

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 24TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE H.P.SANDESH

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL APPEAL NO.100297 OF 2019



BETWEEN:

SANJU

...APPELLANT

(BY SRI. K.S.PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA
R/BY CPI JAMKHANDI P.S.,
DIST: BAGALKOT, REPRESENTED BY
STATE PUBLIC PROSECUTOR,
AG OFFICE, HIGH COURT BUILDING,
DHARWAD.

...RESPONDENT

(BY SRI. M.B.GUNDWADE, ADDL. STATE PUBLIC PROSECUTOR)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., SEEKING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 23.07.2019 IN S.C.NO.52/2018 PASSED BY THE I-ADDL. DIST. AND SESSIONS JUDGE, BAGALKOT TO SIT AT JAMAKHANDI, CONVICTING THE APPELLANT FOR THE OFFENCES U/S 302 OF IPC AND SENTENCING TO LIFE IMPRISONMENT AND PAY FINE OF RS.50,000/- IN DEFAULT OF PAYMENT OF FINE, SHALL UNDERGO SIMPLE IMPRISONMENT FOR SIX MONTHS; OUT OF THE FINE AMOUNT SO COLLECTED RS.45,000/- IS ORDERED TO BE PAID TO THE WIFE AND CHILD OF THE DECEASED JYOTHIBA AS

COMPENSATION AND REMAINING RS.5,000/- IS PAYABLE TO STATE AND ACQUIT THE APPELLANTS BY ALLOWING THIS APPEAL.

THIS CRIMINAL APPEAL HAVING BEEN HEARD THROUGH VIDEO CONFERENCE AND RESERVED ON 08.11.2023 COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **H.P.SANDESH, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The factual matrix of the case of the prosecution is:

- (a) At the first instance case was registered for the offences punishable under Section 279 and 304A of IPC when PW.8 lodged a complaint alleging that an accident has taken place on 28.3.2018 between the motorcycle and a Cruiser Trax as per the information received through PW.12. During the course of investigation, it was emerged that, it was not an accident and it was a murder by causing the accident and assault on the deceased persons. Hence, further complaint was given on 20.04.2018 stating that, one Venkatesh Yadwad examined as PW.14 came and informed that, on 28.3.2018 at 2.15 p.m., his employee PW.15 was sitting in front of the hut. At that time both deceased came on a motorcycle and a trax vehicle came in a rash and negligent manner and dashed against the

motorcycle. As a result, both rider and pillion rider fell down. The trax stopped at a distance. This accused got down from the trax, assaulted the deceased persons on their heads with a club. Thereafter, accused No.2 came there and took away Sanju-accused No.1 on his motorcycle.

- (b) Police conducted investigation and filed the charge sheet making an accusation that, deceased Jyothiba was having illicit relationship with wife of accused No.1. Both of them were caught red-handed in the bathroom previously. The deceased was beaten by accused No.1. Due to this enmity and motive caused the accident and killed both the deceased and filed the charge sheet alleging offences under Section 302 and also Section 201 of CPC.
- (c) The Trial Court after having received the records, issued summons against accused persons. They appeared through counsel. They have denied the charges and claimed to be tried. Prosecution examined in all 27 witnesses, out of 39 witnesses cited in the charge sheet, and got marked the documents Exs.P1 to P66 and MOs.1

to 3. The accused statement was recorded under Section 313 of Cr.P.C. Accused have not led any defence evidence.

2. The Trial Court having considered the material on record came to the conclusion that, charges have been proved against accused No.1 and charges have not been proved against accused No.2. Accordingly, answered point No.1 in the affirmative and point No.2 in the negative. Convicted accused No.1 for the offence punishable under Section 302 of IPC. Accused No.2 was acquitted. On hearing the accused and his counsel, as well as the State, accused No.1 is sentenced to undergo life imprisonment for the offence punishable under Section 302 of IPC and ordered to pay fine of Rs.50,000/-. In default of payment of fine amount, accused No.1 is sentenced to undergo simple imprisonment for a period of six months. It is also ordered to pay compensation of Rs.45,000/- out of Rs.50,000/- to the wife and child of deceased Jyothiba. Being aggrieved by the said judgment of conviction and sentence, accused No.1 has filed this appeal.

3. The main contention in the appeal is that, the Sessions Court failed to arrive at proper conclusion on the evidence placed on record. The Court below over looked hostility of the witnesses

thereby caused material injustice to the appellant. Trial Court has over looked the inconsistencies and admissions of the prosecution witnesses. The counsel would also vehemently contend that, as per the prosecution PWs.12, 13, 14 and 15 are the witnesses to the incident and all of them have turned hostile. Nothing is elicited in their cross examination and absolutely no material insofar as oral evidence is concerned.

4. The reasons assigned by the Trial Court in paragraphs No.19 and 20 are far-fetched and the Court traversed beyond the scope of charge sheet and evidence on record, as witnesses have turned hostile. The Trial Court has formed the opinion without any cogent basis. The Trial Court failed to take note of the admissions given by PW3 with regard to recovery, as he could not depose about the contents of panchanama. More so, he is also a close relative of the complainant. The Trial Court has failed to consider the major discrepancies. The Trial Court relied upon the evidence of PW4 who is treated as hostile to prove recovery of motorcycle and only convicted based upon the evidence of PW5 who received the complaint and arrested the accused and produced him before PW17. The evidence of Doctor examined as PW21 noticed injuries on the body of deceased and erroneously has come to the

conclusion that, motive and commission of offence has been proved. Without properly assessing the evidence, the Trial Court has jumped to the conclusion. To prove the motive, the so-called eye witnesses have not supported. The Trial Court ought to have considered material on record to establish the chain of link. The Trial Court has committed an error in convicting the appellant.

5. The very contention of the counsel that, the illicit relationship has not been proved between the deceased and the wife of accused No.1. The Trial Court has committed an error in relying upon the P.M. report marked as Exs.P34 and P35 and also relied upon the opinion of the Doctor. Though witnesses PWs.8, 9 and 11 have spoken about the motive, the same could not have been accepted by the Trial Court.

6. The counsel in support of his argument relied upon the judgment reported in **2022 LiveLaw (SC) 670** in the case of **RAM NIWAS Vs. STATE OF HARYANA**, and would vehemently contend that in a case of circumstantial evidence, the chain of link has to be completed so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. Prosecution must show that, in all human probability the act must

have been done by the accused. The circumstances should be of a conclusive nature and tendency and should exclude every possible hypotheses except the one to be proved and suspicion cannot take the place of proof beyond reasonable doubt and accused cannot be convicted on the ground of suspicion.

7. The counsel also relied upon the judgment of the Apex Court reported in **(1984) 4 SCC 116** in the case of **SHARAD BIRDHICHAND SARDA Vs. STATE OF MAHARASHTRA**. Relying on this judgment, the counsel would vehemently contend that, in a case of circumstantial evidence falsity of defence plea if a circumstance against the accused not sufficient to conclusively establish the guilt of the accused. Circumstance of last seen together and other circumstances are to be examined in the light of the facts of the case. False plea or false defence taken by accused when can constitute an additional link in the chain of circumstances and infirmities in the prosecution case cannot be cured by use of such additional link. Hence, the counsel would vehemently contend that the principles laid down in both the judgments help the appellant.

8. Per contra, the learned Additional State Public Prosecutor appearing for the State in his argument vehemently contends that, the prosecution mainly relied upon the motive and motive has been spoken to by PWs.8, 9 and 11. Though eyewitnesses have been turned hostile, there evidence cannot be discarded in its entirety. A Court can look into the incriminating evidence of hostile witnesses. The counsel also vehemently contends that, the Doctor who has been examined as PW21 categorically deposed that, it is a case of homicidal death and cause of death was due to assault and accidental injuries. The doctor has given the opinion in terms of Exs.P40 and 41. His expert evidence is very much clear that, death was on account of assault as well as accidental injuries. Nothing is elicited from the mouth of PW21 to disbelieve his evidence.

9. The Additional State Public Prosecutor submits that, even though PW12 to PW15 have been turned hostile, their evidence also has to be considered, since the evidence of witnesses cannot be out-rightly rejected. The Trial Court having considered the material available on record rightly has come to the conclusion that, this appellant has committed the murder by causing an accident and thereafter assaulted with club. The said club was also

seized and recovery witness also supported the case of the prosecution. M.O.2 vehicle has dashed against the motorcycle ridden by deceased Jyothiba in which his father was a pillion. The evidence of the witnesses discloses that, land of the accused and the deceased are adjoining with each other. Both the families of accused no.1 and deceased were residing in the houses, constructed in their respective lands. If the death of victim is an accidental, the accused no.1 being a neighbour would have informed the accident to the family members of the deceased and he would not have fled away from the place of the accident. The documents Exs.P4, P9 and P62 disclose about, the intentional and deliberate act of the accused no.1 in causing the accident against the motorcycle ridden by deceased Jyothiba on which his father was a pillion rider.

10. PW8 was not aware that accused No.1 is the owner of the Cruiser trax, but document Ex.54 shows that accused No.1 is the owner of the said vehicle. More so seizure of said vehicle on the date of the accident is not in disputed. The appellant/accused disputes the very involvement of the vehicle in the said designed accident. Defence taken by accused is that, motorcyclist went and hit the bridge. But there is no explanation with regard to damage

caused to his vehicle. All these factors were taken note of by the Trial Court in paragraph Nos.19, 20 and 21. The Trial Court considering the evidence of PW27 the Investigating Officer in whose presence recovery was made at the instance, has appreciated the evidence along with the evidence of PWs.4, 6 and 7 being mahazar witnesses. The Trial Court was also taken note of evidence of PW.4, since he has admitted that his wife is the daughter of the deceased Bahusab. Trial Court has not committed any error in coming to the conclusion that prosecution has proved the case. Counsel for the state vehemently submitted that, in paragraph No.34 of the Trial Court judgment has taken note of nature of injuries and opined that injuries No.1 to 3 are the injuries because of assaulted on both the victims and other injuries are accidental injuries. Thus nature of injury is also taken note by the Trial Court and has rightly convicted the appellant. It is submitted that, it does not require any interference by this Court. It is prayed to discuss the appeal.

11. Having heard the appellant's counsel and also the counsel appearing for the respondent/State and by considering the grounds urged in the appeal, and the respective oral submissions of both the counsels, the points that would arise for our consideration are:

- i) Whether the Trial Court committed an error in convicting and sentencing the appellant and whether the same requires interference?
- ii) What order?

Point No.1:

12. Having heard the respective counsels and also on considering the material available on record this Court has to re-assess the evidence available on record to ascertain that, whether the Trial Court has come to a right conclusion or whether committed any error.

13. Before that, this Court has to take note of the charges alleged against accused No.1. Accused No.2 is acquitted and no appeal is filed against the order of acquittal by the state. The main charge against accused No.1 is that, he is having enmity against the deceased Jyothiba since he was having illicit relationship with his wife and both of them caught red-handed when they were in the bathroom. Thus he was having ill-will/grudge against deceased Jyotiba and had motive to eliminate him. It is alleged that, on 28.3.2018 when the said Jyothiba was proceeding along with his father caused the accident by using the trax vehicle and also

assaulted with club and thereafter he fled away from the place with the motorcycle of accused No.2.

14. In order to prove this charge, the prosecution mainly relied upon the evidence of PW1 to PW27.

PW1 is the inquest witness i.e. Ex.P1. He says that, he was present while conducting the inquest Panchanama. He noticed the injuries on the face and also on the leg of one of the victim. He also identified the photograph Ex.P2. In the cross examination, he admits that, the victims are his relatives. But he does not know the contents of Panchanama. He identifies the photograph Ex.P2. This witness is only a witness to Ex.P1. This witness is not a material witness with regard to conducting of inquest.

PW2 is a witness to Ex.P3 spot sketch. He identified his signature on the sketch and also identifies signature on the panchanama. He speaks with regard to the panchanama and sketch and also about photograph marked as Ex.P5. He deposed that, he was present when the photograph was taken. He says that, PW7 is also the signatory to the said panchanama. He identified the photograph Ex.P6 when there was seizure of vehicle was made by the Investigating Officer. Ex.P7 is the panchanama. This witness was treated hostile in part. He admits that, first accused is his

relative. He was also cross examined by the accused. In his cross examination, he admit that, the complainant is not his relative. They belong to the same community. Accused also has given the description of place of panchanama. The same was drawn at 11.00 a.m. In the cross examination, suggestion was directed i.e., he was not present when mahazar was drawn. The same was denied by him. Hence drawing of mahazar Ex.P3 and spot sketch Ex.P4, and taking photograph is proved by the prosecution.

PW3 is the witness for seizure of club. In his evidence, he says that, accused No.1 led himself CW8 and CPI near the land of CW20 and produced the club. To that effect police drew the mahazar. He had signed the same i.e. Ex.P8. He deposes that, police have prepared the sketch and he has signed the same, Ex.P9 is the said document. Photo was also taken as per Ex.P10 he says that, the accused only showed the club stating that he used the same for assaulting the victims. The club was seized by drawing mahazar as per Ex.P11, He identified his signature Ex.P11(a). This witness was also subjected to cross examination. He says that, he was near the Sub-Registrar Office with CW8. He also admits that, the complainant is his relative. He has given the description of the spot, stating that, on the western side, there is a drying crop of

grapes and there is a shed. He also says that, sketch was prepared at the spot where an incident has taken place. He also admits that, he has not found any bloodstain on MO.3 i.e. club. He also admits that, CW1 and deceased are his relatives.

The other witness is PW4 pancha to the mahazar as per Ex.P13. He identified his signature and the photo of Ex.P14. This witness was treated as hostile in part and cross-examined. Learned public prosecution cross examined this witness. He admits that, CW16 is his wife. He admits that, his wife is not living along with him and staying in her parental house. He admits that, his wife is the daughter of the deceased Bahusab. But in the cross examination, he categorically admits that, he stood as surety for the release of motorcycle of accused No.2. He admits the affidavit and photograph.

PW5 is a witness for Ex.P14. PW6 is the pancha witness Ex.P.16 and Ex.P.17. His signature was obtained five to six months back prior to he giving evidence. His evidence is in respect of accused No.2. The same is not relevant for consideration in this appeal, since accused no.2 was acquitted.

PW7 is also the witness in to the Mahazar in connection with accused No.2. The same is not relevant for consideration in this appeal.

PW8 is the brother's son of the deceased. He deposes that, their land and the land of accused No.1 are adjoining with each other. Both have constructed the houses in their respective lands. He says in regarding illicit relationship between wife of accused no.1 and deceased Jyotiba. In this regard Panchyath was held. In the said panchayath, Venkatesh Yadawad and Siddu Pawara participated. His evidence is that, wife of accused No.1 had gone to her parental house. As per his evidence accused No.1 was having ill-will against deceased. He has stated that, he came to know about the accident through CW20. Immediately he went to the so called accident place and found the dead bodies, found the injuries as the same. He deposed that, There was a stationed trax at the spot. He says, There were damage caused to the right side of the trax. He identified the trax before the Court. He says, Police have taken the photograph as per Ex.P5. He says that, CW20 Venkatsh Yadwada came and informed that, this is not an accident. It is a murder said PW.20 has stated that himself and CW21 examined as PW15 have witnessed the murder. Thereafter, complaint was given.

It was told by PW14 and PW15 told that, there was a threat to both of them. Therefore he did not inform the same to anybody. This witness was subjected to cross examination. He admits that CWs.3 and 4 are his relatives and CW7 and CW18 are his distant relatives. It is suggested that, the wife of accused No.1 was staying along with him. The same was denied. It is suggested that, rider of the motorcycle dashed against the bridge and as a result, both rider and pillion rider died. This suggestion is denied.

The other witness is PW9. This witness also speaks about the illicit relationship between accused no.1's wife and deceased Jyotiba. He says there was a galata. Panchayat was held. Because of that, There was ill-will. He reiterates the evidence of PW8. This witness is also cross-examined by defence counsel. He says PW8 had informed him over phone. He is the resident of Chikkalaki. He cannot tell the colour of the cruiser vehicle and its registration number. The counsel made the suggestion that, accused no.1's wife is residing with him. The same was denied. He says that, she is residing in her parental house. It is suggested to this witness that, rider of the motor cycle went and dashed against the bridge hence they died. The same was denied. It is suggested that cruiser vehicle was not on the spot. This suggestion also was denied. It is

suggested that PW8 is his relative and hence he is telling lie. But he volunteers that, even accused persons are also his relatives. He says that, his sister was given in marriage to first accused uncle's son.

PW10 is the mahazar witness to Exs.P3 and P4 and Ex.P5 photograph. He identified his photo in Ex.P5, He is also a witness to Ex.P7 seizure of motorcycle and cruiser. This witness was subjected to cross examination. The mahazar was conducted at the spot and also the seizure of vehicle. He was unable to tell who wrote the mahazar. He deposed that, police have prepared the sketch at the spot. He speaks of contents of mahazar and it was drawn at 3 O'clock as per Ex.P7.

PW11 deposed that, accused persons are his relatives and their land is also located by the side of land of the deceased and have their house. PW14's land is situated by the side of the land of deceased. He also speaks that, there was a galata with regard to illicit relationship between wife of accused No.1 and deceased Jyotiba. Panchayat was conducted. Thereafter she went and settled in her parental house. They are not in good terms. He also says that he went to spot and found the vehicles. He has noticed the damages caused to the right portion of the cruiser. This witness

was subjected to cross examination. Suggestion was directed stating that, accused are not his relatives. The same is denied. He says that, he is a distant relative. He was present when the panchanama was conducted, but he was not the pancha.

The other witness is PW12. The prosecution relies upon this witness as he is a pancha, He speaks that, both the landed properties and houses no. 1 and 2 of accused and the deceased persons are situated by the side of each other. But he knows, about the galata between first accused and the deceased Jyothiba. He says that when the socalled accident between cruiser and motorcycle took place he was present in his agricultural land. After one hour of accident he went to the spot and found dead bodies. He is unable to tell the injuries. He says motorcycle and trax were not found at the spot. This witness was treated as hostile. He denied the suggestion that he noticed the damaged cruiser at the spot.

The other witness is PW13. He also speaks about location of landed properties of accused as well as deceased persons by the side of each other. He says that, the said accident was taken place between the motorcycle and cruiser. He found two dead bodies. From his evidence, it is clear that, he found both motorcycle and trax at the spot. But he did not notice the damages caused to the

trax. He admits that, he was the scribe to Ex.P20. This witness was declared as hostile and cross examined by the learned public prosecutor. The counsel for the accused made suggestion that tempo trax was not at the spot. But this suggestion is denied.

PW14 according to the prosecution is an eyewitness. He also speaks with regard to situation of landed properties of both accused and also the complainant. But he has been turned hostile. He admits that, both rider and pillion rider died in the accident. According to him, he was not at the spot. He deposed that CW21 was working with him in his land. This witness was subjected to cross examination. Suggestion was made that, he himself and CWs.23 were the part of panchayath with regard to the illicit relationship. But this suggestion was denied. He denied the suggestion that he has seen the said accident.

The other witness is PW15. He admits that, he was working with in land of PW14. He says that, he went along with PW14 to Bellubi and he was not there. All suggestions directed to him are denied by him.

PW16 speaks about situation of both the landed properties adjoining with each other and also construction of houses by both accused as well as deceased persons in their respective said lands.

He also has been turned hostile. This witness was cross examined by the public prosecutor but nothing is elicited.

PW17 is the relative of both complainant and accused. He also speaks with regard to locating of houses and also the lands of the accused and the deceased persons adjoining with each other. This witness is also treated as hostile. He admits that, first accused and his father are brothers interse.

PW18 speaks with regard to situation of both the properties adjoining with each other and constructions of houses in their lands. He says that, cruiser vehicle belongs to the first accused. He identified the same before the Court. Accused No.1 used to park the vehicle by the side of the road near his house. He came to know that, two vehicles are involved in the accident. This witness was cross examined by the learned Public Prosecutor declaring him as hostile. There is no denied of situation of the landed properties.

PW19 is landed the neighbouring land owner deposed with regard to locating of the landed properties. He says that, he came to know about the accident occurred near the land of PW14. This witness was also declared as hostile and cross-examined. Nothing is elicited from his mouth.

PW20 is the motor vehicle inspector. He conducted mechanical inspection of both the vehicles. He noticed five damages to the trax and ten damages to the two wheeler. He opines that, he said accident has taken place not because of any mechanical defects. A suggestion was made to him that, the nature of damages found on trax could be caused by using the stone. The same was denied by him. He admits that, police told him that, damages were caused to the vehicle on account of accident.

PW21 is the doctor who conducted the autopsy as the dead bodies of deceased persons. He found injuries on both the bodies and issued the P.M. report as per Exs.P35 and P36. Identified his signatures as per Ex.P.35(a) and 36(a). He says that, club was sent for opinion. He issued the opinion as per Ex.P38. He gave opinion as per Exs.P40 and 41 stating that, injuries No.1 and 2 as shown in Ex.P35 could be caused due to assault and injury No.3 and 4 on account of road traffic accident. Injuries No.1 to 3 in P.M. report Ex.P36 may be caused due to assault and injury No.4 may be caused due to road traffic accident. This witness was cross-examined. He admits that, in the post mortem report, he did not mention by which weapons injuries are caused.

The other witness is PW22 PDO. He speaks with regard to drawing of mahazar as per Ex.P42.

PW23 is the Police Constable who brought the Cruiser as well as the Motorcycle to the police station on the instructions and gave a report as per Ex.P44.

PW24 is the other witness. He deposed that, he came to know about accident which occurred between the motorcycle and the jeep and the same was informed by his friend Hanumantha. He went to spot at 7.00 p.m.

PW25 is the ASI who went to the spot on information and noticed the presence of Motorcycle and Trax at the spot. He registered the FIR as per Ex.P31. Identified the Trax and Motorcycle before the Court. The PSI deposed that accused No.1 was apprehended and produced before him and gave the report as per Ex.P49.

PW26 says that accused was arrested as per the report Ex.P49. He also arrested accused No.2.

PW27 conducted investigation from 28.03.2018. Conducted the inquest and further investigation. He says about seizure of document from RTO as per Ex.P53. Cruiser trax vehicle is standing in the name of accused No.1 and motorcycle was in the name of

Kajesab Mulla. He says about the seizure of both the vehicles. He identified the motorcycle as well as the trax. He speaks with regard to production of the accused. According to him, accused no.1 gave voluntary statement. He recorded the voluntary statement. Thereafter, accused led him and showed the spot of incident and also produced the club. Accused No.2 produced his motorcycle. He had obtained the P.M. report obtained the opinion from the doctor. He completed the procedure of arrest of accused Nos.1 and 2. He obtained the FSL report and filed the charge sheet.

This witness was subjected to cross examination. In the cross examination, he admits that, in the complaint at the first instance stated that, in accident both rider and pillion rider dead. In the further cross examination suggestion was made that, he has not instructed to bring the motorcycle and trax. It is also suggested that, when the trax was near the police station, damage was caused by using the stone and he is falsely deposing the same. The said suggestions were denied. He admits that, There were no blood stains on MO.3 as per report of FSL.

15. Having perused both oral and documentary evidence, PW1 speaks with regard to the spot mahazar and spot sketch and also deposed with regard to contents of Exs.P5 and P7. He

identified the photographs. He has supported the case of the prosecution. But in the cross examination, he also admits that he is the relative of the complainant. He says that, accused is also his relative. Material so placed on record disclose that, accused as well as the victim were also the relatives and the same is spoken by the witness. It is also important to note that, in order to prove the illicit relationship witnesses have deposed that, earlier the wife of accused No.1 and the deceased Jyothiba were caught red-handed when they were together in the bathroom. But panchayath witnesses who have been examined before the Court in the shape of PW12 and PW14 have been turned hostile, and have not supported the same. But PW8, PW9 and PW10 spoke about the said incident. No doubt, PW8 is the son and brother of both the victims. But he speaks that, there was an ill-will between them in connection with the said illicit relationship. PW9 also speaks with regard to earlier incident in connection with illicit relationship. He also reiterates the evidence of PW8. In the cross examination of PW9, he admits that, he is the resident of Chikkalaki. He is residing near the drying yard of PW8, and the same is also located at Chikkalaki. He admits that, there were movement of vehicles on the said road. But suggestion was made to PW8, PW9 and PW10 that,

wife of accused No.1 is residing along with him and all these witnesses have denied the same. All of them says, she is residing in her parental house. The said fact disclosed that, wife of the accused No.1 is now not residing with accused no.1. The said circumstances substantiate the contention of the prosecution that, accused No.1 was having strong motive against the deceased. This witness speaks that, both motorcycle and trax were found at the spot. A suggestion was made that, he is a relative of complainant, therefore he is supporting the case of the prosecution. The said suggestion was denied. But he says that accused persons are also his relatives, his sister was given in marriage to the son of the uncle of first accused. Hence it is clear that, he is also the relative of both victims family and also the accused. Hence he cannot be termed as an interested witness for the reason that what was the necessity for him to falsely implicate the accused.

PW10 speaks with regard to drawing of mahazar as per Exs.P3, P4 and also P5 and P7. These are the documents proved by examining the witnesses PW3, PW4 and PW10. PW7 also speaks with regard to seizure of both the vehicle. It is also important to note that, PW23 is the witness to the seizure of both the vehicle on the instructions of the I.O. He gave the report as per Ex.P44.

Nothing is elicited in the cross examination except making bald suggestions. It is also important to note that, Motor Vehicle Inspector has been examined before the Trail Court as PW20. He speaks about the damages caused to both vehicles. Only suggestion was made that, damages may be caused to the trax by using the stone. The same is denied. Nothing is elicited from the mouth of PW20 to disbelieve the case of the prosecution.

Ex.P54 shows that, Cruiser owned by accused No.1. This fact is not denied by the defence. More so, the witness who has stated so is not cross-examination by the defence.

16. It is also not disputed that landed properties of the victim as well as the accused/appellant are located by the side of each other and also they have constructed their respective houses in their properties. Thus no dispute with regard to the vehicle belongs to accused No.1 and document Ex.P4 also substantiate the same. There is no evidence that, motorcyclist of deceased went and hit the bridge as suggested to the witnesses. Material so placed clearly demonstrate that, trax as well as motorcycle were found at the spot and there was an impact in between them. The same were seized. Prosecution evidence corroborates with each other with regard to involvement of two vehicles. No explanation from the part

of accused No.1 with regard to the damages caused to trax which was seized on the very next day i.e. on 29.3.2018 and incident has taken place on 28.3.2018.

17. Having perused the evidence of PW8, PW9, PW11, PW12, PW13, PW14 and PW18 and cross examination directed to the witness as with regard to the location of property by adjoining with each other of accused as well as the victims, also the evidence of PW16, PW17, the same is not disputed by the defence. Hence it is clear that, both are neighbours and having their properties by the side of each other, and have constructed their houses in their respective properties. This evidence clearly disclose that, both of them are having acquaintance with each other. Considering the evidence of PWs.8, 9 and 10, there was an enmity between them with regard to the illicit relationship with wife of the accused no.1 and deceased Jyothiba. Even considering the evidence of witnesses that, an accident has taken place between the two wheeler and Cruiser trax belongs to accused no.1. Accused have denied that, vehicle of the accused no.1 is not involved in the accident. But evidence is clear that, Cruiser trax was involved in the said accident. When the accident occurred, he being the neighbourer, if he has not indulged in an act of committing the murder and it was

merely an accident, he ought not to have fled away from the place of accident. An ordinary prudent man, when there was an accident, he would have helped to shift by injured persons to the hospital, since he is having acquaintance with victims 1 and 2 being his neighbourers. But he has not done so. This conduct has to be taken note of. Having considered the material on record, this is also one of the chain link circumstance to show that, the vehicle belongs to the accused/appellant involved in an accident and he did not take the injured persons to the hospital, instead he ran away from the spot on the motorcycle of accused no.2. There is a chain link between the incident and seizure of the vehicle belongs to the accused. Witnesses have spoken with regard to enmity between them on account of alleged illicit relationship between the accused wife and also the deceased Jyothiba. This have might have prompted the accused no.1 to eliminate deceased Jyothiba. Therefore accused no.1 might have taken this step of causing accident and might have assaulted the deceased. In his process father of accused no.1 also became the victim in the hands of accused no.1.

18. The other linking evidence before the Court is, evidence of the Doctor examined as PW21. In his evidence, he has

categorically deposed that, there were four injuries on Bahusab. He conducted the post mortem between 9.45 and 10.45 p.m. Issued P.M. report as per Ex.P35, He signed the same as Ex.P35(a). In respect of other victim Jyothiba, he found four injuries. P.M. report is marked a Ex.P36. He identified his signature as Ex.P36(a). From the evidence of this witness, it is very much clear that, cause of death was due to assault and also accidental injuries. He gave his opinion as per Exs.P40 and P41 stating that, the injuries mentioned in Ex.P35 i.e. injury Nos.1 and 2 were due to assault and injury Nos.3 and 4 are due to road traffic accident. Other injuries found victims body Jyothiba i.e. injury Nos.1 to 3 found in Ex.P36 are due to assault and injury No.4 is due to RTA. Though this witness is subjected to cross examination, nothing is elicited except eliciting that, in the P.M. report he has not stated which weapon was used for causing the injuries. Question of mentioning the weapon which was used for assaulting in the P.M. report does not arise. Contents of Ex.P.40 and 41 are not disputed. Only a suggestion was made that, those type of injuries could be caused if an accident was occurred. No doubt in the evidence of witnesses, it is brought on record that, the club which was seized has not stained with blood. FSL report says the same, But the opinion of the Doctor is that the

injury Nos.1 to 3 and injury Nos.1 and 2 respectively shown in P.M. report could be caused by using the club.

19. It is also important to note that, the injury No.1 found on the body of Bahusab clearly discloses that 8 cm. x 6 cm. contused and avulsed wound seen over frontal region of head with fracture of underlying frontal bone. It is also important to note that the other injury found in respect of Jyothiba i.e. injury No.2 is also fracture of right parietal and frontal bone and similar injuries are found in both the victims i.e. frontal region of head with fracture of underlying frontal bone and both have sustained similar injuries and these injuries were caused due to assault. If it is an accident and when the victims are sitting on the motorcycle, question of sustaining similar injuries by both the victims do not arise at all. Hence it is clear that, these injuries are on account of assault. Medical evidence supports the case of the prosecution.

20. The other chain link which is conclusive with regard to the circumstantial evidence seizure of MO1 club at the instance of accused no.1 is also important to note that club was seized and witness PW3 categorically says that, when he went to police station, he found accused No.1. It was accused No.1 led all of them to the

place of incident. He showed where he had thrown the club. To that effect mahazar was drawn and sketch was also prepared. Photos were taken, He is also a signatory to the document. No doubt in the cross examination it is elicited that CW8 is his relative and resident of his village. Nothing is elicited that he is having any enmity with the accused to falsely implicate the accused. His evidence is clear that, CW8 was there along with him in the Sub-Registrar Office. He says that his uncle Vijaykumar married to sister of the complainant, but his evidence is very clear that there were six persons when they went in a vehicle and also he has given description of the spot where seizure was made and also categorically deposed that, Ex.P9 sketch was drawn at the spot and photos were also taken. Hence his evidence is clear with regard to seizure of MO1. PW27 has spoken with regard to seizure of the club.

21. No doubt the very contention of the counsel appearing for the appellant that PW12 to PW15 have not supported the case of the prosecution. But PW12 speaks that both accused as well as victims are neighbourers. PW12 categorically says that he knew the reason for galata between the deceased Jyothiba and also the first accused. He admits that there was an accident between motorcycle and cruiser and both the victims died on account of the

accident. But turned hostile with regard to animosity. But he says that he did not see the trax at the spot, PW13 admits that both are neighbours. He has witnessed the presence of Cruiser trax and motorcycle on the spot and lying of dead bodies of the victims. We have to take note of the incriminating evidence available from the evidence of PWs.12 and 13. PW14 speaks with regard to the accident occurred and death of the victims in the accident. He admits that, PW15 was working with them.

22. It is also the case of the prosecution that PWs.14 and PW15 have witnessed the incident of assault made by them with the club and similar evidence was also spoken by PW15 but turned hostile.

23. PW15 also in his evidence denied seeing the incident. But both of them are known to each other and PW15 working with PW14 and 15 were near the accident spot when the said incident took place. Evidence of these witnesses proved about the involvement of two vehicles in an accident i.e. motorcycle and trax. Though PW12 to PW15 have been turned hostile, the partial incriminating evidence available on record supports the case of the prosecution. The Court cannot out-rightly reject the same and they

found both vehicle at the spot and P.W.12 says the reason for galata between accused No.1 and the victim Jyotiba.

24. Having perused all these materials available before the Court with regard to the incident and involvement of the vehicle belongs to the accused/appellant i.e. trax and the document Ex.P54 'B' Register extract standing in the name of the accused no.1, though he denied that vehicle was not involved in the accident, But there is no explanation about the damages caused to the right portion of the cruiser trax, belongs to the accused in terms of the IMV report. The very contention that no material is placed before the Court to substantiate the case of the prosecution cannot be accepted. Prosecution also relied upon photograph with regard to the seizure of club at the instance of the appellant and also photograph with regard to seizure of vehicle. witnesses have identified the photographs which is not denied in the cross examination.

25. From Ex.P5 photograph it is evident that the said incident has taken place. Ex.P6 is the trax damage is seen caused to the right portion of trax. Court has to take note of material available on record and witnesses with regard to the seizure, spot

mahazar which have supported the case of the prosecution. Therefore, we do not find any factual or legal error committed by the Trial Court in appreciating both oral and documentary evidence.

26. No doubt, the Trial Court in the judgment in detail has not discussed the evidence available on record. The judgment is cryptic and lacks of logical reasoning. But having taken note of important material available on record, the same has been discussed in paragraph No.19, Trial Court has discussed the evidence of PWs.14 and 15. The Trial Court has taken note of the 'B' Register extract marked as Ex.P54. Accused No.1 is owner of the trax vehicle MO.2 having purchased in the month of February 2018. It is also important to note that, incident has taken place in the month of March 2018. It is also important to note that, the Trial Court took note of the evidence of the witnesses which discloses that land of this appellant and deceased are adjacent to each other. They were residing in their respective houses constructed in their respective lands. It took note of the fact that, this appellant fled away from the place of incident inspite of he has caused the accident to their neighbours. Conduct of the appellant would do suggest his involvement in causing the accident and committing the murder of both the victims.

27. Though disputed the material placed on record, clearly discloses the involvement of the vehicle i.e. trax belongs to the appellant. No doubt the suggestion was made that, the deceased themselves went and hit the bridge and sustained the injuries. But no explanation on the part of the appellant with regard to the damages caused to the trax. All materials including IMV report disclose that, on the right portion of the trax was damaged and it is nothing but an intentional act of the appellant in causing the accident and committing the murder. Motive has been established. Accused No.1 has not shifted his own neighbours who were injured, gives room to draw inference that, he is the real culprit and involved in both accident and assault on the victims deceased persons. From the material placed on record it is established by the prosecution that, accused no.1 to do away the life of deceased, accused no.1 had purchased the vehicle and made it is a tool to show that victims died because of accident, but his own conduct and act of assault on the victims made him as real offender of crime. He cannot escape from the clutches of law. The evidence brought on record clearly establish the motive to commit the crime, he has executed the said motive in the form of accident. Being not satisfied with the accident, by getting down from the vehicle by

using MO1 club assaulted both the victims causing similar injuries as could be seen from the P.M reports. The possibility of accused no.1 committing the murder of victims Jyothiba and Bahusab cannot be ruled out in view of establishing clear chain links of involvement of accused no.1 in committing of crime.

28. The counsel appearing for the appellant no doubt relied upon the judgment of the Apex Court wherein the ratio laid down by the Apex Court is also clear that there must be a chain of evidence and the same has to be complete and that chain should be conclusive. But in the case on hand as per the discussion made herein above proved chain of events. Evidence led by the prosecution is acceptable of circumstantial evidence. The conclusion is that, accused no.1 is guilty of committing the murder of both the victims because of enmity stated above. To disprove the case of prosecution, to prove the defence, there was no any difficulty to examine wife of accused no.1. She would have been the best witness to disbelieve the enmity brought on record by the prosecution if she is living along with the accused as contended in the defence while cross-examining the prosecution witnesses. Therefore a story of the defence cannot be accepted. The Trial

Court rightly concluded that accused No.1 is guilty of committing the offences as alleged against him.

29. This Court would like to rely upon the judgment of the Apex Court in the case of ***State of Himachal Pradesh Vs. Raj Kumar***, reported in (2018)2 SCC 69 wherein, in a case of circumstantial evidence, the Apex Court held that inference of guilt can be drawn. It is held that in a case based on circumstantial evidence, circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; those circumstances must be conclusive in nature unerringly pointing towards guilt of the accused; moreover, all circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. It was further held that the proved circumstances must be consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence. The Apex Court also held with regard to approach during appreciation of evidence of witness, approach must be whether the evidence of witness read as a whole appears to be truthful in the given circumstances of case; once that impression is formed, it is necessary for court to scrutinise the evidence more particularly keeping in view the drawbacks and infirmities pointed out in evidence and evaluate

them to find out whether it is against general tenor of prosecution case. Circumstantial evidence establishing circumstances by cogent and convincing evidence and cumulatively taken and if it is formed a complete chain pointing out that murder was committed by accused and none else.

30. In the aforesaid judgment of **Raj Kumar's** case (supra), the Apex Court having analysed the material available on record confirmed the conviction in coming to the conclusion that chain was conclusive. This judgment is aptly applicable to the facts of the case on hand and there is a clear chain link is established in committing them murder and pretending the same as accident. The following circumstances clearly shows that the chain of events in committing the murder by accused No.1:

- i) The vehicle which was used for causing the accident was purchased by accused No.1 in the month of February, 2018, just one month prior to the accident.
- ii) The vehicle stands in the name of accused in terms of the documentary evidence.
- iii) The seizure of vehicle, though disputed, has been proved by examining the witnesses.

- iv) The vehicle involved in the accident also sustained damages and the same has been proved by examining the prosecution witnesses including I.M.V. Inspector.
- v) The accused is neighbour of the victims. From the prosecution evidence, it emerges that both, accused and victims, are having properties adjacent to each other and also having houses in their respective properties. The accused knowing fully well that he has caused the accident, he fled away from the spot without taking the victims, who are the immediate neighbours, to the hospital.
- vi) The medical evidence is clear that injuries are accidental injuries and also caused by the assault with the weapons which was seized at the instance of the appellant and the same has been proved by examining the prosecution witnesses.
- vii) The evidence of the doctor-P.W.21 is clear that club was sent for opinion and he has issued opinion as per Ex.P.38 and gave his opinion as per Exs.P.40 and 41 stating that injuries are both accidental injuries and some of the injuries in respect of both the victims are assaulted on the same place of forehead i.e., fracture of frontal bone.
- viii) The seizure mahazar witnesses who have been examined, particularly, P.W.1 in respect of spot mahazar and spot sketch and P.Ws.3 and 4.
- ix) The other circumstances is with regard to motive for committing the murder, and witnesses P.Ws.8, 9 & 10 speak

that earlier there was an incident of one of the victim and wife of this appellant were caught red-handedly in the bathroom and there was enmity between this appellant and the one of the victim.

- x) The other circumstances also disclose that on account of this incident, the wife of this appellant was also not residing along with him and left his company and the same made him to take the extreme step to commit the murder by causing an accident.

Having listed all the chain of events, as noted above, they clearly disclose that the evidence led by the prosecution establishes that the same is conclusive in nature unerringly pointing towards the guilt of the accused and all circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of events. Once that impression is formed, it is necessary for the Court to scrutinise the evidence, more particularly, keeping in view the drawbacks and infirmities pointed out in evidence and evaluate them to find out whether it is against the general tenor of prosecution case.

31. Having appreciated the evidence of the witnesses and the chain link between each of the circumstances, the circumstances are conclusive in nature pointing towards the guilt of

the accused as held by the Apex Courts in the case of **Raj Kumar** (supra) and the said judgment is aptly applicable to the case on hand as there is a complete chain link is established. Though the judgment of the Trial Court is cryptic and has not discussed the evidence and circumstances elaborately, but conclusion is correct, this Court in detail has discussed the evidence available on record with regard to the motive and also the chain of events pointing towards the guilt of accused only. Hence, we do not find any error committed by the Trial Court in convicting the accused and sentencing him, and there is no merit in the appeal.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The judgment and conviction passed against the appellant/accused in S.C.No.52/2018 dated 23.07.2019 is confirmed.
- (iii) The accused is directed to surrender before the Trial Court within 15 days to undergo the sentence.

- (iv) If the appellant fails to surrender, as ordered above, the Trial Court is directed to secure his presence as per law and commit him to prison to serve the sentence.
- (v) The bail bond executed by the appellant stands cancelled.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*AP