure mahazar, (Ex.P15.) He deposed that Pursuant to the voluntary statement of the accused, the weapon used in the commission of the offence, marked as M.O.No.1, was recovered. He further deposed that the accused showed the place where the deceased was killed, leading to the preparation of a panchanama (Ex.P18) and that the accused also produced a blood-stained blue T-shirt and towel, which were recovered and as M.O.No.9, and M.O.No.10

respectively, as per Ex.P.21. He also spoke about the seizure of the deceased clothes marked as M.O.No.2 to M.O.No. 4 (T-shirt, black pant, and baniyan) as under Ex.P.24.

ix. PW.9 – Beerappa Appanna Mulimani, a hearsay witness. Has stated that at about 7.00 a.m. he learnt from PW.3 over the phone that the deceased had been murdered. He then went to the spot, saw the dead body, and learnt that the accused had assaulted the deceased with an iron axe (ಕೊಯ್ತಾ) and had ran away. He further deposed that he wrote the complaint at the instance of PW.4, as per Ex.P4. He deposed that the complaint states the illicit relationship as the motive.

x. PW.10 – Venkappa Biradarpatil, the engineer who, at the request of the Investigating Officer, prepared the sketch marked as Ex.P.25. Further, he deposed that the tam-tam driver gave him the details of the incident vehicle stating that he had witnessed it personally. He was told that the motive was allegedly an illicit affair between the deceased and accused's wife.

xi. PW.11 – Hanamant Malagi, another hearsay witness, stated that he came to know that the accused had murdered the deceased, and upon visiting the spot, saw the

dead body. He further stated that the motive for the crime was allegedly an illicit intimacy between the deceased and the accused's wife.

xii. PW.12 – Mahmadhusen Janglisab Walikar, is the Head Constable who received the complaint and registered the FIR.

xiii. PW.13 – Jayaram Desu Lamani, is the Head Constable who spoke about the arrest of the accused and seizure of material objects.

xiv. PW.14 – Shrishail Neelappa Gabhi, is the Police Inspector who conducted the investigation.

xv. PW.15 – Dr. S.K. Yadahalli, is the Medical Officer who conducted the post-mortem examination over the dead body of the deceased.

17. On the basis of the aforesaid evidence, the learned Additional State Public Prosecutor contended that though some of the witnesses have partly turned hostile, their evidence, regarding the involvement of the accused corroborates each other.

18. In view of the aforesaid evidence of the witness and the contention of the Additional SPP this Court is required to analyze whether any contrary evidence is elicited from the prosecution witnesses during cross-examination, and whether the evidence adduced by the witnesses examined by the prosecution is sufficiently credible to be relied upon?

19. In the present case, the fact that the death of the deceased was homicidal is not disputed by the respondent/accused, therefore, it is unnecessary to undertake a detailed inquiry as to whether the death was homicidal or not.

20. Learned counsel for the respondent/accused contended that, although the accused does not dispute the homicidal death of the deceased, he has denied his involvement in the commission of the offence. It is submitted that the accused neither assaulted the deceased nor committed his murder.

21. Learned counsel for the respondent/accused argued that PW.1, who is projected as a material witness by the prosecution, has deposed that he only heard a commotion (“galata”). In his cross-examination, it was suggested to him that any commotion alleged to have

occurred on the road could not have been heard by him; however, the suggestion was denied. It was further suggested that the driver of the tam-tam vehicle, who allegedly informed him about the incident, was not known to him, which fact was admitted by PW.1. It was also suggested that he had not seen the accused running from the spot, which suggestion was denied by him.

22. The learned Addl. SPP argued that, despite an elaborate cross-examination, nothing material was elicited from PW.1 to discredit his testimony. PW.1 has categorically deposed that he saw the accused running away from the scene of occurrence.

23. *Per contra*, the learned Additional State Public Prosecutor (Addl. SPP) submitted that, on consideration of the evidence on record, the prosecution has successfully established the guilt of the accused in committing the murder of the deceased and hence the trial Court has failed to properly appreciate the evidence available on record.

24. On perusal of the evidence of PW.1, it is evident that his testimony in cross-examination has substantially withstood scrutiny. He has consistently stated that the driver of the tam-tam vehicle informed him about the

incident and that he immediately rushed to the spot, where he saw the accused running away.

25. However, learned counsel for the respondent/accused submitted that there existed a dispute between the accused and CW.14, who has been examined as PW.9. It is contended that, owing to the said dispute, PW.9, despite not having witnessed the incident, has deposed against the accused.

26. The trial Court disbelieved the evidence of PW.1 on the ground that there were contradictions in his testimony.

27. A careful consideration of the overall evidence of PW.1 reveals that he has not fully supported the prosecution case and has partially turned hostile. Further, although PW.1 claims to have seen the accused running away, neither he nor the other persons gathered at the spot made any effort to chase or apprehend the accused. Had PW.1 actually seen the accused fleeing from the scene, it would be natural for him and the other persons present to pursue and apprehend him.

28. Therefore, notwithstanding the fact that PW.1 has stated that he saw the accused running away, in view of the contradictions in his evidence with respect to the same, his testimony does not inspire sufficient confidence in the mind of the court and cannot be readily accepted to hold that he is a reliable witness.

29. Coming to the evidence of PW.2, although he has deposed that he saw the accused running away from the spot, he too has not fully supported the prosecution's case with respect to the same and has partially turned hostile. Consequently, his evidence also does not inspire confidence and is not sufficiently credible to be relied upon.

30. The evidence of PW.3 reveals that he heard a commotion at the spot. However, in his cross-examination, he categorically stated that he did not witness the accused assaulting the deceased. He further deposed that he saw the accused running away from the spot. Though he stated that he saw the accused running from the scene, he is not an eyewitness to the actual assault inflicted upon the deceased. Therefore, his evidence is only hearsay in nature and does not establish that he witnessed the occurrence of the incident. He further denied that he made any statement regarding the accused having produced the weapon to the

police when he was brought by the PS1 to the spot, hence, turning hostile in relation to the same.

31. Coming to the evidence of PW.4, she is also a hearsay witness. Further, there are material contradictions in her testimony. PW.4, who is none other than the wife of the deceased, is a material witness. In her chief-examination, she deposed that there were monetary transactions between the deceased and the accused and that, on account of the said transactions, the accused might have committed the murder of the deceased. However, this version is entirely different from the prosecution case. Thus, the evidence of PW.4 is inconsistent with the prosecution's version. Moreover, PW.4 is not an eyewitness to the incident and her evidence is only hearsay. In her cross-examination, she further deposed that the complaint was written by CW.14, Beerappa, who has been examined before the Court as PW.9 without any instructions having been provided by her. PW.4 further admitted in her cross-examination that she was not aware of the contents of the complaint purportedly lodged by her. This admission clearly indicates that the complaint was not lodged voluntarily by her and that it was filed at the instance of CW.14. Therefore, her evidence does not inspire confidence and cannot be relied upon to establish the guilt of the accused.

32. Coming to the evidence of PW.5, in his chief-examination, he deposed that he saw the accused running away from the spot. However, in his cross-examination, he admitted that he had not personally witnessed the accused assaulting or killing the deceased. He further stated that he had not seen the accused running away from the spot. Thus, there are material contradictions in his testimony. In view of these inconsistencies, the evidence of PW.5 is not trustworthy and cannot be safely relied upon.

33. Coming to the evidence of PW.6, he is a witness to the inquest panchanama as well as the spot panchanama. However, in his cross-examination, he stated that he was not aware of the contents of Ex.P.11 and 18? the inquest panchanama and the spot panchanama. Though he has supported the prosecution case to the extent of the conduct of the inquest and spot panchanamas, his admission that he does not know the contents of the said documents substantially weakens the evidentiary value of his testimony. Therefore, his evidence is also not sufficiently reliable to place implicit reliance upon.

34. Coming to the evidence of PW.7, the learned Additional SPP contended that he is an eyewitness to the incident. However, in his cross-examination, it was elicited that he had not made any statement before the police to

the effect that he had witnessed the accused assaulting the deceased with an iron axe, as reflected in Ex.D2. Though PW.7 is projected as a material witness to the incident and, in his chief-examination, he deposed that he had actually seen the accused assaulting the deceased, but in his cross-examination it was brought on record that he had not stated as such before the police. Thus, a material contradiction has been elicited in his evidence. In view of the said contradiction, the testimony of PW.7 does not inspire confidence and cannot be safely relied upon to prove the guilt of the accused.

35. So far as the contention of the learned Additional SPP that the learned Trial Judge failed to properly appreciate the evidence of the eyewitnesses, is concerned, as discussed above, the testimonies of the alleged eyewitnesses, namely PW.1, P.W.2, PW.3, PW.5 and PW.7, though implicating the accused in their chief-examinations, have not withstood the test of cross-examination. Material inconsistencies and contradictions have been brought on record, rendering their evidence unreliable. Consequently, their testimonies cannot be accepted as sufficient to establish the guilt of the accused beyond all reasonable doubt. Therefore, the contention of the learned Additional SPP that the Trial Court had erred in not accepting the

evidence of the eyewitnesses, namely PW.1, PW.2, PW.3, PW.5 and PW.7, is unsustainable.

36. Coming to the other material ground urged by the learned Additional SPP, it is contended that the Trial Court failed to properly appreciate the evidence relating to the FSL report. It is argued that, pursuant to the voluntary statement of the accused, the weapon alleged to have been used in the commission of the offence and the blood-stained clothes of the accused were recovered. The said articles were subjected to scientific examination. As per the FSL report, bloodstains were detected on the weapon, namely the iron axe (MO.1), as well as on the T-shirt and towel of the accused, marked as MO.Nos.9 and 10 respectively. The Scientific Officer opined that the blood detected on these articles was human blood of 'A' group.

37. Though it is true that human blood of 'A' group was detected on the weapon and the clothes allegedly belonging to the accused, the prosecution has failed to produce any cogent evidence to establish that the blood group of the deceased also belonged to 'A' group. In the absence of such evidence, the mere presence of human blood of 'A' group on the recovered articles cannot, by itself, conclusively connect the accused with the commission of the offence. Therefore, the evidentiary value of the FSL

report, in the facts and circumstances of the present case, is insufficient to establish the guilt of the accused beyond reasonable doubt.

38. The learned Additional SPP argued that the blood detected on MO.1, MO.9 and MO.10 was human blood of 'A' group and that the same matched the blood group detected on Article No.2, Article Nos.4 and 9. i.e., Article No.2 consisting of blood-stained mud collected from the scene of occurrence, and Article Nos.5 and 9 being T shirt and baniyan belonging to the deceased, respectively.

39. Therefore, according to the learned Additional SPP, the scientific evidence in the form of the FSL report, marked as Ex.P38, is a material document which establishes that the bloodstains found on the weapon, the shirt and the towel allegedly recovered from the accused matched the bloodstains found on the blood-stained mud and the clothes of the deceased. It is contended that this material piece of evidence, namely the FSL report, was not properly appreciated by the learned Trial Judge, who erroneously rejected the same and consequently acquitted the accused.

40. On perusal of the evidence on record, it is observed that the prosecution has not examined the author of Ex.P38, i.e., the FSL Report. The said document was

marked through PW.14, the Investigating Officer. The prosecution has also relied upon the evidence relating to the seizure of the weapon and the clothes allegedly belonging to the accused, namely the shirt and towel, and the evidence of the mahazar witnesses in support of such recovery.

41. PW.8 has deposed regarding the seizure of MO.1, namely the iron axe, as per Ex.P15, as well as the seizure of the blood-stained T shirt and towel as per the seizure mahazar marked as Ex.P21. However, in his cross-examination, PW.8 admitted that the deceased was his relative and that the police had taken him to the police station. He further stated that from the police station they proceeded to the place of the incident. He also admitted that he had not dictated the contents of the mahazar to the police and that he was not aware of the contents of the mahazar. Further, he stated that the T-shirt seized by the police was green in colour, but he could not state the colour of the towel allegedly seized by the police. These admissions made by PW.8 in his cross-examination cast a serious doubt on the reliability of the seizure procedure and consequently diminish the evidentiary value of the recovery materials relied upon by the prosecution.

42. On a careful perusal of the evidence of PW.8 with regard to the seizure of the material objects, it is evident that the description of the T-shirt deposed to by PW.8 does not tally with the prosecution case. Consequently, the prosecution has failed to satisfactorily establish the seizure mahazar marked as Ex.P21 in respect of MO.Nos.9 and 10.

43. Therefore, in view of the contradiction regarding the identity of the clothes allegedly seized from the accused, the prosecution evidence relating to the FSL report also loses its evidentiary value and cannot be safely relied upon to prove the guilt of the accused.

44. The learned counsel for the respondent/accused has relied upon the aforesaid decisions. We have carefully gone through the same. In the case of ***Ravi Sharma v. State (Government of NCT of Delhi)***, the principles governing an appeal against acquittal have been summarized. The said principles are extracted hereunder:

> *8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala (2022)8 SCC 440 as follows: (SCC p.454, para 25)*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

9. This court in aforesaid judgment has noted the following decision while laying down the law: jafarudheen case (2022)8 SCC 440, SCC pp. 454-62, paras 26-27)

"Precedents

26. Mohan v. State of Karnataka (2022) 12 SCC 619: 2021 SCC OnLine SC 1233, as hereunder: (SCC paras 20-23)

"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a

> *consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.*

45. In the present case, on an overall analysis of the evidence adduced by the prosecution, it is evident that there are material contradictions in the testimonies of the prosecution witnesses, particularly the alleged eyewitnesses. More importantly, PW.4, the wife of the deceased and a material witness, has not supported the prosecution's case in material particulars. The Trial Court, after a detailed appreciation of the oral and documentary evidence on record and upon assigning cogent reasons, has

come to the conclusion that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

46. It is also relevant to note the submission of the learned counsel for the respondent/accused that the accused remained in judicial custody for a period of nearly six years during the pendency of the trial.

47. Having regard to the entirety of the evidence on record, the contradictions and inconsistencies in the prosecution case, and the well-reasoned findings recorded by the Trial Court, we are of the considered view that the grounds urged by the learned Additional SPP for the State are unsustainable and devoid of merit. Therefore, this court is of the opinion that the impugned judgment of acquittal does not suffer from any perversity, illegality or infirmity warranting interference by this Court:

48. The point for consideration is answered accordingly.

49. In view of the above discussion, we pass the following:-

ORDER

a. The appeal is ***dismissed***.

b. The impugned judgment and order dated 28.06.2023 passed in Sessions Case No.92/2017 on the file of the II Additional District and Sessions Judge, Bagalkot, is hereby confirmed.

Sd/-
(H.T.NARENDRA PRASAD)
JUDGE

Sd/-
(RAJESHWARI N.HEGDE)
JUDGE

AC,
CT-CMU