KABC010080542021

IN THE COURT OF LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82)

PRESENT

Sri. Santhosh Gajanan Bhat, B.A.L., LL.B.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)

Dated this the 15th day of April, 2026

Spl.CC. No. 565/2021

COMPLAINANT : State by Central Bureau of Investigation, ACB, Bengaluru.

V/s

ACCUSED :

2. Vikram Ballari
S/o Udaykumar Ballari,
Aged about 30 years,
R/o 6th Cross, Maratha Colony,
Dharwad, Hubballi - Dharwad City, Karnataka.

3. Kirtikumar Basavaraj Kurahatti
S/o Basavaraj T. Kurahatti,
Aged about 29 years,
R/o Itigatti Village and Post,
Dharwad, Karnataka.

4. **Sandeep Saudatti**
S/o Somashekar
Aged about 33 years
R/o Maratha Colony,
Malapur Road, Near Ganesh
Temple, Dharwad,
Hubballi-Dharwad City,
Karnataka.

5. **Vinayak Katagi**
S/o Basavaraj Ningappa
Katagi, Aged about 38 years
R/o Bhusappa Chouk
Karubar Oni, Hubballi-Dharwad
City, Karnataka.

6. **Mahabaleshwar Hongal @ Mudaka**
S/o Mallappa Hongal,
Aged about 35 years,
R/o Govanakoppa village,
Dharwad, Hubballi-Dharwad
City, Karnataka.

7. **Santosh Savadatti**
S/o Somashekar Savadatti,
Aged about 34 years,
R/o Maratha Colony,
Malapur Road, Near Ganesh
Temple, Dharwad, Hubballi-
Dharwad City, Karnataka.

8. **Dinesh.M**
S/o Late.Mariyappa
Aged about 44 years
R/o No.4S, Ijoor, Venkatappa

Layout Badavane, Ramanagar
Taluk & District.

9. **Ashwath.S.**
S/o Shivanna Gowda
Aged about 34 years,
R/o No.66, 1st Main, D Group
Layout, Nagarabhavi,
Bangalore - 560 078.

10. **Sunil K.S.**
S/o Shivanna
Aged about 38 years,
R/o Kalahalli, 1st Main,
1st Cross, Near Someshwara
Gowda Samudaya Bhavan,
(Land Mark – Near Graveyard)
Mandya City.

11. **Nazeer Ahmed**
S/o Basheer Ahmed,
Aged about 29 years,
R/o 12th Cross, Sonnenahalli
Basthi, Near Sonnenahalli Bus-
Stop, Bengaluru.

12. **Shanawaz**
S/o Sardar
Aged about 41 years,
R/o No.1/2, 4th Cross,
1st Main Road, Azad Nagar,
Near Cambridge School,
Land Mark: Near Bismillah Tea
Hotel, Bengaluru-560 026.

13. **Nutan. K**
S/o K.N.Krishnappa,
Aged about 35 years,
R/o No.146, Gubbalala
Subramanyapura Post,
Near Manjunatha Floor Mill,
Subramanyapura,
Bengaluru-560 061

14. **Harshith C.**
S/o Chinnagiri
Aged about 30 years,
R/o No.55/1, Janata Colony,
Somawarpet, Kodagu District,
Karnataka.

15. **Vinay Rajashekharappa Kulkarni**
S/o Late,Rajashekarappa
Kulkarni,
Aged about 52 years,
R/o Barakoti, Shivagiri,
Dharwad - 580 007.

16. **Chandrashekar Indi @ Chandu Mama**
S/o Sharanabasappa Indi,
Aged about 59 years,
R/o No.27, Shankeshwar Villa,
II Cross, Athani Road,
Vijayapura, Karnataka-586 108

18. **Vikas Kalburgi**
S/o Ramesh Kalburgi
Aged about 33 years,
R/o 6th Cross, Maratha Colony,
Dharwad, Hubballi-Dharwad
City, Karnataka.

19. **Chennakeshava B. Tingarikar**
S/o Late Basavaraja,
Aged about 42 years,
R/o Basava Nilaya,
2nd Cross, 2nd Main,
Malaprabha Nagar,
Near Gramin P.S., Dharwad
Karnataka.

20. **Vasudev Rama Nilekani**
ACP, ACB, KSP, Gadag
Karnataka.
S/o Sh.Rama,
Aged about 55 years,
R/o Shambhavi Colony,
3rd Cross, Gandhinagar
Dharwad, Karnataka.

21. **Somashekar Basappa Nyamagouda**
S/o Basappa,
Aged about 53 years,
R/o Kadakol Village & Post
Jamakhandi Taluk.
Bagalkot District, Karnataka.

Date of offence	15.06.2016
Date of report of offence	15.06.2016
Name of the complainant	Smt.Mallavva Gouda Goudar
Date of commencement of recording of evidence	15.07.2024
Date of closing of evidence	07.02.2026
Offences complained of	Sec.120(B) r/w Sec.143, 147, 148, 149, 302, 201,

	218 of IPC and under Sec.7, 13(1)(d) r/w Sec.13(2) of Prevention of Corruption Act, 1988 and under Sec.3, 5, 8 and 29 of Arms Act, 1959.
Opinion of the Judge	Accused No. 2 to 16, 18, 19 are held to be guilty. Accused No.20 and 21 are acquitted.
State represented by	By Sri.Surya Prakash V Raju, learned ASG and Special Public Prosecutor along with Smt. Hema, Sri. Shivananda Perla and Sri. Gangadhara Shetty.
Accused represented by	Accused No.2 to 6 by Sri. C. Parameshwarappa, Advocate. Accused No.7 by Sri. Sunil Kumar, Advocate. Accused No.8 to 14 by Sri. S.Shankarappa, Advocate. Accused No.15 by Sri.C.V.Nagesh, learned Senior Counsel on behalf of Sri. S.Sunil Kumar, Advocate. Accused No.16 by Sri.M.S.Shyamsundar, learned Senior Counsel on behalf of Dr.Vandana P.L., Advocate. Accused No.18 by Sri.

	B.Siddeshwara, Advocate. Accused No.19 by Sri. S.Balakrishna, Advocate. Accused No.20 by Sri.K.B.K.Swamy, Advocate. Accused No.21 by Sri.Nithin Ramesh, Advocate)

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JUDGMENT

"Justice is not a cloistered virtue; it must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." — Lord Atkin

The brutal murder of Yogesh Goudar in the otherwise tranquil environs of Dharwad did not merely set the criminal law in motion—it sent ripples across the political and social fabric of the region, stirring the collective conscience of its citizenry. What began as a routine investigation by the Dharwad Sub-Urban Police, culminating in a charge-sheet against six accused, soon unfolded into a far more complex and unsettling narrative.

2. As the trial progressed before the learned 4th Additional District and Sessions Judge at Dharwad,

the family members of the deceased, driven by a deep-seated quest for truth, approached the corridors of justice seeking an independent and impartial probe by the Central Bureau of Investigation. Their plea resonated, and the State Government, acknowledging the gravity of the matter, entrusted the investigation to the CBI.

3. What followed was nothing short of a dramatic unravelling. The further investigation claimed to have unearthed startling revelations that turned the earlier narrative on its head. Beneath the surface lay a sinister interplay of muscle power intertwined with political might, pointing towards a calculated act rooted in political rivalry. The shadows deepened with the alleged involvement of influential figures, including Vinay Kulkarni, the then District In-charge Minister, alongside certain members of the law enforcement machinery themselves. The case began to reflect a grim portrait of the criminalization of politics, where the

guardians of law were, allegedly, entangled in its breach.

4. In the wake of these revelations, the investigative net widened, bringing within its fold additional accused, including high-ranking police officials, all of whom were placed before the majesty of law.

CHAPTER-I:
FACTS OF THE CASE:

5. It is the case of the prosecution that due to the political rivalry which was entertained by Vinay Kulkarni against Yogesh Goudar, the commission of his murder was planned. The prosecution contends that the main motive and intention for commission of murder was the quarrel that had taken-place on 23.04.2016 at the premises of Zilla Panchayath wherein Yogesh Goudar had tried to divert the attention of Vinay Kulkarni in a drought meeting convened by the then Minister Vinay Kulkarni. It is

contended by the prosecution that in the said meeting a verbal altercation had taken-place and thereafter accused No.15 Vinay Kulkarni had called upon accused No.1 Basavaraj Muttagi to his Vinay Dairy at Dharwad and had stated that day by day the arrogance of Yogesh Goudar had increased and as such he should be eliminated. Accordingly, he had requested accused No.1 Basavaraja Muttagi to eliminate Yogesh Goudar by hatching conspiracy and taking the help of his close aides in Dharwad, whom the then Accused No.1 used to call as Dharwad Boys. However, accused No.1 Basavaraja Muttagi had discussed about the same with his close associates i.e., accused No.2 Vikram Bellary, accused No.3 Kirtikumar, accused No.4 Sandeep Saudatti, accused No.5 Vinayak Katagi and accused No.6 Mahabaleshwar Hongal, who had refused to do so and the same was convened to accused No.15 Vinay Kulkarni. However, it is contended that he had not budged from his earlier

stand and accordingly, Basavaraj Muttagi had visited Bengaluru and by taking the help of Jaya Karnataka Association, had met accused No.8 Dinesh and accused No.9 Ashwath to discuss in this regard. It is further contended by the prosecution that on discussion, accused No.8 Dinesh had agreed to eliminate Yogesh Goudar with a condition that they would not surrender before the concerned Police nor their name should appear anywhere. When it was once again convened to Vinay Kulkarni, he had agreed to pay a sum of Rs.20,00,000/- and had requested Muttagi to convince accused No.2 to 6 to surrender in the place of real assailants. The prosecution contention also indicates that thereafter the accused No.2 to 6 were convinced to get surrender in place of prior assailants i.e., accused No.7 to 14 and subsequently murder was committed.

6. The prosecution also contends that as per the assurance given by Vinay Kulkarni, he had convened a

meeting of the then Police Commissioner Sri. M.H.Rane, Deputy Commissioner of Police Vasudev Rama Nilkeni and Police Inspector Chandrashekar Tingarikar, who was the Investigating Officer at Dharwad Sub-Urban Police Station. The meeting was convened at Vinay Diary of Vinay Kulkarni and even there some ill words were spoken about Yogesh Goudar. On completion of the murder, accused No.1 to 8 had initially visited Haveri and had taken shelter by opting to stay at M/s Hema Resorts with the help of PW.49 Raghavendra and thereafter Muttagi had returned back to Bengaluru and had met Vinay Kulkarni on the intervening night of 15/16.06.2016 at about 01.30 a.m. near Sanky Tank, Sadashivanagara and immediately on the next day he was given Rs.5,00,000/- by accused No.21 Somashekar Basappa Nyamagouda, who was the personal assistant of Vinay Kulkarni and thereafter the accused had surrendered before the Deputy Commissioner of Police Vasudev

Rama Nilekani at Hubli. It is also contended by the prosecution that the Investigating Officer Chennakeshava Tingarikar had destroyed the original weapons which were used for the commission of murder and in that place some other weapons came to be planted which was brought by PW.24 Shivananda Chalavadi and subsequently some mahazars were drawn by accused No.19 Chennakeshava Tingarikar through the Constable PW.51 Ramesh Mudukanagouda, depicting it to be the recovery being made at the hands of present accused No.1 to 6. Finally, Chennakeshava Tingarikar had conducted majority of the investigation and later the investigation papers were transferred to PW.107 Motilal Pawar, who had completed the investigation and had filed charge-sheet against accused No.1 to 6 by holding that the motive and intention to commit the offence was prevailing land dispute between the then Accused No.1 Basavaraj Muttagi and deceased Yogesh Goudar.

7. On submission of the Final Report before the Court, the Court had taken necessary cognizance of the offence alleged by the prosecution and thereafter the case came to be committed to the Sessions court at Dharwad. On committal proceedings being completed the case was made over to 4th Additional District and Sessions Judge Court at Dharwad, wherein the court after completing the statutory bound obligations had framed necessary charges against Accused No.1 to 6 and the trial had commenced. The prosecution therein had examined totally 61 witnesses on their behalf and thereafter the statement of Accused No.1 to 6 came to be recorded as contemplated under sec 313 of Cr.P.C.

8. During the course of trial itself the family members of the deceased had expressed their displeasure with the manner of investigation being conducted by the Dharwad Sub-Urban Police and the mother of the deceased had knocked the doors of the

Hon'ble High court of Karnataka seeking to entrust the case for investigation by CBI. During the interregnum, they had even filed an application under Sec.319 of Cr.P.C to bring on record the additional accused persons. However, the said application was also rejected by the Hon'ble High court and later on the State Government had taken a decision to entrust the above case for further investigation to CBI and accordingly, the case was handed over for further investigation. The CBI during the course of their investigation had filed three supplementary final reports and had arraigned Accused No.7 to 21 as additional Accused persons. It was further contended that the real motive and intention to commit the offence was not the land dispute but was the political rivalry which was prevailing between deceased Yogesh Goudar and Accused No.15 Vinay Kulkarni and also it was submitted that the real assailants were accused No.7 to 14 and in their place the Accused No.1 to 6

had surrendered before the jurisdictional police and with the aid and support of Accused No.19 Chennakeshava Tingarikar, the first Investigating Officer and Accused No.20 Vasudev Rama Nilekani, the then ACP. Accordingly, the final report was filed before this court.

9. The record also indicates that during the interregnum, the accused No.17 Shivananda Shrishail Biradar had filed an application seeking for pardon from this Court. However, my predecessor-in-office had rejected the same and later on he had approached the Hon'ble High Court of Karnataka by challenging the order passed by this Court. The Hon'ble High Court of Karnataka by its kind orders in Crl. Petition No.8369/2022 dated 24.03.2023 had granted pardon to him and he was considered as approver by imposing condition that he was required to disclose the true and correct facts which were within his knowledge with

respect to the above case. At the same point of time, the accused No.1 Basavaraja Muttagi had also filed an application seeking to grant pardon to him. However, his application was initially resisted by the CBI on the ground that the same do not disclose any materials which he intended to disclose. By considering the said aspects, my predecessor in office had rejected the same. Thereafter, a detailed hearing had taken place with respect to the discharge applications which were filed by the accused persons and on considering the same and also on perusing the materials on record, the applications which were filed seeking discharge came to be rejected by holding that there are sufficient materials to frame charges against the accused persons herein.

CHAPTER-II:

COMPARISON OF CHARGES AT IV ADDL. DISTRICT AND SESSIONS JUDGE COURT AT DHARWAD AND THE

PRESENT CASE OF PROSECUTION AFTER FILING OF SUPPLEMENTARY REPORTS BY CBI:

10. As noticed from the records, the above case is having a checkered history wherein it does indicate that initially the investigation was conducted by Dharwad Sub-Urban Police Station which had culminated in filing of charge-sheet and later on it was committed to the Sessions Court at Dharwad and numbered as SC No.50/2017 and totally 61 witnesses were examined and even the statement of accused came to be recorded. At that juncture, the investigation was entrusted to CBI by the orders passed by the State Government to conduct further investigation. Admittedly, in the above case, no specific orders were passed to conduct a de-nova investigation or trial. Accordingly, an opportunity was given to the accused persons to make their submissions in this regard and after hearing both the parties on record, it was found that new trial was required to be conducted

as contemplated under Sec.216(4) of Cr.P.C., since the charges which were framed at the earlier instance by the 4th Additional District and Sessions Judge Court at Dharwad was with respect to accused No.1 to 6, wherein the motive for commission of the offence was held to be the prevailing land dispute between accused No.1 Basavaraja Muttagi and deceased Yogesh Goudar. However, on culmination of the investigation by the CBI, the motive and intention had also changed and as does the role of accused No.1 to 6. In the supplementary reports filed by CBI, it was contended that the real assailants of Yogesh Goudar were accused No.7 to 14 and in their place accused No.1 to 6 had surrendered to screen out accused No.7 to 14 as assailants in the above case in furtherance of larger conspiracy. It is further contended that such an act was committed in furtherance of the criminal conspiracy which they had entered into with accused No.15 Vinay R. Kulkarni prior to commission of the

offence. The materials which were now brought on record was not reflected in the earlier chargesheet filed by the Dharwad Sub Urban Police station and that apart it is also noticed that only accused No.1 to 6 had faced the trail before the Sessions court at Dharwad and whereas the trial was conducted in the absence of accused No.7 to 21 who were now charge sheeted by the CBI on the basis of further investigation. Under these circumstances, new charges were required to be framed and accordingly new charges came to be framed under Sec.216(4) of Cr.P.C., vide order dated 08.12.2023.

11. For the sake of brevity, the charge which was framed by the then 4th Addl. District and Sessions Judge at Dharwad against accused No.1 to 6 is herewith extracted and reads as follows:

> ***1. That on 15.06.2016 at about 7.30 a.m. to 7.45 a.m. on Saptapur road at Uday Health and Fitness Center, Saptapur Dharwad, situated within***

the limits of Suburban P.S. Dharwad, you accused 1 to 6 being the members of an unlawful assembly came with a common object by holding deadly weapons on the motor cycle bearing No.KA 31/Q-8755, KA 25/EU-2609 and KA 25/X-535, with an intent to commit murder of deceased Yogishgowda as there was a dispute between accused No.1 and deceased pertaining to land measuring 25 acres 8 guntas of Belligatti village belongs to C.W.32 Nagendra Todkar, for which accused No.1 entered into an agreement of sale with the owner of the land i.e. C.W.32 and thereby you all accused have committed an offence punishable U/s.143 R/w.Sec. 149 of I.P.C. and within the cognizance of this Court.

2. That on the above said date, time and place, you all accused 1 to 6, being the members of an unlawful assembly came with a common object as stated above, indulged in rioting and thereby you all accused have committed an offence of rioting punishable U/s.147 R/w.Sec.149 of IPC

and within the cognizance of this Court.

3. That on the above said date, time and place, you all accused, being the members of an unlawful assembly came with a common object as stated above, by holding deadly weapons i.e. Jambe, Koyata, rod, sticks, long which were used as a weapon of offence was likely to cause death of deceased Yogishgouda and thereby you all accused have committed an offence punishable U/s.148 R/w.Sec. 149 of I.P.C. and within the cognizance of this Court.

4. That on the above said date, time and place, you all accused, being the members of an unlawful assembly came with a common object with deadly weapons as stated above, when deceased Yogishgouda came to his GYM named above, you all accused 1 to 6 came with an intention to murder that you accused No.5 splashed (poured) chilly powder on the face of deceased Yogishgouda, you accused No.2 stabbed the deceased on several

occasions with Jambe (knife) on his stomach, you accused No.3 assaulted with koyata on his head, you accused No.4 assaulted with rod on his head, you accused No.1 assaulted with stick and you accused No.6 assaulted with long on his head and also other parts of the body of the deceased and caused the death of deceased Yogishgouda and thereby you all accused have committed an offence punishable U/s.302 R/w. Sec.149 of I.P.C. and within the cognizance of this Court.

5. That prior to the above incident, i.e. on 14/6/2016, evening at KCD college ground Dharwad, you all accused, being the members of an unlawful assembly, you accused No.1 hatched a criminal conspiracy with accused 2 to 6 at KCD college ground Dharwad, that you accused No.1 believing that deceased Yogishgouda may eliminate you, as there was life threat relating to the land under agreement as stated above, under that threat, you A.1 wanted to eliminate Yogishgouda and thereby you all accused have committed an offence punishable

U/s.120-B R/w.Sec.149 of I.P.C. and within the cognizance of this Court.

6. That on the above said date, time and place, you all accused, after committing the murder of deceased Yogishgouda as stated above, went on respective motor cycles as stated above, and thrown the deadly weapons which are used for commission of offence on the road side bush of the trees near Yarikoppa, Dharwad and also the clothes which were worn by you in Tungabhadra river near Harihar, with an intention to causing disappearance of evidence of an offence committed and thereby you all accused have committed an offence punishable U/s.201 R/w.Sec. 149 of I.P.C. and within the cognizance of this Court.

12. For the sake of comparison, the charges which were framed by this Court against the accused No.1 to 16, 18 to 21 are as follows;

That you accused No.15 Vinay Rajashekarappa Kulkarni, the then in-charge Minister of Dharwad District,

during April and May 2016 had entered in to criminal conspiracy with accused No.1 Basavaraj Muttagi and accused No.16 Chandrashekar Indi to execute the murder of Yogesh Goudar, the then Zilla Panchayath Member from Dharwad, who was also running a Gym by name M/s.Uday Gym and Fitness Center at Saptapur, within the jurisdiction of Dharwad Upanagara Police Station and in pursuance of the same, you accused No.1 conspired with your associates i.e., accused No.2 to 6 and you accused No.1 decided to bring your associates from outside of Dharwad and also had conspired to surrender yourself along with accused No.2 to 6 before local police in the place of real assailants.

As such, you accused No.1 had visited Bengaluru several times in the month of April and May 2016 to meet accused No.8 Dinesh, accused No.9 Ashwath, who were associates of you accused No.1 in Jaya Karnataka Organisation and they agreed to assist you in the execution of murder of Yogesh Goudar and you accused No.10 Sunil, accused No.11 Nazeer Ahmed, accused No.12 Shanawaz, accused No.13 Nuthan

and accused No.14 Harshith had agreed to come to Dharwad to commit the murder of Yogesh Goudar and as such, you accused No.16 Chandrashekar Indi had arranged three country made pistols through you accused No.17 Shivanand Srishail Biradar and delivered to you accused No.1. Though, you accused No.8 to 14 came to Dharwad on two occasions in the month of June 2016 and stayed in an old house bearing CTS No.4/39/L measuring 14 guntas situated at No.17, Sarswathpur, Dharwad and hatched further conspiracy towards the execution of your earlier conspiracy to eliminate Yogesh Goudar and even a futile attempt was made on 14.6.2016, you accused No.7 to 14 decided complete the said task on the next day i.e., on 15.6.2016 and in furtherance of the same, you accused No.7 to 14 reached Uday Gym and committed the murder of Yogesh Goudar and there afterwards, as part of your conspiracy, you accused No.15, accused No.18 Vikas Kalburgi assisted the accused No.7 to 14 by providing logistic support to hide vehicles used in the commission of said crime; and you accused No.21 Somashekar Basappa

Nyamagouda, Personal Secretary of Accused No.15, having knowledge of criminal conspiracy, had actively assisted accused No.15, by carrying out his instructions by passing on the message to accused No.1 Basavaraj Muttagi towards commission of offence and further, you accused No.21 had accompanied with accused No.16 and met accused No.1 at Bengaluru on the night of 15.6.2016 and 16.06.2016 and handed over the money to accused No.1 and thereby you accused No.1 to 18 and 21 have conspired with each other in all stages of the crime with common object to commit the murder of Yogesh Goudar and thereby committed an offence punishable under Sec.120-B R/w Sec.149 of IPC, within my cognizance.

Secondly, in furtherance of common object to commit murder of Yogesh Goudar and in furtherance of criminal conspiracy with accused No.15, you accused No.1 to 14 formed into an unlawful assembly on 15.06.2016 at about 7.00 a.m. and were members of said unlawful assembly and thereby you accused No.1 to 14 committed an offence

punishable under Sec.143 R/w Sec.120-B and 149 of IPC, within my cognizance.

Thirdly, in furtherance of common object to commit murder of Yogesh Goudar and in furtherance of criminal conspiracy with accused No.15, you accused No.1 to 14 formed into an unlawful assembly on 15.06.2016 at about 7.00 a.m. and being members of said unlawful assembly and in prosecution of the common object of the said unlawful assembly, you accused No.1 to 14 had committed offence of rioting, punishable under Sec.147 R/w Sec.120-B and 149 of IPC, within my cognizance.

Fourthly, in furtherance of common object to commit murder of Yogesh Goudar and in furtherance of criminal conspiracy with accused No.15, you accused No.1 to 14 formed into an unlawful assembly on 15.06.2016 at about 7.00 a.m. and being members of said unlawful assembly, you were armed with deadly weapons such as three country made pistols, daggers, long machet, wooden stick, iron rod, and other sharp and deadly weapons, which

used as a weapon of offence, were likely to cause death and thereby you accused No.1 to 14 committed an offence punishable under Sec.148 R/w Sec.120-B and 149 of IPC, and within my cognizance.

Fifthly, you accused No.15 Vinay Rajashekarappa Kulkarni, the then in-charge Minister of Dharwad District, conspired with accused No.1 Basavaraj Muttagi and accused No.16 Chandrashekar Indi, with common object to commit the murder of Yogesh Goudar, due to personal and political reasons and in pursuance of the same, you accused No.1 conspired with you accused No.2 to 14 and in pursuance of the same, you accused No.8 to 14 came to Dharwad on two occasions in the month of June-2016 and stayed in the old house at Sarswathpur and hatched conspiracy with accused No.1 to 7 for commission of the murder of Yogesh Goudar and in pursuance of the same, you accused No.1 to 14 made an unsuccessful attempt to commit the murder of Yogesh Goudar on 14.6.2016. After the unsuccessful attempt, you accused No.1 to 14 decided to complete the task on the next day.

Accordingly, on 15.6.2016, you accused No.7 and 9 reached Uday Gym by 6.46 a.m. in a Hero Honda Splendor motor cycle bearing No.KA-25-EA-6230, you accused No.13 and 8 reached Uday Gym in white colour scooter bearing Regn.No.KA-25-EU-2609 by 7.29 a.m. and you accused No.10, 11, 12 and 14 reached the area in a white Tavera Car bearing Regn.No.KA-25-D-0420 driven by you accused No.4 and all of you accused waited for arrival of Yogesh Goudar to Uday Gym to attack and when he reached the said Uday Gym in his Silver Colour Innova Car at 7.36 a.m. you accused No.7 who was waiting on the stairs of the building thrown chilli powder in the eyes of Yogesh Goudar and stabbed him on his neck with a dragger and unsettled him, you accused No.9 seated on the wall close to the Gym by hiding your face in newspaper, attacked Yogesh Goudar on his head with long machete and you accused No.8, 10, 11, 12, 13 and 14 rushed to the Gym and dragged Yogesh Goudar to the Gym and assaulted him on his head and other parts of the body with long machete and other sharp with an intention to kill him

and inflicted deadly wounds all over his body, with a knowledge that such injuries in ordinary course would cause the death of the injured and Yogesh Goudar succumbed to said injuries and thereby you accused No.1 to 6 played a passive role towards commission of the offence in furtherance of the criminal conspiracy and you accused No.7 to 14 being the real assailants who had carried forward the common object of the commission of murder of the deceased Yogesh Goudar at the instance of you accused No.15 Vinay Rajashekharappa Kulkarni and you accused No.16 Chandrashekar Indi by supplying weapon for the commission of offence in furtherance of the common object and criminal conspiracy hatched by you and you accused No.18 Vikas Kalburgi assisted the accused persons to hide the vehicles and also by giving information about the movement of the deceased Yogesh Goudar and you accused No.21 Somashekara Basappa Nyamagouda, being the Personal Secretary of accused No.15 had taken a active part in furtherance of criminal conspiracy and thereby you accused No.1 to 16, accused

No.18 and 21 have committed the offence punishable under Sec.302 r/w Sec.120-B and 149 of IPC within my cognizance.

Sixthly, in furtherance of criminal conspiracy with accused No.15 Vinay Rajashekarappa Kulkarni, the then in-charge Minister of Dharwad District, accused No.16 Chandrashekar Indi and accused No.1 Basavaraj Muttagi, after commission of murder of Yogesh Goudar on 15.6.2016 at about 7.36 a.m. at Uday Gym, you accused No.1 to 3 and 5 to 14 assembled near the Tavera Car parked near the 1st Cross Road, where you accused No.4 was waiting and you accused No.7 to 14 escaped from the place in said Tavera Car which was driven by you accused No.7 and proceeded towards Harihar. Later, you accused No.1 along with you accused No.3, 5 and 18 reached the spot in a Chevorlet car bearing Regn.No.KA-25-P-8526 by 7.42 a.m. to confirm the execution of the murder of the deceased and you accused No.1, 3, 5 and 18 also proceeded to Harihar where you accused persons met accused No.7 to 14. You accused No.4 drove the Splendor bike used by your brother accused No.7 and

left it near NTTF and joined accused No.2 who was waiting on CBZ bike bearing No. KA-31-Q-8755 and met accused No.1 and other accused at Haveri. You accused No.7 also joined them in your vehicle. Thereafter, accused No.8 to 14 were dropped at Harihar Bus-stand from there you left to your respective places of stay. You accused No.1 to 7 and 18 proceeded to Hospete in white Tavera and Black Chevrolet vehicles and you accused No.2 to 7 and 18 stayed in M/s. Hema Guest House at Hampi on the night of 15.06.2016, whereas you accused No.1 left to Chitradurga and later to Bengaluru to meet accused No.15 and 21. On 16.06.2016 you accused No.2 to 7 and 18 left Hampi and stayed in Panchavati Hotel, located at NH4, Munavalli, Shiggoan Taluk, Haveri where you were joined by accused No.1 on 16.06.2016 after returning from Bengaluru and accused No.1 arranged for hiding the black Chevrolet car at Shiggaon through you accused No.7 and 18. In furtherance of criminal conspiracy, to mislead the investigation and to screen the real assailants, you accused No.1 to 5 got surrendered before police on 17.06.2016

morning and you accused No.6 surrendered on 20.06.2016. Further, as a part of the larger criminal conspiracy with accused No.15, you accused No.19-Chennakeshava Tingarikar being the Investigation Officer of the case in Crime No.135/2015 of Sub-Urban P.S. Dharwad and you accused No.20 Sri Vasudev Rama Nilekani, being the immediate Supervisory Officer to accused No.19, had carried out defective investigation by recording the arrest of implanted accused No.1 to 6 as assailants, effecting recovery of implanted weapons from them by creating false mahazar, by not bringing on record the actual weapons found near the scene of crime, caused destruction of certain evidence connected with the offence of murder of Yogesh Goudar with an intention to screen the real assailants from legal punishment and thereby you accused No.1 to 16, 18, 19 and 20 committed offence an punishable under Sec.201 R/w Sec.120-B and 149 of IPC within my cognizance.

Seventhly, in furtherance of common object to screen the real offenders, you accused No.19-Chennakeshava Tingarikar being the

Investigation Officer of the case in Crime No.135/2015 of Sub-Urban P.S. Dharwad, and you accused No.20 Sri Vasudev Rama Nilekani, being the immediate Supervisory Officer to accused No.19, being public servants, had carried out defective investigation (1) by recording the arrest of implanted accused No.1 to 6 as assailants who used weapons, (2) by effecting recovery of implanted weapons from them by creating false mahazar, (3) by not bringing the actual weapons on record found near the scene of crime and thereby destructed the evidence and (4) by not arresting the real assailants who committed the crime. Subsequently, as a part of the larger criminal conspiracy, accused No.1 to 6 surrendered in the place of accused No.7 to 14 and you accused No.19 and 20 being public servants having the responsibility to prepare the charge sheet, you accused No.19 had prepared such charge sheet under the supervision of accused No.20 in a manner which you knew to be incorrect, with the intention to screen the accused No.7 to 18 and 21 from legal punishment for committing murder of Yogesh Goudar on 15.6.2016 and thereby

you accused No.19 and 20 have committed offence punishable under Sec.218 R/W Sec.120-B and 149 of IPC, within my cognizance.

Eighthly, you accused No.19-Chennakeshava Tingarikar being the Investigation Officer of the case in Crime No.135/2015 of Sub-Urban P.S. Dharwad, and you accused No.20 Sri Vasudev Rama Nilekani, being the immediate Supervisory Officer to accused No.19, had carried out defective investigation by recording the arrest of implanted accused No.1 to 6 as assailants who used weapons, effecting recovery of implanted weapons from them by creating false mahazar, by not bringing the actual weapons found near the scene of crime on record, destructing the evidence and by not arresting the real assailants and you accused No.19 and 20 had obtained illegal gratification to scuttle the investigation and these acts were committed by you accused No.19 and 20 as part of the criminal conspiracy to shield the other accused and weaken the case of prosecution and thereby you accused No.19 and 20 being public servants committed criminal misconduct

punishable under Sec.7, 13(1)(d) R/w Sec.13(2) of the Prevention of Corruption Act, 1988 within my cognizance.

Lastly, you accused No.15 Vinay Rajashekarappa Kulkarni, then then Minister in-charge of Dharwad District conspired with accused No.1 Basavaraj Muttagi and accused No.16 Chandrashekar Indi with common object to execute the murder of Yogesh Goudar due to personal and political reasons and in pursuance of the same you accused No.16 Chandrashekar Indi arranged three country made pistols through you accused No.17 Shivanand Shrishail Biradar and arranged to deliver the same to accused No.1 Basavaraj Muttagi and thereby you accused No.1, 15, 16 and 17 have committed offence punishable under Sec.25 R/w Sec.3, 5, 8 and Sec.29 of Arms Act, 1959 R/w Sec.120-B and 149 of IPC, within my cognizance.

13. The accused persons had pleaded not guilty and claimed to be tried on 06.12.2023. Immediately thereafter an application came to be filed by the then

accused No.1 Basavaraja Muttagi under Sec.231(2) of Cr.P.C., requesting the Court to continue with the evidence of witnesses in the same chronological manner which was conducted before the 4th Addl. District and Sessions Judge Court at Dharwad. After hearing both the parties on merits, this Court has disposed off the said application by holding that though it is a continuation of trial, it does not mandate the prosecution to continue with the very same material and the status of the witness since it is contended by the present Investigating Agency that the motive and intention for committing the murder was entirely different from that of the earlier one. The aforesaid order was challenged before the Hon'ble High Court of Karnataka in Crl.Petition No.7467/2024 c/w WP No.18539/2024 (GM-RES) dated 31.08.2024. The Hon'ble High Court of Karnataka by its kind order had rejected the same, which was once again challenged before the Hon'ble Apex Court, wherein the Hon'ble

Apex Court had also upheld the order passed by this Court, as such the trial came to be fixed. Further it was directed to this Court by the Hon'ble High Court to conclude the trial within a fixed time frame of 3 months. When the trial was fixed initially and when PW.1 Dattatreya Hanumantha Gudagunti was examined partly in chief-examination, the accused No.1 had filed an application under Sec.306 of Cr.P.C., seeking for pardon, as such counter was sought from the CBI who had accepted the contention of accused No.1 Basavaraja Muttagi and he had narrated in his statement that for security reasons he was not disclosing the facts which was within his specific knowledge. Thereafter, this Court after hearing the parties, had directed Basavaraja Muttagi to get his statement recorded under Sec.164(4) of Cr.P.C and thereafter the same came to be recorded. On perusal of the said statement and on the basis of the counter

submitted by the CBI, the Court had granted him with pardon.

14. Once again, the granting of pardon was challenged before the Hon'ble High Court of Karnataka in Crl.P.No.12176/2024. The aforesaid criminal Petition came to be allowed by the Hon'ble High Court of Karnataka holding that granting of pardon on the basis of the statement recorded under Sec.164(4) of Cr.P.C. after commencement of trial is not proper. However, the Hon'ble High Court had held that in the event of fresh ground being pointed out, he will be at liberty to file necessary application. By pointing out a fresh ground, once again another application came to be filed by accused No.1 Basavaraja Muttagi under Sec.306 r/w 307 of Cr.P.C. After seeking the counter and hearing the learned counsel for accused No.1 and also other accused persons since they had contended that even their rights were required to be protected and also after following the guidelines laid down by the

Hon'ble High court of Karnataka with respect to considering the application and by appreciating the materials available on record, this Court had proceeded to pass an order to grant pardon to accused No.1 Basavaraja Muttagi by imposing condition to disclose all true and necessary facts in the above case. Again, the said order was challenged before the Hon'ble High Court of Karnataka in WP No.383/2025, wherein the Hon'ble High Court after hearing both the parties on merits was pleased to dismiss the application confirming the order of pardon. Again, the same was challenged before the Hon'ble Apex Court wherein the order of this Court once again was upheld by the Hon'ble Apex Court. During the pendency of the same, the Hon'ble High Court of Karnataka had directed to conduct the trial as expeditiously as possible and conclude it within a period of four weeks.

15. Thereafter the trial had commenced and the prosecution in order to prove their case had examined

totally 113 witnesses as PW.1 to PW.113, Ex. P1 to Ex. P.292 and MO.1 to 33 were identified and marked and Ex.D1 to Ex.D38 were marked in the course of cross-examination.

CHAPTER: III

RECORDING OF STATEMENT UNDER SEC.313 OF Cr.P.C. OF ACCUSED No.2 TO 16 AND 18 TO 21:

16. On completion of the prosecution evidence, necessary statement under Sec.313 of Cr.P.C., came to be recorded by putting-forth separate incriminating materials against the aforesaid accused persons. The recording of the statement of accused person was recorded by marshaling the evidence which was recorded and by pointing out to the incriminating materials which were available against the accused person. The above case had a checkered history wherein, on earlier occasion the approver PW.10 Basavaraja Muthagi along with accused No.2 to 6 had faced the trial before the Sessions Court at Dharwad

and even they had claimed of committing the murder and thereafter the matter was entrusted to CBI for investigation and final reports were filed including accused No.7 to Accused No.21. As such the incriminating materials alleged against the accused persons drastically changes so as the evidence which is placed before court. By pointing out to the said incriminating materials, necessary statement of accused came to be recorded under sec 313 of Cr.P.C. The accused had answered all the questions and also, they were permitted to file the written statement as contemplated under Sec.313(5) of Cr.P.C. Particularly, accused No.2 to 6 were put-forth the incriminating materials which was alleged against them with respect to the screening of evidence and standing in the place of real assailants. The accused had denied all the incriminating materials that were available and likewise accused No.2 to 14 who were according to the case of prosecution were the assailants also notified

with respect to the incriminating materials available against them. Even they have denied all the incriminating materials. Accused No.15 who is said to be the main conspirator as per the case of the prosecution and accused No.16 Chandrashekar Indi @ Chandu Mama, who happens to be the maternal uncle of accused No.15 were examined separately by narrating the incriminating materials against them. Even they have denied the circumstances and incriminating materials available against them. The other accused i.e., accused No.19 and 20, who were the Police Officers who were pointed out with the incriminating materials with respect to their alleged role in the commission of murder by entering into conspiracy separately with accused No.15 to take forward the murder of Yogesh Goudar. Even they have denied all the incriminating materials available against them and likewise accused No.21 Somashekar Basappa Nyamagouda, who was the Personal Assistant

of Vinay R. Kulkarni was also examined in this manner and he too has denied the incriminating materials available against them.

17. On completion of recording of statement under Sec.313 of Cr.P.C., the learned counsels for the accused and also the accused persons have submitted that there is no defence evidence on their side. And as such the case was posted for arguments on merits.

CHAPTER : IV

ARGUMENTS ADDRESSED BY PROSECUTION AND DEFENCE.

18. Heard the arguments of both the parties. The learned Senior Public Prosecutor has vehemently argued that the incident of murder had taken-place on 15.06.2016 between 07.00 a.m. to 07.30 a.m., at Uday Gym situated at Sapthapura, Dharwad, wherein Yogesh Goudar was murdered. It is argued by the learned Senior Public Prosecutor that the main motive and intention for the commission of murder was the

conspiracy hatched by accused No.15 Vinay R. Kulkarni, due to a political rivalry. It is further argued that at the inception of the investigation by the Dharwad Sub-Urban Police, the murder was projected to be as a result of land dispute prevailing between the then accused No.1 Basavaraja Muttagi and deceased Yogesh Goudar with respect to a land situated at Belligatti village of Dharwad Taluk. In order to substantiate her contention, the learned Senior Public Prosecutor has taken this Court with respect to the evidence of PW.4 Shivananda Salagatti and PW.5 Gangappa Shivappa Kallagaudthi, who were the former Member and Member of Village Panchayath of Mundaragi village at relevant point of time. Though the contention of the Dharwad Sub-Urban Police was that the motive to commit the murder was a land dispute wherein Basavaraja Muttagi had intended to purchase the land of PW.6 Nagaraj Todkar, the same was not the real motive or intention but it was only a projected one

in order to escape from the wrath of justice. In this regard, the contention of CBI is required to be juxtaposed and examined with that of the contentions or the findings arrived at by the Investigating Agency of the State Police i.e., Dharwad Sub-Urban Police. At the first instance, the evidence of PW.4 Shivananda Salagatti is required to be examined. In his evidence he has deposed that on 23.04.2016, a meeting was convened at Dharwad Zilla Panchayath premises by the then District In-charge Minister Vinay Kulkarni to discuss about the famine situation and it is also narrated that the meeting was to be attended by the President and Vice President of Village Panchayath, Taluk Panchayath, Zilla Panchayath, PDO and Taluk Level Officials, KEO, District Commissioner, Superintendent of Police of Dharwad. He has further deposed that on that day even the public persons had gathered in that meeting and at relevant point of time, a verbal altercation has taken-place between the

deceased Yogesh Goudar about drinking water supply to the constituency of Yogesh Goudar at Hebballi village. The aforesaid aspect has been seriously refuted by the learned Counsel for the accused No.15 and the prosecution mainly contends that in the said verbal altercation that had taken place on 23.04.2016, Vinay Kulkarni had threatened deceased Yogesh Goudar with dire consequences and thereafter a conspiracy was hatched by him to commit his murder. The learned Senior Public Prosecutor has also pointed out to the evidence of PW.5 Gangappa Shivappa Kallagaudthi, wherein he has admitted that he was the Member of Village Panchayath from Managundi Constituency and he had succeeded PW.4 Shivananda Salagatti. He has also deposed in the similar manner and during the course of his cross-examination he was consulted by the learned Counsel for the defence with respect to the minutes which were recorded at that meeting. Since it was admitted by the witness, the minutes got marked

as Ex.D3 and whereas the invitation/notification calling upon the meeting was marked through confrontation as Ex.D2.

19. The learned Senior Public Prosecutor has submitted before this Court that the prosecution is successful in establishing their case with respect to the allegations leveled by them. The learned Senior Public Prosecutor has argued that the motive and intention to commit the aforesaid offence was the quarrel that had taken-place on 23.04.2016 between accused No.15 Vinay Kulkarni and deceased Yogesh Goudar in the meeting convened by Vinay Kulkarni at Zilla Panchayath premises. It is submitted that PW.4 Shivananda Salagatti and PW.5 Gangappa Kallagaudthi, who were also the Member of Village Panchayath have deposed that the quarrel that had taken-place between them and also the aforesaid aspect was reported in a Newspaper which was also established by the prosecution by examining PW.103

Jagadish Burlabaddi who has produced the Newspaper. The learned Senior Public Prosecutor has vehemently argued that immediately after the incident, accused No.15 had hatched a conspiracy and in furtherance of the same he has assigned the work to eliminate the deceased to accused No.1 Basavaraja Muttagi, who had availed the help of accused No.7 to 14, who had agreed to commit the murder by receiving a sum of Rs.20,00,000/- and with a condition that they would not be arrested nor made to surrender. As such, accused No.2 to 6 had agreed to stand in place of the real assailants. The aforesaid aspect was deposed by PW.2 Gurunath Goudar who had also produced the unanimous letter at Ex.P.7 wherein it was warned the deceased about the incident prior to his death and also it was proved during the evidence that the same was written by PW.10 Basavaraja Muttagi who had turned approver later on. The learned Senior Public Prosecutor has vehemently argued that

the entire case of the prosecution rests upon the circumstantial evidence and it is her submission that initially the complainant who is none other than the wife of deceased Yogesh Goudar had given a public interview and had repeatedly stated that the reason for murder of Yogesh Goudar was accused No.15 Vinay Kulkarni and later had joined the hands of Vinay Kulkarni himself. The learned Public Prosecutor has requested the Court to appreciate the evidence of PW.50 Mallavva Yogesh Goudar with that of PW.11 Anjana Basavaraj, who is none other than the sister-in-law of accused No.15 Vinay Kulkarni, who deposed that they have all traveled together to Sirsi and in the midst of the same, Mallavva Goudar had contacted Vinay Kulkarni at Vaishnavi Lodge. With respect to hatching of conspiracy, the learned Senior Public Prosecutor has argued that they had proved beyond reasonable doubt with respect to the conspiracy hatched between PW.10 and accused No.15 and in

turn with that of other accused persons were fully established by the prosecution by producing the CDR's which would indicate that accused No.7 to 14 were present at Dharwad and more particularly in front of Uday Gym on 14.06.2016 as well as on 15.06.2016 and likewise the tower location of other accused persons co-related with the then accused No.1 Basavaraja Muttagi. It is her submission that when the evidence of PW.10 Basavaraja Muttagi is compared and appreciated with the other materials, it would clearly indicate the presence of accused persons near Uday Gym on the relevant date. The above said aspect is further justified by looking into the CCTV footage which would clearly indicate and fortify the case of the prosecution.

20. The learned Senior Public Prosecutor has also vehemently canvassed that in order to prove the entering of conspiracy necessary electronic records have been produced by the prosecution in the form of

CDR and in order to justify the same she has pointed out to the evidence of PW.106 G.Prakash who is he Nodal Officer of Vodafone India Pvt. Ltd., PW.109 Johnson Tom who had produced the CDR's at Ex.P249 and also the evidence of PW.95 Ravi Norohna, Officer of the Vodafone and PW.10 Basavaraj Muttagi's evidence is required to be considered along with the aforesaid electronic records. It is submitted that at relevant point of time, the tower locations of the accused persons were all seen together and also, they were together immediately after the commission of alleged murder by them. By pointing out to the same, it is submitted by the learned Senior Public Prosecutor that the prosecution has established the entering of conspiracy between the accused persons. It is also submitted that since the question of conspiracy will always be based on circumstantial materials and it is not hatched in darkness, the prosecution will have to rely upon the materials which indicate through

circumstances. That apart, the learned Public Prosecutor has taken this Court through Ex. P80, which is the CCTV footage which indicates of the involvement of accused persons in the above case. The CCTV footage which indicates of the involvement of accused persons in the above case. The CCTV footage was displayed in the Court and as per the submissions made by the learned Senior Public Prosecutor, it is argued that the face of the assailants was clearly visible and the same was identified categorically by the eye-witnesses in the instant case. In order to justify the said contention, the learned Senior Public Prosecutor has taken through the evidence of PW.1 Dr.Dattatreya, PW.32 Anand Irappa Uddannavar, PW.33 Vinayak Binjiyaker, PW.34 Mohan Yethrappa Mumutal, PW.30 Lakshmi Benakatti and PW36 Shwetha Kulkarni. Out of the aforesaid witnesses, only PW.30 Lakshmi Benakatti had supported the case of prosecution and rest of the witnesses mentioned above

had turned hostile. However, it is argued that during the course of their cross-examination, they have categorically admitted the presence of assailants and also their presence and when corroborated with the evidence of PW.10 Basavaraja Muttagi, the same would justify the case of prosecution.

21. The learned Senior Public Prosecutor has also argued that the Court can always rely upon the evidence of the approver provided it inspires the confidence. It is submitted by the learned Senior Public Prosecutor that though the evidence of approver is considered as weak evidence and also his evidence is not believable at the inception, the Court can always ascertain and examine its veracity by looking into the facts and circumstances. It is her submission that the evidence of the approver though is considered as weaker evidence, it can still be relied upon by the Court to join the missing links when the case is based on circumstantial evidence. By pointing out to the

same, the learned Senior Public Prosecutor has taken this Court through the evidence of PW.10 Basavaraja Muttagi, wherein he had specifically deposed about the manner in which the conspiracy was hatched at the inception which was immediately after 23.04.2016 at Vinay Dairy, Dharwad. It is her submission that there cannot be any direct materials to indicate the manner in which the conspiracy was hatched and as such the said evidence can be looked into for the purpose of joining the links when appreciated with another eye-witness to the incident. By pointing out to the same, she has argued that the tower location of Basavaraja Muttagi immediately after commission of the murder on 15.06.2016 is required to be considered with that of tower location of other accused persons who had allegedly assembled near Sanky Tank, Sadashivanagar, Bengaluru. The tower location of Basavaraja Muttagi would clearly indicate of his presence and whereas as per the statement rendered

by Basavaraja Muttagi, accused No.15 Vinay Kulkarni had got his mobile phone switched off at Hotel Mourya prior to going to meet him at Sadashivanagar. The learned Senior Public Prosecutor has pointed out to the CDR, which would indicate the last tower location on 15.06.2016 of accused No.15 Vinay Kulkarni was near legislature's home at Bengaluru and thereafter the mobile came to be switched off. That apart, she has also argued that when the mobile numbers of other persons who were present at that point of time is verified and in particularly with that of Vijay Kulkarni, it would indicate his presence at Sanky Tank at Bengaluru, which once again retract back and corroborates the evidence of Basavaraja Muttagi. Even otherwise, the learned SPP has taken this Court to the evidence of PW.56 Mallavva Yogesh Gouda Goudar who is none other than the wife of deceased Yogesh Goudar. It is her submission that the criminal law was set into motion on the basis of the written information which

came to be filed at her behest as per Ex. P1 before the Dharwad Court and in fact she had openly stated that it was due to the political rivalry her husband Vinay Kulkarni was murdered. The aforesaid fact was corroborated when compared with the evidence of PW.2 Gurunath Goudar, PW.10 Basavaraja Muttagi, PW.11 Anjana Basavaraj Dollin and PW.12 Suma Subhash Goudar. The aforesaid witnesses have spoken about the ill-will and rivalry that was prevailing between them and in fact the evidence of PW.11 Anjana Basavaraj Dollin also indicates that subsequently after the murder, in the month of December 2017 Smt.Mallavva had intended to take treatment at Sirsi and on their way to Sirsi they had stayed at M/s Vaishnavi Lodge, wherein she had met a political leader and also Vinay Kulkarni and at that point of time the CCTV footage came to be switched off for the reason that Vinay Kulkarni was intending to visit the place. By pointing to the aforesaid

circumstances and by comparing with the public interview which Smt. Mallavva Goudar had given prior to the commencement of investigation by the CBI in a public rally that Vinay Kulkarni was mainly responsible for the murder of her husband. The prosecution has pointed out to the ill-will and also winning over of the witness by exercising power by accused No.15 Vinay Kulkarni. The learned Senior Public Prosecutor has also pointed out to the test of identification parade which was carried out by the Assistant Commissioner and Sub-Divisional Magistrate at Dharwad who was examined before the Court at PW.79 Mohammed Zubair. It is her submission that the witnesses were made to identify the suspected persons and in fact as per the evidence of the aforesaid witnesses he had followed all the procedures as contemplated under law to conduct Test Identification Parade and in that particularly PW.30 Lakshmi Benakatti had identified accused No.9 Ashwath and

likewise PW.34 Mohan Yethrappa Mulmuttal and also PW.33 Vinayak Binjiyakar had identified the accused persons which were marked as Ex.C.3 and Ex.P85 to 89. By pointing out to the aforesaid aspects, though the witnesses had turned hostile, the Court can always place reliance on the evidence of PW.30 Lakshmi Benakatti, who had specifically identified the suspected person at that point of time and also his identification before the Court. Lastly, it is argued by the learned Senior Public Prosecutor that the statement of the accused persons was recorded as contemplated under law under Sec.164(1) of Cr.P.C., wherein they had confessed and admitted of committing the offence. It is her submission that the judicial confession which was recorded before the Magistrate can always be believed into since the same stands on different footing than that of any other statement which is recorded. She has also pointed out to the Court that the learned Magistrate had given

sufficient period of time for retraction and also, he had explained the consequences to the accused persons of tendering such a statement. Since the witness themselves had volunteered, the statements came to be recorded. It is her submission that the said confession statement was not seriously disputed by the accused person and only a stray suggestion was put-forth that the submissions were recorded due to the pressure exerted by CBI to the Investigating Officer PW.113 Rakesh Ranjan. She has also taken this Court with respect to the statement of the witnesses which was also recorded under oath under Sec.164(5) of Cr.P.C. In particularly she has pointed out to the evidence of PW.24 Shivanand Chalavadi, the then Police Inspector of Dharwad Town Police Station who was instrumental in planting the weapons at the behest of accused No.19 Chennakeshava Tingarikar, who was the then Investigating Officer at Dharwad Sub-Urban Police Station. By pointing out to the same,

the prosecution has sought for conviction of the aforesaid accused persons.

22. The learned counsel for accused No.2 to 6 Sri.C.Parameshwar has taken this court through the entire materials which are available on record. It is his submission that the contention of the prosecution is not established with the facts and circumstances of the case. It is also been submitted that the alleged confessional statements of accused No.3 Keerti Kumar and accused No.6 Mahabaleshwara Hongal is not justified under the eyes of law. It is submitted that on 16.12.2020, the learned Magistrate before whom they were produced was pleased to send them back for reflection for a period of 48 hours and accordingly they were produced before the Magistrate on 18.12.2020 on which date the statement was not recorded and again they were directed to appear before him after 48 hours. It is further submitted that on 22.12.2020 the accused No.3 was produced before the learned Magistrate and

whereas the accused No.6 was produced on 23.12.2020 for getting the confessional statement recorded under Sec.164(5) of Cr.P.C. It is submitted that the CBI investigating officer Mr. Rakesh Ranjan had not recorded the statement of accused No.3 and 6 in writing during the course of investigation at any point of time and as such producing them before the Court at the first instance would definitely indicate that the process of recording the statement was tainted. Even otherwise it is argued that the confessional statement did not indicate of any questions being put-forth by the Magistrate and they were recorded directly by the Magistrate would clearly indicate that the statement which was recorded was not a voluntary one. It is also contended that though the aforesaid accused were on bail, were taken into custody and kept under illegal detention by the CBI for the purpose of recording their statement. Further it is also submitted that as per the confession statement, it

was projected that accused No.1 was an innocent person who was allegedly forced to commit the crime. Further it is submitted that actually it was the mind game of accused No.1 Basavaraja Muttagi who was involved with the Investigating Officer from the day one of his investigation which would indicate that he wanted to give a clean chit to the accused No.1 which was rather a conspiracy of accused No.1 to get record the alleged confession statement to suit his benefit. The learned counsel has relied upon the judgment of the Hon'ble Apex Court reported in **AIR 1957 SC 216 (Balbir Singh Vs. State of Punjab)** and also another judgment of the Hon'ble Apex Court reported in **AIR 1963 SC 1094 (Pyarelal Bhargava Vs. State of Rajasthan)** and has submitted that the statement which is recorded by the Magistrate is not in accordance with law and it does not have any value under the eyes of law. He has also contended that the prosecution which have produced CDR's along with certificates

under Sec.65(B) of Indian Evidence Act was admissible in evidence which would indicate the CDR analysis report revealing that the accused No.2 to 6 were in different locations so as that of the then accused No.1 Basavaraja Muttagi who had turned approver later on. It is the submission of the learned counsel for accused No.2 that the prosecution had failed to establish the motive for committing the offence was the land dispute and in fact the evidence of PW.13 was not indicating of any such materials. That apart it is also submitted that accused No.5 was not proved to be in possession of the house at Sapthapura, Dharwad and the evidence of PW.10 Basavaraja Muttagi was not corroborated in any manner by the evidence of Usha Deshpande or any other persons who were examined before the Court. It is also submitted by him that the tower location of the aforesaid accused persons on the alleged date of incident did not indicate of their presence at the time of commission of murder but it was showing the

location at some other place which was not explained properly by the prosecution. When the presence of accused No.2 to 6 could not be pointed out at or near Uday Gym, the contention of the prosecution to rely upon the statement of Basavaraja Muttagi was not proper.

23. The learned counsel for the accused No.2 to 6 has also submitted that the prosecution has utterly failed to prove the recovery of the vehicles which were allegedly used by the accused persons at the time of the incident. It is their contention that the vehicles were not used at the time of alleged incident by the aforesaid accused persons and even otherwise the ownership documents which were produced before the Court does not indicate of being used or standing in the name of accused No.2 to 6. By pointing out to the aforesaid aspects, it is his submission that solely on the basis of the statement of accused No.1 Basavaraja Muttagi who was later on granted with pardon, the

Court cannot proceed to accept the contention of the prosecution of proving their case beyond reasonable doubt. Accordingly, he has sought for acquittal of accused No.2 to 6. In order to substantiate his contention, the learned counsel has relied upon the following authorities which are as follows;

a) **AIR 1957 SC 216 (Balbir Singh Vs. State of Punjab)**

b) **AIR 1963 SC 1094 (Pyare Lal Bhargawa Vs. State of Rajasthan)**

c) **(1977)1 SCC 731 (Pyare Lal Vs. State of Madhya Pradesh)**

d) **(2001)9 SC 578 (Abdul Rashid Vs. State of Bihar)**

24. The learned counsel for accused No.7 Sri. Sunil Kumar.S, has endorsed the arguments of accused No.15 submitted by the learned Senior Counsel and with respect to the overt-act of accused No.7 he has filed a separate written arguments under various heads. Firstly, it is submitted that the evidence of eye-witnesses against accused No.7 with respect to his participation in the act of assault was not

established by way of evidence and the accused No.7 for the first time was identified by PW.30 Lakshmi Benakatti during the course of her chief-examination by pointing out that he was the one who had thrown chili powder to deceased Yogesh Goudar. It is his submission that without any iota of identification prior to the one that had taken place in the Court was not having any value under the eyes of law and in order to buttress the same he has relied upon the judgment of the Hon'ble Apex Court reported in **(1979)4 SCC 312 (Chonnampara Chelappan Vs. State of Kerala).** That apart, it is his contention that the conduct of PW.30 Lakshmi Benakatti was required to be appreciated by the Court as she had not divulged or explained about the identity of accused No.7 before the previous proceedings nor she had deposed anything in this regard when she was afforded with an opportunity before the learned Sessions Court at Dharwad in SC No.50/2017. It is his submission that before the said

Court she has feigned her ignorance with respect to the identity of any of the accused persons and had specifically deposed that she was not in a position to identify any of the assailants. It is also submitted that the prosecution without following the procedure of Test of Identification Parade (TIP in short) at the earliest instance and directly examining such witness before the Court was not in consonance with the settled principles of law. It is also submitted that her presence itself was not proved by the prosecution since many of the witnesses had deposed that she was not attending the Gym at the relevant point of time. The learned counsel has also argued that even otherwise if her evidence before the Sessions Court at Dharwad is appreciated, it would indicate that she herself had deposed under oath that she was not at all present at the place of incident and in fact she had joined the Gym about couple of days earlier to the incident and that too in the evening batch.

25. The other limb of arguments which is canvassed by the learned counsel is that the conspiracy and arrest of accused No.7 was not duly proved by the prosecution. Admittedly, the prosecution had not produced the CAF of mobile number 9035575321 and the Investigating Officer who was examined as PW.113 had feigned his ignorance during the course of his evidence by stating that he was unable to recall of collecting CAF from Somashekar Saudatti. The learned counsel for accused No.7 has submitted by pointing out to the evidence of PW.82 who was none other than the brother of accused No.7 who was using the mobile number 9035575321 and has stated that during the cross-examination no incriminating materials were elucidated from him by the prosecution. The allegations of the prosecution that accused No.7 was using Mobile Number 8050891607 was evident from Ex.P.234 which could be looked into from the evidence of PW.113, the

Investigating Officer. The investigation referred appears to be incomplete concerning the mobile devices allegedly used during the crime and when the prosecution relies on tower location data or call detail records to implicate a suspect it would be imperative that the Investigating Officer verifies which mobile devices were actively used at relevant point of time and also it should have the basis on IMEI and IMSI. However, no such aspects were forthcoming in the evidence. It is also submitted that during the course of cross-examination and in particularly at Para No.131, the I.O had admitted of not obtaining IMEI Number of all the mobile numbers during the course of his investigation nor the Nodal Officer who was examined by the prosecution as per PW.106 categorically admitted that the I.O had not requested to provide the aforesaid details.

26. The other limb of arguments which is submitted by the learned counsel for accused No.7 is

that the prosecution relies upon CDR and tower locations. However, CDRs are considered as secondary evidence and therefore in criminal trials the prosecution must establish the authenticity of such evidence for which the I.O is responsible for obtaining necessary certificate under Sec.65(B) of Indian Evidence Act at the time of generating the document for its presentation. The Nodal Officer PW.106 Prakash.G has categorically admitted of not following the aforesaid principles which was fortified by the evidence of PW.109 Johnson Tom, who was also the Nodal Officer. The learned counsel has relied upon the call detail records and has submitted that the last and final piece of circumstantial evidence relied upon by the prosecution to bring home the charges against the appellant pertains to CDR which was also established as per the settled law laid down by the Hon'ble Apex Court in its various dictum and in particularly in the dictum laid down by the Hon'ble Apex Court in Arjun

Pandith Rao Khotkar Vs. Kailash Kushan Rao Gorantyal.

27. The learned counsel for accused No.7 has also argued that the non-seizure of mobile and SIM Cards was also fatal to the case of prosecution. Last but not the least, the learned counsel has taken this court through the evidence of PW.10 Basavaraja Muttagi who had turned approver in the above case. The evidence provided by PW.10 was unreliable and unfounded which indicates of numerous omissions and contradictions, undermining its credibility. He has also argued that the conduct of the approver was crucial as he had not disclosed anything prior to filing of his third application seeking for pardon, which would indicate his falsehood and his version as nothing but a tutored story of the prosecution. It is also submitted that the case appears to be highly politically motivated and the evidence against accused No.7 should not be considered valid or reliable given

the context and potential bias influencing the integrity of the case. It is also argued that the learned Senior Public Prosecutor at the time of her arguments had submitted that the accused No.7 should have explained certain aspects in the above case. It is argued that the accused No.7 was having the right to remain silent during the course of trial which was guaranteed under the Constitution of India. In order to buttress the same, he had relied upon the judgment of the Hon'ble Apex Court reported in **(2019)8 SCC 50 (Anand Ramachandra Chougule Vs. Sidarai Laxman Chougula)** in this regard. Hence, by pointing out to the same and also by relying upon the authorities which he had presented to the Court has requested the Court to hold that he was an innocent person and charges leveled against him stands negated. Accordingly, he had sought for the acquittal. The learned counsel has relied upon the following authorities:

a) (1979)4 SCC 312 (Chonampara Chellappan Vs. State of Kerala)

b) (2024)19 SCC 503 (Jafar Vs. State of Kerala)

c) 2025 SCC OnLine SC 1203 (Agniraj and others Vs. State)

d) 2026 SCC OnLine SC 9 (Anjani Singh Vs. State of Uttar Pradesh)

e) 2026 SCC OnLine SC 344 (Pooranmal Vs. The State of Rajasthan and another)

f) 2025 SCC OnLine SC 1481 (Rahil and another Vs. State [Govt. of NCT of Delhi])

g) (2011)4 SCC 143 (Nilesh Dinkar Paradkar Vs. State of Maharashtra)

h) (2019)8 SCC 50 (Anand Ramachandra Chougule Vs. Sidarai Laxman Chougala)

28. The learned counsel for accused No.8 to 14 Sri.S.Shankarappa has submitted that the charge came to be framed against accused No.1 to 21 by this Court on 06.12.2023, wherein the first charge against accused No.1 to 18 and 21 for the offences punishable under Sec.120(B) r/w 149 of IPC and the second charge was framed against accused No.1 to 14 and 15 for the offences punishable under Sec.143 r/w 120B and Sec.149 of IPC and whereas the third charge was

framed against accused No.1 to 14 and 15 for the offences under Sec.147 r/w Sec.120B and Sec.149 of IPC. It is further submitted that the fourth charge was framed against accused No.1 to 14 for the offences punishable under Sec.148 r/w 120B and Sec.149 of IPC and whereas the fifth charge was framed against accused No.1 to 16, 18 and 21 for the offences punishable under Sec.302 r/w Sec.120B and Sec.149 of IPC. The sixth charge was framed against accused No.1 to 16, 18, 19 and 20 for the offence punishable under Sec.201 r/w Sec.120B and Sec.149 of IPC and that apart charge was also framed against accused No.1 to 15, 16 and 17 for the offences punishable under Sec.25 r/w Sec.3, 5, 8 and Sec.29 of the Arms Act. The learned counsel has also argued that out of the total 113 witnesses examined before the Court, PW.2 Gurunatha Goudar was the brother of the deceased and whereas PW.50 Smt.Mallavva Goudar was the complainant and the wife of the deceased. It is

submitted that the majority of the eye witnesses who were examined before the court as PW.1 Dr. Dattatreya Hanumantha Gudaganti, PW.32 Ananda Uddannavar, PW.33 Vinayak Binjiyavar, PW.34 Mohan Malmuttal, PW.35 Vivekananda Dalawai, PW.36 Shwetha Kulkarni had all turned hostile. It is his arguments that the evidence of PW.30 Lakshmi Benakatti who though had supported the case of prosecution was not inspiring confidence. It is submitted by him that on assuming the case files for further investigation by PW.113, the entire case took a different turn and the records also indicates the statements being recorded by the Investigating Officer. It is his submission that the prosecution has failed to produce any materials to indicate the presence of PW.30 Lakshmi Benakatti at the place of incident on 15.06.2016 at Uday Gym since her evidence itself was not inspiring confidence when compared to the evidence which she had tendered before the Sessions Court at Dharwad.

29. It is also submitted that the deposition of PW.10 Basavaraja Muttagi who was accorded the status of approver by this Court was also not inspiring confidence and it is the submission of the learned counsel for accused that though he claims to have written a letter as per Ex.P6 and Ex.P7 warning the deceased Yogesh Goudar about attempts being made on his life, the same has not been established by the prosecution in any manner during the course of trial. The furnishing of the copy itself as contended by PW.2 Gurunath Goudar is doubtful since it is very much contrary to the evidence of PW.50 Mallavva Goudar who at the inception of the case had got a written information filed before the then Dharwad Sub-Urban Police Station. The learned Counsel has taken this Court throughout the evidence of PW.10 Basavaraja Muttagi and has pointed out the deficiencies in his examination by comparing it with the cross-examination. It is also argued by him that the

Investigating Officer had falsely implicated accused No.7 to 14 in the case by submitting that it was on the basis of CDR and CCTV footage. The statements recorded by the accused No.2 to 6 is very much akin to confession statement of a co-accused which was totally inadmissible under the provisions of law. The learned counsel for accused has also disputed the date of arrest and also non-assigning any reasons in the materials which were produced before the Court. The learned Counsel has also taken this Court through the various provisions of law which would require the mandatory provision of law to be followed and he has pointed out to Sec.50 of Cr.P.C., in comparison with Chapter-11.12 of CBI Manual. The learned Counsel has also seriously disputed the TIP Parade which was carried out by the Investigating Agency. It is his submission that as per the provisions mentioned at Chapter-11.39 and 11.40 of the CBI (Criminal Manual) which was in addition to Sec.54A of Cr.PC., certain

strict mandatory aspects were required to be followed and at the time of arrest of the accused persons, their face was required to be covered and a note to that effect should have been made in the corresponding Arrest Memo, Case Diary and the Remand Application. Further it is argued that the suspects were required to be placed amongst other similarly dressed persons and of the same gait in the proportion of 8 or 9 such persons to one suspect. Further it is his submission that the Test of Identification Parade which was carried out was not in accordance with law and the evidence of the jurisdictional Sub-Divisional Magistrate PW.79 Mohammed Zubair would clearly indicate that he had not followed the procedural aspects. It is his submission that according to PW.30 who was the solitary witness supporting the case of prosecution was not corroborated by any other materials or witnesses. The evidence of PW.113 sending the controlled CCTV footage was also not in accordance with law and the

evidence pointed out various lacuna which is not helpful to the case of prosecution. The learned counsel for accused has also argued that PW.10 Basavaraja Muttagi in his entire evidence had not deposed about giving Rs.20 lakhs to accused No.8 to 14 and he had only deposed that he had given Rs.6 lakhs to Bangalore Boys without specifically stating that to whom he had given it. Further his evidence did not disclose the mobile number of accused No.8 Dinesh and accused No.9 Ashwath. The CDR and location extract of accused No.8 was located in the vicinity which was contrary to the case of prosecution. Under the circumstances, it is his submission that the entire case of prosecution was not backed by any proper materials and they had utterly failed to prove the case beyond reasonable doubt. Accordingly, he has sought for acquittal of accused No.8 to 14. The learned counsel has relied upon the following authorities which are as follows:

1. (2023)7 SCC 727 (Pritinder Singh Alias Loverly Vs. State of Punjab)

2. (2019)9 SCC 738 (Gargi Vs. State of Haryana)

3. (2014)12 SCC 133 (Prakash Vs. State of Karnataka)

4. (2013)3 SCC 440 (Oma @ Omprakash and another Vs. State of TN)

5. (2021)13 SC 716 (Jaikam Khan Vs. State of UP)

6. AIR 1996 SC 2478 (Dhanna Etc. Vs. State of MP)

7. (2011)2 SCC 715 (Subhash Vs. State of Haryana)

8. (2016)16 SC 418 (Harbeer Singh Vs. Sheeshpal and others)

9. (2013)12 SCC 406 (Sujit Biswas Vs. State of Assam)

10. (2013)5 SCC 722 (Raj Kumar Singh Alias Raju Alias Batya Vs. State of Rajasthan)

11. (2023)1 SCC 180 (Gireesan Nair and others)

12. 2014 SCC Online Kar 10093 (Premakumar @ Kumar @ Vadda and others Vs. State of Karnataka)

13. (1999)8 SCC 428 (Rajesh Govind Jagesha Vs. State of Maharashtra)

14. (2006)12 SCC 306 (Vikramjit Singh Vs. State of Punjab)

15. JT 2006 (6) SC 597 = (2006)10 SCC 601 (Syed Ibrahim Vs. State of Andhra Pradesh)

16. (2024)19 SC 570 (Shailesh Kumar Vs. State of Uttar Pradesh)

30. The learned Senior Counsel Sri C.V Nagesh, appearing on behalf of the counsel for accused No.15 has taken this Court through the various facets of law and has also highlighted about the evidentiary value of the witnesses who were examined before the Court. The learned Counsel for accused No.15 has also filed brief written submissions in addition to the oral arguments. The written submissions filed by accused No.15 can be summarized as follows;

- The defense of the 15th accused centers on the argument that his implication in the case is a politically motivated afterthought. The initial investigation by the local police and the first Additional Report filed by the Central Bureau of Investigation (CBI) did not name A15 as an accused. It was only after a change in the state administration and a

second Additional Report that A15 was "tagged on" to the case.

- The core of the prosecution's case against A15 is a projected motive of political rivalry, alleging that A15 viewed the deceased as a rising political obstacle. The defense systematically dismantles this by providing evidence of cordial relations between A15 and the deceased's family, including testimony from the deceased's wife (PW50) stating that A15 actually helped her husband to become the President of the Taluk Panchayath. Furthermore, the defense provides official records (Ex.D.3) to prove that during a Zilla Panchayat meeting where a heated altercation supposedly occurred, A15 was actually supporting the deceased's grievances and reprimanding officials for ignoring them.
- The submission further challenges the reliability of the prosecution's witnesses. Many key "eye-witnesses" (PW1, PW31 to 34,

PW36) were treated as hostile, with some alleging they were tutored, threatened, or mentally tortured by the CBI to provide false statements. The defense particularly attacks the credibility of PW30 Lakshmi Benakatti, labeling her a "hired witness" whose testimony after an eight-year lapse contradicts her earlier statements and is belied by gym and hotel records.

- Finally, the defense refutes the physical evidence and the testimony of the approver (PW10). They argue that the weapons produced are "planted" and do not match the autopsy findings. The submission characterizes the approver as an extortionist and provides a transcript (Ex.D24) of an alleged attempt by him to blackmail A15 for money. Alleged conspiracy meetings are further dismissed as they are not reflected in official security registers.

31. That apart, the other aspects which has been highlighted by the learned counsel for accused No.15 when summarized are as follows;

A. Challenge to the Investigation and Motive :

- **Late Implication:** A15 was not named in the original FIR or the first Final Report; his involvement was only alleged in the CBI's second Additional Report after a change in the State Government.
- **Fabricated Political Rivalry:** The prosecution's claim that A15 murdered the deceased over political growth is characterized as an after-thought to "wreck political malice".
- **Supportive Relationship:** The deceased's wife (PW50) testified that A15 and the deceased were on visiting terms and that A15's support was instrumental in the deceased becoming the President of the Taluk Panchayath.

- **Debunked Meeting Altercation:** Official Zilla Panchayat proceedings (Ex.D.3) show that instead of threatening the deceased, A15 took officials to task for failing to attend to the deceased's constituency grievances.
- **Concocted Witnesses:** Witnesses who spoke of altercations at the meeting (PW4 and PW5) were not on the official attendance register (Ex.D.2) and are described as "non-entity street goers".

B. Discrediting Eye-Witness Testimony :

- **Hostile Prosecution Witnesses:** Numerous witnesses (PW1, PW31, PW32, PW33, PW34, PW36) denied seeing the assault or knowing the assailants, leading the prosecution to treat them as hostile.
- **CBI Tutoring and Threats:** PW1 and PW32 stated in court that they were tutored and threatened by

the CBI to give false statements before the Magistrate.

- **The "Hired" Witness (PW30):** The defense argues that Lakshmi Benakatti (PW30) was planted by investigators. Her 2025 testimony identifying the accused contradicts her 2017 statement where she claimed to have seen nothing.
- **Missing Corroboration for PW30:** Gym records (Ex.D.23) and hotel guest registers at "Rashi Farms" fail to show PW30's presence at the times she claimed to be present in the relevant place.
- **Flawed Identification:** PW30 admitted that investigators showed her CCTV footage and photographs of the accused before she identified them in the Test Identification Parade.

C. Refutation of Recovery and Physical Evidence :

- **Planted Weapons:** The defense contends that the weapons (MO.1 to 25) were planted to frame the

initial accused (A1 to A6) and do not match the injuries described in the autopsy report.

- **Hostile Recovery Witnesses:** Witnesses for the recovery of weapons (PW12, PW13, PW19, PW22) all denied witnessing the recoveries and claimed they were forced to sign papers they did not understand.
- **Arms Act Discrepancies:** Claims regarding country-made pistols provided by A15 are unsupported; the weapons were found without bullets and were never used in the crime.
- **Fabricated Letters:** Incriminating letters (Ex.P.6 and Ex.P.7) allegedly sent to the deceased are described as concocted documents produced by the deceased's brother (PW2) in collusion with the approver.

D. POINTING OUT INFIRMITIES IN THE EVIDENCE OF THE APPROVER (PW10):

- **Extortionist Character:** The first accused turned approver (PW10) is described as a black-mailer with a history of extortionist activity.
- **Blackmail Attempt:** A transcript (Ex.D.24) exists of a conversation where PW.10 allegedly demanded an "unimaginable amount" from A15 to keep him safe in the case.
- **No Record of Conspiracy Meetings:** Security registers at the Legislator's Home (Ex.D.23) and Vinay Dairy show no record of the alleged conspiracy meetings described by PW10.
- Contradictory Statements: PW10's testimony regarding the authorship of the incriminating letters is contradicted by his earlier statements and an expert's observation that the handwriting did not match his specimen.

32. By pointing out to the aforesaid aspects and also by relying upon the citations mentioned below, the learned counsel for accused No.15 has sought for his

acquittal in the above case. The learned counsel for accused No.15 has relied upon the following authorities which are as follows:

1. 2024 SCC Online SC 526 (Ravishankar Tandon Vs. State of Chhattisgarh)
2. (2025)7 SCC 401 (Chandrabhan Sudam Sanap Vs. State of Maharashtra)
3. 2024 SCC OnLine SC 3683 (Nusrat Parween Vs. Sate of Jharkhand)
4. 2022(19) SCC 301 (Nandu Singh Vs. State of Madhya Pradesh)
5. 2025 SCC OnLine SC 1459 (Baljinder Kumar Alias Kala Vs. State of Punjab)
6. 2021 SCC OnLine SC 1184 (Praveen @ Sonu Vs. State of Haryana)
7. (2012)9 SCC 696 (Baliya Alias Bal Kishan Vs. State of Madhya Pradesh)
8. (2022) 16 SCC 166 (Ram Sharan Chaturvedi Vs. State of Madhya Pradesh)
9. (2022)9 SCC 402 (Amrik Singh Vs. State of Punjab)
10. 2023 SCC OnLine SC 1124 (Harilal etc., Vs. State of Madhya Pradesh)
11. 2025 SCC OnLine SC 773 (Karandeep Sharma Alias Razia Alias Raju Vs. State of Uttarakhand)
12. 2025 SCC OnLine SC 1110 (Tukeesh Singh and others Vs. State of Chhattisgarh)

13. 2025 SCC Online SC 2337 (Nimai Ghosh and others Vs. Sate of Bihar)

14. (2023)10 SCC 134 (Naresh alias Nehru Vs. State of Haryana)

15. (2024)9 SCC 546 (Allarakha Habib Memon and others Vs. State of Gujarat)

16. 2025 SCC OnLine SC 1074 (Renuka Prasad Vs. State represented by Assistant Superintendent of Police)

17. (2021)13 SCC 716 (Jaikam Khan Vs. State of Uttar Pradesh)

18. 2025 SCC OnLine SC 2270 (Kannaiya Vs. State of Madhya Pradesh)

19. (2024)4 SCC 208 (Ram Singh Vs. State of U.P)

20. 1949 SCC OnLine PC 12 (Bhuboni Sahu Vs. The King)

21. 1994 Supp (2) SCC 73 (Rampal Pithwa Rahidas and others Vs. State of Maharashtra)

22. 1995 Supp (1) SCC 80 (Suresh Chandra Bahri Vs. State of Bihar)

23. (2023)13 SCC 705 (A.Srinivasulu Vs. State Rep. By the Inspector of Police)

24. (2023)19 SCC 321 (Santosh Alias Bhure Vs. State [G.N.C.T of Delhi]))

25. (2025)7 SCC 401 (Chandrabhan Sudam Sanap Vs. State of Maharashtra)

26. Crl.Appeal No.851/2008 (State of Tavarekere PS Vs. Narasimhaiah and others) and Crl.Appeal No.852/2008 (State of Tavarekere PS Vs. K.Doddaiah and others)

27. 1971(2) SCC 42 (State of UP and another Vs. Jaggo Alias Jagdish and others)

28. (2024)3 SCC 544 (Mallappa and others Vs. State of Karnataka)

29. (2001)4 SCC 9 (Dhananjaya Reddy Vs. State of Karnataka)

30. (2011)2 SCC 385 (Alamelu and another Vs. State represented by Inspector of Police)

31. (2024)12 SCC 224 (Alauddin and others Vs. State of Assam and another)

32. 2025 SCC Online SC 1459 (Baljinder Kumar alias Kala Vs. State of Punjab)

33. 2024 SCC Online SC 310 (Jafar Vs. State of Kerala)

34. 2025 SCC Online SC 1439 (Kattavellai @ Devakar Vs. State of Tamilnadu)

35. (2022) 16 SCC 732 (Arvind Kumar alias Nemichand and others Vs. State of Rajasthan)

36. (2020)14 SCC 257 (Imrat Singh and others Vs. State of Madhya Pradesh)

37. (2025)8 SCC 315 (Vaibhav Vs. State of Maharashtra)

38. ILR 2020 KAR 5531 (Yankappa and another Vs. The State of Karnataka, Rep. By Public Prosecutor)

39. 2026 SCC Online SC 89 (Tulasareddi @ Mudakappa and another Vs. State of Karnataka and others)

40. 2018 SCC Online Kar 4167 (N.Raghumurthy Vs. State by Lokayuktha Police, Mysuru District)

41. 2026 SCC Online SC 116 (Bernard Lyngdoh Phawa Vs. State of Meghalaya)

33. The learned counsel for accused No.16 who is represented by learned Senior Counsel Sri.M.S.Shyam Sundar, has vehemently argued that the entrustment of the case to CBI itself a misconceived one. It is his submission that the entrustment order and the subsequent notification which came to be issued in favour of CBI conducting the further investigation was a defective one and the name of the victim herself was not shown properly. It is also submitted by him that the question of filing additional supplementary charge-sheets which was totally against the earlier evidence collected by the Dharwad Sub-Urban Police itself was a farrago. It is his submission that under the guise of further investigation, the entire case is made as topsy-Turvey which is highly impermissible under the eyes of law. He has filed the written arguments wherein he has discussed about the trial that had taken place in the instant case. In fact, he has discussed about the aspects which were culled out in each of the additional

charge-sheets which were filed by the Investigating Agency. It is his submission that the prosecution intended to prove the guilt of accused No.16 through the evidence of accused No.17 who was granted pardon and later on examined as PW.9 Shivananda Shrishaila Biradar and also on the evidence of PW.10 Basavaraja Muttagi who was also granted pardon in the above case. That apart, it is his submission that PW.21 Manikanta Acharya, who was the owner of the ammunition shop at Dharwad was examined by the prosecution to prove their contention of Basavaraja Muttagi visiting his shop to get his unlicensed Pistol serviced. However, he had turned hostile and has specifically stated that the approver Basavaraja Muttagi had not approached him for the purpose of cleaning the unlicensed weapon. That apart, the prosecution has relied upon the evidence of CW.56 Nagappa Mallikarjuna Bhairagonde and PW.26 Suresh Jagadev Hulle, who both had turned hostile and have

deposed that they had not handed over any Gun to PW.10 Basavaraj Muttagi. Likewise, the Senior Counsel has taken this Court through the evidence of PW.46 Suresh Ramegouda, PW.53 Vijay Kulkarni, PW.71 Prabhu Shankar, PW.85 Harish Shetty, PW.86 Santhosh R. Jadhav, who had conducted the Postmortem, PW.87 Dr.Kiran Kumar who had conducted ballistic examination, PW.88 Firoz Khan Jagirdar, PW.112 Kempegouda R. Patil, whom the prosecution contends to be present near Sanky Tank on the night of 15.06.2016. However, the majority of the aforesaid witnesses have turned hostile and have not supported any of the contention which were urged by the prosecution. Accordingly, he has submitted that the evidence collected by the prosecution was not in accordance with law.

34. The learned Senior Counsel has also taken this court through the various seizures which were made by the prosecution. It is his submission that the

prosecution had suppressed several material facts and the same were glaringly forthcoming during the course of trial. It is his submission that during the testimony of PW.113 Rakesh Ranjan, the I.O had suppressed the arrest of accused No.16 along with his team on 13.06.2020 at the residence of accused No.16 at Bijapur at about 07.49 AM in the morning. Prior to his arrest the CBI had not served with any notices and he was straight away taken to Sub-Urban Police Station at Dharwad and there he was served with a notice on 14.06.2020 and after that he was remanded to custody for two days which would indicate of illegal detention and procedures being followed by the Investigating Agency. He has also argued that the prosecution has failed to explain the reason for delay in sending MO.12 to 14 for the purpose of scientific examination of the weapons which came to be seized on 08.11.2020. Lastly it is submitted by the learned Senior Counsel that the other allegation which was leveled against

accused No.16 was of constantly watching the trial at Dharwad Court by residing at Hotel Central Park and Hotel Ankitha Residency. The guest registers of the aforesaid Hotels were collected by the CBI and while procuring the records, the Investigating Agency had intentionally not collected materials prior to the commencement of trial in SC No.50/2017 and had submitted materials which would suit their needs.

35. The learned Senior Counsel has also racked up legal issues and in that instance, it is his submission that the validity of the sanction order accorded by the Government of Karnataka dated 06.09.2019 bearing No. HD 48 PCB 2016 at Ex. P.259 was not proper. He has also argued that the question of permissibility of further investigation at a stage when the case was posted for arguments after completion of the recording of statements under Sec.313 of Cr.P.C., was also required to be considered. In this regard, it is his submission that as per the ratio

laid down by the Hon'ble Apex Court in the judgment rendered in **(2024)19 SCC 382 (K.Vadivel Vs. K.Shanthi and others)** it was not permissible to do fishing and roving enquiry when the Police had already filed the charge-sheet. It is his submission that in the present case only one single investigation had necessarily happened and the law is settled that there cannot be any two set of evidence which are contradictory to each other. In this regard he has relied upon the judgment of the Hon'ble Apex Court reported in **(2024)3 SCC 544 (Mallappa and others Vs. State of Karnataka)**. The learned Senior Counsel has also touched upon the aspects of the legality and also the credentials which can be attached to the confessional statement of co-accused persons. It is his submission that the evidence of co-accused cannot be considered on a higher footing and even otherwise the search and seizure procedures followed by the Investigating Agency were not in accordance with law. He has also argued that non-

furnishing of mahazars and inventories to the learned Magistrate at relevant point of time would negate the materials if any collected by the Investigating Agency which would in other words be considered as void-ab-initio. Lastly, the learned Senior Counsel has argued that the Investigating Agency has not complied with the provisions of Cr.P.C., and in particularly the provision of Sec.157, Sec.158 and Sec.173(3) of Cr.P.C., wherein it was required to follow the search and seizure procedures scrupulously. He has submitted that no fresh FIR was registered and the entire investigation happens only by virtue of existing FIR and that too when the second additional final report came to be filed against accused No.15 to 17 there was absolutely non-compliance of the report as prescribed and mandated by the law. He has also relied upon the judgment of the Hon'ble Apex Court reported in **(2026) SC 156 (Pramod Kumar and others Vs. State of UP and others)** and also in the judgment

rendered in **(2019)17 SCC 1 (Vinubhai Haribhai Malavia and others Vs. State of Gujrath and another)**. Further the doctrine of sub-silentio was also argued by the learned Senior Counsel and has submitted that no proper materials were collected in order to point out the guilt of accused No.16 Chandrashekar Indi @ Chandu Mama in the above case and hence he has sought for acquittal of the accused person. In order to butters his contention, he has relied upon the following authorities which are as follows:

1. **(2000)6 Supreme Court Cases 359 (Kunhayammed and others Vs. State of Kerala and another)**
2. **(2024)19 Supreme Court Cases 382 (K.Vadivel Vs. K.Shanthi and others)**
3. **2026 SCC OnLine SC 156 (Pramod Kumar and others Vs. State of Uttar Pradesh and others)**
4. **(2024)3 Supreme Court Cases 544 (Mallappa and others Vs. State of Karnataka)**
5. **(2024)6 Supreme Court Cases 799 (Chandan Vs. State [Delhi Admn])**

6. (2022)9 Supreme Court Cases 23 (Noor Mohammed Vs. Khurram Pasha)

7. Privy Council (From the High Court of Judicature at Lahore) (Nazir Ahmed Vs. King – Emperor)

8. (2019)17 Supreme Court Cases 1 (Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another)

9. (2000)5 Supreme Court Cases 488 (Arnit Das Vs. State of Bihar)

36. The learned counsel for accused No.19 has taken this Court with respect to the charges that were framed by the Dharwad Court in SC No.50/2017 on 14.09.2017. It is submission that the different investigation teams were formed by the then Commissioner of Police on 15.06.2017 with respect to tracing the accused persons, and also another investigation team was formed apart from forming a technical team. It is his contention that accused No.19 Chennakeshava Tingrikar was conducting the investigation during the period 16.06.2016 to 08.07.2016 i.e., in all for a period of 22 days he was

entrusted with the investigation. It is also submitted that PW.107 Motilal Pawar was the one who had filed the final report on 27.07.2016. The learned counsel for accused has taken this court through the evidence of PW.113 Rakesh Ranjan, who was the Investigating Officer of CBI. It is argued that as per the evidence which is placed before the Court, the then IO who is arraigned as accused No.19 had recorded the statements, drawn the mahazars and recovered material objects. In order to point out to the same, he has pointed out to the evidence of PW.51 Ramesh Mudukanagouda, PW.55 Chandrashekar Thippanna, PW.58 Rajasab S. Gunjal. It is his contention that the Investigating Agency had failed to give explanation that why the statement of PW.54 were not referred or made as part of second supplementary charge-sheet. The learned counsel has also argued that the weapons at MO.23 to 27 were contended by CBI to be planted and fabricated one. It is his contention that in order to

prove the aforesaid aspect, the prosecution had examined PW.51 Ramesh Mudukanagouda, PW.24 Shivananda Chalavadi, who was the then Inspector at Dharwad Town Police Station, PW.58 Musthaq Ahmed, PW.57 Raja Sab Gunjal, PW.54 S.B.Patil, PW.91 Basavaraj Mallappa, PW.97 Eshwarappa Kundikoppa, PW.98 Hanumanth Gaddigappa and PW.99 Basavaraj Thondikoppa. It is his submission that PW.56 Mushtaq Ahmed who allegedly had furnished the planted weapons had turned hostile and like-wise the evidence of PW.58 Raja Sab S Gunjal was of not much relevance to the case of the prosecution. It is also submitted that PW.24 Shivananda Chalavadi was the one who had allegedly produced the weapons to the Investigating Officer. However, he had turned hostile and had not at all supported the case of prosecution. Further it is submitted that his statement recorded under Sec.164 of Cr.P.C., before the learned CJM at Dharwad was due to the pressure exerted on him by the CBI to tender

the statement in a particular manner. The learned counsel has also contended that the testimony of PW.54 Shankaragouda Basanagouda Patil, the Head Constable would also indicate that he had turned hostile and had not supported the case of the prosecution. With respect to the other seizures, the evidence which was on record would indicate that he had followed the due process of law.

37. The learned Counsel after adverting to the aforesaid evidence, has taken this court through the evidence of PW.107 Motilal Pawar, who has deposed that during the course of investigation the Supervisory Officer was ACP Vasudev Naik and DCP by name Kanagavi. By adverting to the above, he has argued vehemently that it was not the sole investigation being carried out at the whims and fancies of the present accused person but it was a team work which was being monitored by the higher Police Officials. As such, the present accused No.19 cannot be solely attributed

for committing any offences. The learned counsel for accused has also taken this Court through the testimony of PW.94 Dr. Santhosh Kumar, who was the Medical Officer and conducted autopsy on the dead body of deceased Yogesh Goudar. It is his contention that his testimony would indicate that the then I.O i.e., the present accused No.19 had requested for collecting blood samples to ascertain the blood group. Further the weapons at MO.22 and 27 which were seized and sealed on 17.06.2016 were subjected to the same PF and was referred to the Serologist through the IO on 29.07.2016. The learned Counsel has pointed out the scientific aspects with respect to clotting of blood which was not at all explained by the prosecution.

38. Thereafter, the learned counsel for accused has taken this Court with respect to the other facet of the contention of commission of offence under Sec.7(1)(d) r/w Sec.13(2) of Prevention of Corruption Act. It is his contention that in order to prove the same, the

Court is required to appreciate the evidence of the approver PW.10 Basavaraja Muttagi, PW.44 Babu Katagi, PW.54 S.B.Patil, PW.55 Chandru, PW.64 Holabasaiah G Matapathi. It is his submission that the testimony of PW.10 Basavaraja Muttagi is of a weak character and no proper materials were produced in order to prove the same. He has also referred to the evidence of PW.54 Babu Katagi who had turned hostile and infact had deposed that he was made to give such a statement before the CBI on the basis of the pressure exerted by them. The learned counsel has also relied upon the evidence of PW.25 Chandrashekar Tippanna, PW.64 Holabasavaiah G Matapathi and CW.101 Shivananda Kashinath Mankar and has submitted that the prosecution has utterly failed to establish the existence of the basic ingredients which are required to be proved under Sec.7 and 13 of Prevention of Corruption Act.

39. He has also taken this court through the materials which were collected by accused No.19 during the course of his investigation which indicated that motive for commission of the offence was the land dispute which was pointed out by PW.6 Nagaraj Thodkar, PW.7 Amruthesh Byahatti and also from the testimony of PW.50 Mallavva, the wife of the deceased. He has also argued that during the course of his investigation, there were no materials to indicate that the alleged offences were committed due to political rivalry between accused No.15 and PW.10 Basavaraja Muttagi. With respect to the recovery of vehicle, he has argued that no proper materials were presented by the CBI to indicate any overt-act on the accused person. The learned Counsel has argued that the CCTV footages were promptly discovered and recovered by accused No.19, which would indicate his presence of mind and dispassionate investigation by him. The learned counsel has also argued that non-arresting of

accused No.7 and 18, though they were in contact with accused No. 1 to 6 at the time of incident was not correct and there were no lapses on his part. Though the allegation of collusion with other accused persons as part of conspiracy is alleged by the CBI, the same is not justified with any materials. The learned counsel has also adverted to the fact of allegation that the accused No.19 had requested not to include the name of Vinay Kulkarni in the complaint at the inception of the case. It is his submission that except PW.2 Gurunath Goudar, whose evidence is otherwise found not sustainable, is not backed by the evidence of any other person and also by the complainant, the wife of deceased Yogesh Goudar. With respect to the sanction, it is submitted that a separate sanction order was issued with respect to accused No.19 and also that of accused No.20 which would only indicate that the prosecution was required to consider the role of each accused independently and separately and as such the

explanation offered by PW.83 Rajesh S Sulikeri cannot cure the fundamental defect which the competent authority had bypassed. The learned counsel in order to buttress his submission has relied upon the judgment of the Hon'ble Apex Court reported in **(2015)14 SCC 186 (Nanjappa Vs. State of Karnataka), (2007)11 SCC 273 (State of Karnataka Vs. Ameer Jan)** and another authority reported in **AIR 2014 SC 827 (CBI Vs. Ashok Kumar Agarwal)**. By pointing to the aforesaid aspects and also by contending that the evidence of PW.10 Basavaraja Muttagi cannot be relied upon as it is of weak character, the learned counsel has submitted that the prosecution has utterly failed to prove their case beyond reasonable doubt and hence he has submitted that the present accused No.19 may be acquitted in the interest of justice. He has relied upon following citations which are as follows:

1. **(2024)12 SCC 401 (Maghavendra Pratap Singh @ Pankaj Singh Vs. State of chhattisgarh)**

2. (1975)3 SCC 742 (Ravinder Singh Vs. State of Haryana)

3. 2025 SCC OnLine SC 1074 (Renuka Prasad Vs. State represented by Assistant Superintendent of Police)

4. (2007)4 SCC 415 (Chandrappa and others Vs. State of Karnataka)

40. The learned counsel for accused No.20 Sri. K.B.K.Swamy has vehemently argued that no materials are produced in order to indicate the alleged overt-act against accused No.20 Vasudev Rama Nilekani. It is his submission that at the relevant point of time accused No.20 was serving as Assistant Commissioner of Police of Dharwad Sub-Division. It is his submission that on learning about the incident he had rushed to the spot at Uday Gym and by that time the Commissioner of Police, Hubballi Dharwad, DCP (L & O) and Deputy Commissioner of Police (Crime) had arrived at the said place. It is also submitted that the case was entrusted for investigation to accused No.19 Chennakeshava Tingarikar and later on it was taken

up for investigation by Mr. S.S.Hiremath who had conducted substantial portion of the investigation and finally PW.107 Motilal Pawar had concluded the investigation and placed the final report before the jurisdictional court. Thereafter, the learned counsel for accused No.20 submits that the allegation which is leveled against him is of supervising the defective investigation being conducted by accused No.19 and also depicting accused No.1 to 6 as assailants by effecting recovery of implanted weapons from them and also permitting to create false mahazar and not bringing the actual weapons which were found near the scene of crime. The learned counsel has filed the witness list who have deposed or according to the prosecution the material witnesses deposing about the incriminating materials against the accused No.20. It is submitted by him that CW.6 Nagaraj Thodkar had entered into an Agreement of Sale with PW.10 Basavaraj Muttagi for which CW.7 Veeresh Byahatti

had negotiated and CW.8 Nataraj Makigoudar had later on handed-over Rs.5 lakhs to Shivananda Chalavadi, which was to be handed-over to the present accused as bribe. It is also contended that CW.95 Shanakaragouda Patil was alleged to have brought iron rod and wooden stick to the Town Police Station but he had turned hostile so as the evidence of CW.96 Basavarajagouda, who was the driver of Shivananda Chalavadi. By pointing out to the evidence of all the aforesaid witnesses it is submitted that the prosecution has utterly failed to prove the allegations which they have leveled against accused No.20.

41. The learned counsel for accused has vehemently argued that as per the case of the prosecution a meeting was convened at Vinay Diary wherein the prominent and higher Police officials had attended and in that meeting it is alleged that the conspiracy to hatch the murder of Yogesh Goudar was hatched. The learned counsel for accused argued that

if only the aforesaid aspects are to be accepted, then how the prosecution can segregate the role of other officials who were present in the very same meeting. It is argued that as per the allegations leveled the meeting was attended by the Commissioner of Police Mr. Rane, who was never summoned nor examined before the Court by the prosecution. The non-examination of Mr. P.H.Rane, would clearly indicate of selective prosecution being carried out by the Investigating Agency. It is also narrated that as per the case of prosecution immediately after the incident, the other accused persons had left the vicinity and hence they were not arrested. However, the Investigating Officer had arrested accused No.1 to 6 who had surrendered on 17.06.2016. It is also argued that with respect to allegation of implanting weapons by the accused persons, no materials were forthcoming and though there is evidence of PW.51 Ramesh Mudukanagoudar, he has categorically deposed that

none of the photographs of the mahazar Vasudev Nilekani was to be seen. The learned counsel for accused has vehemently argued with respect to the non-recovery of a black colored bag which was allegedly seen near the vicinity of the scene of offence and as such not much inference can be drawn in this regard. He has also pointed out that when the evidence of the other witnesses is carefully appreciated, it would only point out the fact that the present accused No.19 given necessary instructions to his officers to nab the assailants. As such, the contention of the prosecution cannot be accepted.

42. The learned counsel has also taken this court with respect to the other limb of submissions wherein it is stated that accused No.20 was involved in larger conspiracy and he was having prior knowledge of the commission of the murder of Yogesh Goudar. Except the self-sustaining claim made by PW.10 Basavaraja Muttagi regarding conspiracy, no other materials were

forthcoming to justify his contention. The learned Counsel has also argued that accused No.20 was facing charges under Sec.7 and Sec.13(1)(d) r/w Sec.13(2) of the PC Act. He has pointed out that the witnesses who would depose against accused No.20 were PW.6 Nagaraj Thodkar, PW.7 Veeresh Byahatti, PW.8 Nataraj Makkigoudar who were all involved in the transaction with respect to selling the land to Basavaraj Muttagi. PW.23 Ashok Patil was examined to indicate handing over of money to Mr. Shivananda Chalavadi, so as to prevent the harassment allegedly meted out to him. It is his submission that the evidence of PW.23 Ashok Patil was not at all inspiring confidence since he in his evidence has deposed that it was the brother of Ashok Patil by name Ravi Patil as the one who had pressurized his brother to tender money. However, it is argued that Mr. Ravi Patil was not at all examined by the prosecution and therefore the chain of evidence so far as demand and acceptance

of bribe by accused No.20 does not inspires confidence. The other evidence which is available is that of PW.7 and he has not taken the name of Shivananda Chalavadi nor has deposed of handing over any money to the present accused in the presence of the eye-witnesses. It is submitted that when the question of demanding the bribe itself is not established by the prosecution, then the question of accepting the same does not arise for consideration. Thereafter, the learned counsel has taken this Court to the statement of PW.41 Mahesh Shetty, who in his earlier statement had not disclosed the fact of accused No.20 Basavaraja Muttagi, demanding bribe. In the absence of the same, the contention of the prosecution cannot be accepted. The learned counsel has also pointed out to the sanctions which were accorded by the Government to prosecute the present accused person. PW.83 Rajesh.S Sulikeri was examined in this regard. The evidence would indicate the clear non-

application of mind in the sanction order accorded by the Government. It is submitted that during the course of evidence of the Investigating Officer, PW.113 Rakesh Ranjan, it was submitted by him that it was correct to suggest that in the order of granting sanction, the authorities had not mentioned perusing the FIR and charge-sheet for their scrutiny. During the course of investigation, the accused No.20 had honestly co-operated and he had also explained to the Investigating Agency about the role played by him and he had even consented to undergo polygraphy test. As such, it is submitted that the accused No.20 was unnecessarily dragged into the proceedings and in fact a false case were being foisted against him. Hence, he has sought for his acquittal. The learned counsel for accused has relied upon the following authorities which are as follows:

1. **(2023)18 SCC 251 (Neeraj Dutta Vs. State [Govt. of NCT of Delhi)**

2. **(2015)10 SCC 152 (P.Satyanarayana Murthy Vs. District Inspector of Police State of Andra Pradesh and another)**

43. The learned counsel for accused No.21 Sri.Nithin Ramesh has vehemently argued that the entire case of the prosecution against accused No.21 is not proper and there is no iota of materials in order to indicate an overt-act against him. It is submitted by the learned counsel that at relevant point of time accused No.21 was working as Personal Secretary to accused No.15 had discharged his duty in accordance with law. The main contention of the prosecution is pointed out by the learned counsel by arguing that the role of accused No.21 as per the case of prosecution itself is very minimal and at first instance it is being submitted that he was present at Vinay Diary when accused No.15 Vinay Kulkarni had requested PW.10 Basavaraja Muttagi to hatch a conspiracy for committing the murder of Yogesh Goudar. PW.10 at that point of time deposes that accused No.21 was

preparing cattle feed and hence he was aware of the conspiracy. It is his submission that accused No.21 being a government servant was preparing cattle feed in the Vinay Diary at the first brush of incident itself would be a fact very hard to digest. It is submitted that the contention of the prosecution itself was a flimsy one. The learned counsel has also argued that as per the case of the prosecution itself no materials were examined in order to justify the presence of accused No.21 at that place on the fateful day. As such, the self-serving statement of PW.10 Basavaraja Muttagi was not sufficient in order to prove the contention of the prosecution without any corroborating materials. That apart, the learned counsel has also pointed out to the provisions of Sec.133 of Indian Evidence Act wherein the concept of accomplice has been defined and also, he has taken this court through the evidence of PW.10 wherein he has deposed that the opinion of accused No.15 to the witness PW.10 was conveyed to

through accused No.21. Under the circumstances it is submitted that the entire incriminating part as alleged by the prosecution was hit by Sec.60 of Indian Evidence Act. Thereafter, the learned counsel has pointed out to the evidence of PW.48 Nagaraj wherein he has deposed by taking the name of accused No.21. Even then the learned counsel submits that the aforesaid evidence was hearsay evidence since the witness has deposed that the support allegedly to be given by accused No.15 was discussed by Basavaraja Muttagi and he in his version had narrated to him. The learned counsel has taken this Court to the other limb of allegation which is leveled against the accused No.21 that he had created a false tour program for accused No.15. It is his submission that the Investigating Officer during the course of cross-examination has admitted that he was not aware of Karnataka Secretariat Manual of office Procedure and circular governing Private Secretaries for preparation

of tour programs. It is his submission that the tour program was prepared as per the say of the Minister for whom the accused No.21 was working at that point of time. It is also argued that the tour program was pertaining to 13.06.2016 and PW.74 had deposed of handing over the same to the tappal branch who had marked the copies to the respective persons at that time. If the said aspect is to be considered, then the contention of the prosecution that accused No.21 had tried to create alibi was not proper and correct. With respect to obtaining of sanction for prosecuting accused No.21, the learned counsel for accused has vehemently argued that though a Writ Petition was filed before the Hon'ble High Court of Karnataka in WP No.15570/2023, the Hon'ble High Court at the time of disposing the same had granted liberty and also directed this Court to consider the necessity of sanction during the course of trial if the acts were found to have been discharged during the official work

of accused No.21. By pointing out to the same, it is argued that the entire materials would indicate that the accused No.21 had only discharged his official duty and had prepared a tour program in accordance with law which was duly handed over to DPAR. When the aforesaid aspect was established, the question of obtaining necessary sanction was very much essential and in the absence of it the proceedings cannot be culminated against the present accused person.

44. The learned counsel has once again contended that the filing of additional charge-sheet was directly in contravention of settled law by the Hon'ble Apex Court. It is his contention that broadly speaking forms of intervention by the Hon'ble Apex Court during the phase of criminal investigation at the time of trial may be categorized as follows;

a) **Hon'ble Supreme Court monitored investigation.**
b) **Hon'ble Supreme Court directed investigation.**

c) Hon'ble Supreme Court approved investigation.

45. When the materials of the above case are juxtaposed with the settled principles of law, it would only indicate that the present fact and situation concerned would mainly fall under the category of Supreme Court approved investigation. As such, obtaining of prior permission was very much essential. The learned counsel has also pointed out to the gaps in the chain of circumstances by adverting to the materials collected by the prosecution. The learned counsel has vehemently argued that during the course of cross-examination of PW.113 in particularly at Para-153 and 198 indicates of calls being made between the parties and necessary tower location were obtained by the Investigating Agency. It is his contention that the tower location analysis of accused No.21 at Ex.P.219 when appreciated with Ex.P.241 to Ex.P.246, would indicate that from the evening of 15.06.2016 and from

morning of 16.06.2016, accused No.21 was near Raj Bhavan or Vikas Soudha and nowhere near Sanky Tank. Therefore, the contention of the prosecution of accused No.21 being present near Sanky Tank of Sadashivanagar and of meeting accused No.15, accused No.16 and PW.10 Basavaraja Muttagi on the late evening of 15th or at the early hours of 16.06.2016 was not established by the prosecution. By pointing out to the aforesaid aspects, it is submitted that the prosecution has utterly failed to prove their case beyond reasonable doubt and accordingly he has sought for acquittal of accused No.21. In order to buttress his contention, he has also furnished the CDRs with tower location analysis report and also citations to justify his contention.

46. After completion of the sesquipedalian arguments by the learned counsel for the accused persons, the learned Additional Solicitor General of

India, who was appointed as SPP to represent the above case had appeared and had replied to the legal aspects which were raised by the prosecution during the course of trial. The learned ASG Sri. Suryaprakash V Raju, in his usual fairness has bifurcated the entire case of the prosecution with respect to legal aspects urged by both parties into different chapters. The same are deciphered as follows;

a) Prosecution is not required to prove the adequacy of motive, lack of proof of motive is not fatal.

b) Evidentiary value of approver: corroboration thereof: principal accused can be an Approver.

c) Dock identification is substantive evidence despite the failure to identify in test of identification parade.

d) CCTV footage is substantive evidence.

e) Admissibility of CDR accompanying necessary certificate under Sec.65(B) of

Indian Evidence Act with reference to res-gestae.

f) Judicial notice of google map can be taken.

g) Improvement of statement under Sec.161 of Cr.P.C. is permissible during the course of trial.

h) Evidentiary value of Sec.164 statement where Certificate has been attached to verify the same.

i) Can the Court consider statement recorded under Sec.164(5) of Cr.P.C. without getting the same marked.

j) The programmer of technical and forensic support unit of CBI is an expert under Sec.45 of Indian Evidence Act.

k) Whether the earlier evidence rendered before the Sessions Court at Dharwad requires to be eschewed or considered by the present Court.

l) Permission of the Court not required when accused voluntarily gives specimen of his hand writing.

m) Evidentiary value of TIP without the permission of the Court.

n) Mere signing by the accused in the mahazar proceedings and its repercussion.

o) Mere non-recovery of weapons is immaterial.

p) Offering non-explanation in the 313 statements by the accused with respect to their presence near the scene of crime as visible from CCTV footage.

q) Test of valid plea of alibi.

r) No overt-act required to prove conspiracy.

s) No permission required to conduct further investigation.

t) Mobile phone which is not sent for FSL is not fatal when it was produced in the Court and witness has deposed regarding the same.

u) Deviation from earlier investigation is part of further investigation.

v) Non-mentioning of certain details in the case diary does not go to the root of the prosecution case.

47. Further he has relied upon several authorities of the Hon'ble Apex Court to buttress his submissions.

48. Heard the arguments of both the parties and perused materials on record.

CHAPTER: V

POINTS FOR CONSIDERATION

49. The points that would arise for my consideration are as follows: -

1) Whether the prosecution proves beyond reasonable doubt that the death of Yogesh Goudar which had taken place on 15.06.2016 was homicidal?

2) Whether prosecution proves that the investigation conducted by CBI in pursuance of the Notification issued by Government of Karnataka amounted to further investigation?

3) Whether the prosecution proves beyond reasonable doubt that accused No.15 Vinay Kulkarni had entered into a criminal conspiracy with the then accused No.1 to eliminate Yogesh

Goudar and in furtherance of the same accused No.8 to 14 had agreed to commit the murder of Yogesh Goudar and accused No.1 to 6 had agreed to stand in the place of real assailants in order to screen the evidence, for which accused No.17 and 18 had provided logistic support with accused No.16 and in furtherance of the same, conspiracy was hatched in the month of June-2016 at CTS No.4/39/L of Saraswathpura, Dharwad and by carrying out the instructions had agreed to commit the murder with the connivance and active support of accused No.19 to 21 and thereby committed an offence punishable under Sec.120-B of IPC?

4) Whether the prosecution proves beyond reasonable doubt that in furtherance of the criminal conspiracy, accused No.7 to 14 with the aid and support of accused No.1 to 6 and 18 had formed unlawful assembly to commit the murder of Yogesh

Goudar at Uday Gym, Dharwad on 15.06.2016 at the instructions of accused No.15 and thereby committed an offence punishable under Sec.143 r/w 120-B of IPC?

5) Whether the prosecution proves beyond reasonable doubt that on 15.06.2016 at about 07.00 a.m., in furtherance of the criminal conspiracy, the accused No.1 to 14 and 18 at the instructions of accused No.15 had formed unlawful assembly in prosecution of the common object of committing murder of Yogesh Goudar and had committed the offence of rioting with deadly weapons like Pistol, Dagger, Long Machette, wooden stick, iron rod and other deadly weapons and thereby committed an offence punishable under Sec.147 and 148 r/w Sec.120-B of IPC?

6) Whether the prosecution proves beyond reasonable doubt that on 15.06.2016 the accused No.7 to 14 in furtherance of the criminal

conspiracy hatched between them to commit the murder of Yogesh Goudar, had assembled near Uday Gym Dharwad and between 07.00 a.m. to 07.45 a.m., had attacked Yogesh Goudar, who was standing in front of his Gym and was thrown chili powder on his eyes, stabbed with Dagger on his neck to unsettle him and had dragged him to the Gym mentioned above and assaulted him on his head and other parts of the body with long machette and other sharp weapons inflicting deadly wounds on all parts of his body with a clear knowledge that such injuries in ordinary course would cause death and accused No.1 to 6 had played a passive role in commission of the offence as per the criminal conspiracy hatched between them and for which accused No.15 and 16 had supported the cause along with accused No.18 and the Personal Secretary of accused No.15 i.e., accused No.21 and thereby committed an offence punishable under Sec.302 r/w 120-B of IPC?

7) Whether the prosecution proves beyond reasonable doubt that the accused No.15 in furtherance of the criminal conspiracy which he had entered between accused No.1 to 14, 16 to 18 towards the murder of Yogesh Goudar on 15.06.2016 at 07.36 a.m. at Uday Gym and on completion of the murder, accused No.8 to 14 were dropped at Harihara Bus Stand and accused No.1 to 6 were implanted in the place of the real assailants and accused No.19 and 20, being the Police Officers had assisted in screening the evidence by carrying out defective evidence and creating false mahazar with recovery of weapons not related to the case with an intention to screen the real assailants from legal punishment and thereby committed an offence punishable under Sec.201 r/w 120-B of IPC?

8) Whether the prosecution proves beyond reasonable doubt that in furtherance of the criminal

conspiracy which accused No.15 had entertained with accused No.1 to 14 and 16 to 18 to commit the murder of Yogesh Goudar and on completion of the murder, accused No.19 and 20 being the Supervisory Investigating Officer and IO had implanted accused No.1 to 6 in place of accused No.7 to 14 who were the real assailants and had effected recovery of weapons not connected to the case and also drawn false mahazar by not bringing actual weapons on record and thereby accused No.19 and 20 had committed an offence punishable under Sec.218 r/w 120-B of IPC?

9) Whether the prosecution proves beyond reasonable doubt that in furtherance of the criminal conspiracy entered between accused No.15 to commit the murder of Yogesh Goudar and further to screen the evidence by accepting the implanted accused No.1 to 6 as real assailants, the accused No.19 and 20 being Investigating Officers had

obtained illegal gratification to scuttle the investigation and thereby committed an act of criminal misconduct being public servants and committed an offence punishable under Sec.7, 13(1)(d) r/w Sec.13(2) of Prevention of Corruption Act, 1988?

10) ***Whether the prosecution proves beyond reasonable doubt that the accused No.15 in furtherance of the criminal conspiracy to eliminate Yogesh Goudar, had obtained three country made Pistols from accused No.16 Chandrashekar Indi, which was procured through accused No.17 to be delivered to the then accused No.1 Basavaraja Muttagi and thereby accused No.15 and 16 committed an offence punishable under Sec.25 r/w Sec.3, 5, 8 and 29 of Arms Act, 1959 r/w Sec.120-B of IPC?***

11) ***Whether the prosecution proves beyond reasonable doubt that separate proceedings are required to be initiated against the witnesses for tendering false evidence under oath?***

12) Whether prosecution proves beyond reasonable doubt that the pardon tendered to the approver accused No.17 Shivananda Shrishaila Biradar requires to be recalled and necessary proceedings are required to be initiated against him?

13) What order?

2. My answer to the above points are as follows:-

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative except accused No.20 and accused No.21.

Point No.4: In the Affirmative

Point No.5: In the Affirmative

Point No.6: In the Affirmative except A-21

Point No.7: In the Affirmative except A-20

Point No.8: In the Affirmative except A-20

Point No.9: In the Negative

Point No.10: In the Negative

Point No.11: In the Affirmative

Point No.12: Disposed off with liberty to obtain necessary sanction to prosecute

Point No.13: As per final order

for the following:-

:: REASONS ::

CHAPTER VI :

APPRECIATION OF EVIDENCE

49. Before adverting to the factual aspects of the case, the entire evidence which has been led before the Court is recapitulated and summarized as follows by dividing into the nature of their testimony;

A. Complainant who had set the criminal law into motion:

Sl. No.	Name	Nature of their evidence	Brief description
1.	PW.50 Mallavva Yogesh Gouda Goudar	Complainant and wife of deceased Yogesh Goudar	Has deposed that on 15.06.2016 her husband was murdered which she came to know through Television Channel and later on visited the Police Station and lodged the complaint as per Ex.P1 and she had not supported the case of prosecution and was treated as

			hostile witness and was subjected to cross-examination by the learned SPP wherein she had admitted of giving an interview in the TV about 1 year after the death of her husband that the investigation has not been conducted properly by the Dharwad Police and had feigned her ignorance that she had castigated A-15 Vinay Kulkarni towards the murder and also admitted of receiving threatening letters and also categorically admitted of giving TV interviews with respect to involvement of accused No.15 Vinay Kulkarni

B. Eye-witnesses to the incident of murder which had taken place on 15.06.2016:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.1 Dattathreya Hanumantha Gudaganti	Eye-witness to the incident of	Hostile	Has deposed that on 15.06.2016 he had heard loud noise at about 07.30 a.m. and

		murder		had ran out of the door of the Gym wherein he had noticed 6 to 7 persons attacking Yogesh Goudar and stood near the gate of the Post Office. Further has deposed about accompanying the complainant Mallavva at the time of lodging the complaint as per Ex.P1. He was treated as hostile witness and during the course of cross-examination has categorically admitted of witnessing the incident and has deposed clearly that the CCTV footage produced before the Court is clear and has categorically identified the assailants and admits of running towards Post Office along with other Gym mates at the time of incident and also admits of tendering statement under

				Sec.164 of Cr.P.C., before the learned Magistrate and volunteers that he had tendered such evidence under oath due to the pressure exerted by CBI and has categorically admitted of identification of assailants during TIP.
2.	PW.30 Lakshmi Benakatti	Eye-witness	Supported the case of prosecution	Has deposed in consonance with the case of the prosecution and has deposed that on 15.06.2016 she had witnessed the incident of murder wherein Yogesh Goudar was assaulted with sharp edged weapon and she had run to the Post Office building along with Shwetha Kulkarni. She has also identified accused No.9 Ashwath in the Court and deposes of identification of assailants during TIP and also deposes about tendering false

				evidence before Dharwad Court due to the pressure exerted on her.
3.	PW.31 Shashank Jain	Eye-witness to the incident	Supports the case of the prosecution	Deposes that about 4 to 5 people were attacking Yogesh Goudar and had ran towards Post Office building and at that time PW.36 Shwetha Kulkarni was also present and they all ran towards Post Office building
4.	PW.32 Anand Erappa Uddannanavar	Eye-witness to the incident	Hostile	Though has deposed of noticing an incident of assault on Yogesh Goudar has feigned his ignorance with respect to seeing the assailants and was considered as hostile witness and during the course of cross-examination has categorically admitted of hearing the loud noise and scream of Yogesh Goudar near the Gym and has also categorically identified the

				assailants who were moving in front of Gym as per the CCTV footage on 15.06.2016 and also admitted of tendering statement under Sec.164(5) of Cr.PC before the learned Magistrate however had volunteered that it was due to pressure exerted on him by CBI.
5.	PW.33 Vinayak Binjiyavar	Eye-witness to the incident	Hostile	Has deposed that he had heard the scream and ran out of the Gym and when he had returned back, the murder had taken place. He was considered as hostile and was confronted with CCTV footage and further admits of identifying accused Harshith during the course of TIP
6.	PW.34 Mohan Echarappa Mulmuttal	Eye-witness to the incident	Hostile	Has deposed that he had heard the scream and ran out of the Gym and when he had returned back, the murder had taken place. He was

				considered as hostile and was confronted with CCTV footage wherein he had categorically identified the assailants
7.	PW.35 Vivekananda Shivashankar Dalawai	Eye-witness to the incident and Gym trainer	Hostile	Has deposed that he had heard the scream and ran out of the Gym and when he had returned back, the murder had taken place. He was considered as hostile and was confronted with CCTV footage wherein he had categorically identified the assailants
8.	PW.36 Shwetha Kulkarni	Eye-witness to the incident	Hostile	Nothing much was elucidated from her

c. ***Witnesses who speak about motive and intention to commit the murder:***

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.2 Gurunath Goudar	Speaks about the intention	Supported the case of prosecution	The witness being the elder brother of deceased Yogesh Goudar has deposed about

				the rivalry which Vinay Kulkarni had entertained with the deceased for political reasons and though he deposes about the incidents which he learnt from others, he has also deposed about the prevailing rivalry and also filing of various cases by Vinay Kulkarni and after the incident the act of Vinay Kulkarni requesting him to meet him near his Diary and also deposes about the alurements given by him through Gururaj Hunasimarad and Thulajappa Sulphi and also Mahesh Shetty
2.	PW.4 Shivananda Basappa Salagatti	Speaks about motive and intention	Supports the case of prosecution	Has deposed that a meeting was conveyed at the premises of Dharwad ZP on 23.04.2016 to discuss about famine situation

				wherein a verbal altercation had taken-place between deceased Yogesh Goudar and Vinay Kulkarni due to which he was enraged and decided to eliminate Yogesh Goudar which the prosecution claims to be motive for commission of the offence
3.	PW.5 Gangappa Shivappa Kallagoudthi	Speaks about motive and intention	Supports the case of prosecution	Has deposed that a meeting was conveyed at the premises of Dharwad ZP on 23.04.2016 to discuss about famine situation wherein a verbal altercation had taken-place between deceased Yogesh Goudar and Vinay Kulkarni due to which he was enraged and decided to eliminate Yogesh Goudar which the prosecution claims to be motive for commission of the offence

D. Witnesses who speak about projected intention of accused persons to portray the murder as consequence of land dispute:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.6 Nagaraj Todkar	Speaks about entering into agreement to sale with Basavaraj Muttagi	Supported the case of prosecution	The witness being the brother of Shivananda Todkar has deposed about entering into Agreement to Sale with Basavaraja Muttagi in the house of Ashok Patil and Ravi Patil and identified the agreement to sale at Ex.P.10 and revenue documents at Ex.P11
2.	PW.7 Veeresh Amrutheshwar Byahatti	Speaks about Agreement to Sale and land transactions	Supports the case of prosecution	Has deposed of participating in the negotiation of land and also of entering into Agreement to Sale and later on after the murder received call from ACP Vasudeva Nayak who had demanded Rs.25 lakhs and finally

				he had met Shivananda Chalavadi and had handed-over Rs.5 lakhs to Vasudeva Nayak through Mr. Nataraj.
3.	PW.8 Nataraj Makhigoudar	Speaks about Agreement to Sale and land transactio ns	Partly hostile	Has deposed of participating in the negotiation of land and also of entering into Agreement to Sale and later on after the murder received a demand from ACP Vasudeva Nayak and visited his chamber and also has deposed of collecting Rs.5 lakhs from Ashok Patil and handing over it to Shivananda Chalavadi
4.	PW.23 Ashok Veerannagou da Patil	Circumsta ntial evidence	Supports the case of prosecution	Deposes about Nagaraj Todkar entering into Agreement to Sale with Basavaraj Muttagi and also stated that Veeresh Byahatti had

				called his brother Ravi Patil to arrange Rs. 5 lakhs to be paid to ACP Vasudeva Nayak and accordingly he had arranged for the same and handed-over to Nataraj who was the friend of Veeresh Byahatti who in turn had handed the amount to Vasudeva Nayak

E. Witnesses who are the family members of deceased Yogesh Goudar explaining the circumstances prevailing prior to that and the incidents which had taken place after his murder:

Sl. No.	Name	Nature of the evidence	Status of witness	Brief description
1.	PW.11 Anjana Basavaraj Dollin	Circumstantial evidence	Supported the case of prosecution	The witness deposes about Yogesh Goudar contesting on BJP ticket and also about Vinay Kulkarni with whom he had verbal altercation and also about the incident at Ambulli Ghat wherein Yogesh

				Goudar was followed by a black car and after the death of Yogesh Goudar she had accompanied Mallavva to the Police Station to lodge the complaint
2.	PW.12 Suma Subhash Gouda Goudar	Circumstantial evidence	Supported the case of prosecution	The witness deposes that after the death of Yogesh Goudar she had accompanied Mallavva for treatment at Sirsi and initially they had stayed at Vaishnavi Lodge near Kundagol Cross wherein she had met Suresh Goudar, Nagaraj Gouri, Karigar Shivanna and later on about switching off the CCTV at the lodge and having discussions by Mallavva with Nagara Gouri and others

F. Witnesses who speak about the place where conspiracy had allegedly taken place at Sapthapura, Dharwad:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.13 Pramod Narahari Rao Deshpande	Speaks about circumstances prevailing in his house at Saraswathpur, Dharwad	Partly hostile	Has deposed about the dispute which was prevailing with his sister Dr.Usha and also with respect to the house at No.4/39/L at Plot No.17, Saraswathpur, Dharwad. He has also deposed about the quarrel that had taken place near his house and in his cross-examination has admitted of lodging complaint on 05.03.2016 and also of Vinayaka Katagi visiting his house.
2.	PW.14 Anand Kumar	Circumstantial evidence	Supports the case of prosecution	Has deposed of obtaining GPA from Dr. Usha Narahari for selling the house at Saraswathpur Dharwad and was introduced

				to Vinayaka Katagi who had paid him commission of Rs.3 lakhs towards the property that was to be sold
3.	PW.15 Thimmanna Ningappa Bahur	Sub-Registrar	Supports the prosecution case	Deposes about issuing certified copy of the document with respect to land at Morakatti village, Dharwad

G. Witnesses who speak about the circumstantial evidences as per the case of prosecution:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.16 Mahesh Totad	Speaks about circumstantial evidence	Hostile	Has turned hostile and has denied of giving information about the movement of Yogesh Goudar from his house.
2.	PW.17 P.Roopendra Rao	Circumstantial evidence	Hostile	Though has admitted his acquaintance with Vinay Kulkarni has denied of giving room to Basavaraj Muttagi and his

				associates at Hornbill River Resort at Ganesh Gudi, Joida
3.	PW.18 Yogesh Kumar	Circumstantial evidence	Hostile	Deposes of working as Manager at Hornbill River Resort and not supported the case of prosecution
4.	PW.19 Srivathsa Dattatreya Patil	Circumstantial evidence	Hostile	Deposes that he had not handed-over money to Basavaraja Muttagi but admits of giving statement under Sec.164 of Cr.PC as per Ex. P22
5.	PW.20 Nataraj Sarj Desai	Circumstantial evidence	Hostile	Deposes by admitting tendering statement under Sec.164 of Cr.P.C., but has denied of meeting Basavaraja Muttagi on 13.06.2016 at Vinay Diary in the presence of A-21 Somashekar Nyamagouda. Further admits of receiving incoming call

				from Mobile No.9844267730 on 15.06.2016 at 22.10 hours, 22.18 hours and 22.20 hours
6.	PW.21 Manikantan Acharya	Circumstantial evidence	Hostile	Has deposed denying the servicing the unlicensed Revolver of Basavaraja Muttagi
7.	PW.22 Syed Hasham	Circumstantial evidence	Hostile	Has denied of accompanying accused Shahanawaz to Dharwad and making a futile preparation to commit the murder on earlier occasion
8.	PW.25 Nagappa Mallikarjun Byragonde	Circumstantial evidence	Hostile	Has denied of supplying Pistol to Chandrashekar Indi
9.	PW.26 Suresh Jagadev Hulle	Circumstantial evidence	Hostile	Has denied of supplying Pistol to Chandrashekar Indi
10.	PW.27 Bharath Kalsur	Circumstantial evidence	Hostile	Has denied of booking rooms to help the assailants of Basavaraja Muttagi but has categorically

				admitted of booking rooms at Panchavati Hotel and also at Hotel Hithaishi Palace and has denied of helping Basavaraja Muttagi
11.	PW.28 Anoop Churi	Circumstantial evidence	Supports the case of prosecution	Admits of booking room by giving necessary details and entering it in the Hotel Register book of Hithaishi Palace
12.	PW.29 Girish Pathri	Circumstantial evidence	Hostile	Deposes about booking room at Hotel Panchavati at the behest of Bharath Kalsur
13.	PW.52 Bhoosa Reddy	Circumstantial evidence	Supports the case of prosecution	Deposes that PW.27 Bharath Kalsur had requested him to permit him to park a black coloured car near his house and has handed over the key to him and after one day he had again requested that one of his friend would take back his car

H. Expert witnesses who depose about forensic examination:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.37 Tyagaraj.M, State FSL, Bengaluru	Speaks about analyzing CCTV footage	Supported the case of prosecution	Has deposed about analyzing Sea Gate Company Hard Disc of 500 GB capacity at Ex.P57 which is a CCTV footage and deposes that it was authenticated and also deposes about extracting e-mail files and generating CDR Report at Ex.P62
2.	PW.38 Balu.M, Mobile Forensic Section, State FSL, Bengaluru	Speaks about analyzing mobile phones	Supports the case of prosecution	Has deposed about analyzing 7 mobile phones and furnishing report to the concerned IO
3.	PW.39 Kushal A Master, FSL, Gujarath	Speaks about gait pattern analysis	Supports the case of prosecution	Deposes about gait feature analysis of the suspected persons through controlled CCTV footage and also analyzing photographs
4.	PW.47 Bhavin Kumar Jeram	Worked as in-charge	Supports the case	Deposes that he has received

	Sathwara, SFL, Gujarat.	Scientific Officer at Department of Photography, FSL, Gujarat	of prosecution	internal forwarding letter on 14.07.2020 and had carried out examination to identify the presence of accused persons in the video footages and has given his opinion that the video footages of the accused persons in the captured frames of CCTV footages were similar and had filed the report as per Ex.P77
5.	PW.59 Mallikarjun Chikmutt	Technical Assistant	Supports the prosecution case	Has deposed of furnishing data in a hard disc with respect to tower dump and CDR
6.	PW.93 Dr. Kumudha Rani, FSL, Bengaluru	Handwriting Expert	Supports the case of prosecution	Deposes about conducting analysis with respect to specimen writing of Basavaraj Muttagi and other accused persons

I. APPROVER EVIDENCE:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description

1.	PW.10 Basavaraja Muttagi	Approver	Supports the case of prosecution	Deposes by explaining the circumstances which would support the prosecution case
2.	PW.9 Shivanand Shreeshail Biradar	Approver	Hostile	Has not supported the case of prosecution and has deposed that he was pressurized by CBI which lead him to depose falsely under oath before the learned Magistrate.

J. Witnesses who deposes about circumstantial evidence in consonance with the evidence of the approver Basavaraj Muttagi :

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.40 Logendra.C., Car Driver	Circumstantial evidence	Supported the case of prosecution	Has deposed that he had picked up Basavaraja Muttagi and has also narrated that he was tensed at that time and Vinay Kulkarni had promised to take care of him in a murder case and later on in the year 2017 he

				was requested by Basavaraja Muttagi to pick up PW.1 Dr. Dattathreya near Esteem Mall, Bengaluru to Dharwad and further states that they had stayed at Ramya Residency, Dharwad and also of visiting Goa for two days in a Tavera Car and later on returning back from Julie Jolly Resort at Goa to Rashi Farms and has also narrated about Babu Kattagi picking up the witnesses and also of Lakshmi Benakatti staying in Rashi Farms
2.	PW.41 Mahesh Shetty	Circumstantial evidence	Supports the case of prosecution	Deposes he knew Basavaraja Muttagi and he owed Rs.3,50,000/- and accordingly Muttagi had requested him to pay Rs.2 lakhs to Vasudeva Rao, the then ACP in the year 2016

				which he had paid in the Police Station. He has also deposed of reserving room at Ramya Residency Hotel for the friends of Basavaraj Muttagi on 2 to 3 occassions. Apart from that he has deposed about a arranging a meeting between Vinay Kulkarni and Gurunath Goudar and has identified ACP Vasudeva Nayak as the ACP to whom he had made the payment
3.	PW.42 Shivananda Bheemappa Janmatti, Advocate	Circumstantial evidence	Hostile	Has not supported the case of prosecution and has denied of assisting any of the witnesses to turn hostile before the Sessions Court at Dharwad
4.	PW.43 Shivakumar Nijaguni Bendigeri, Advocate	Circumstantial evidence	Supported the case of prosecution	Has deposed that while having Tea with his Senior in the year 2017, he was requested to

				accompany him and had got down at Kalageri Road, Dharwad and at that time one lady had come near the car and was conversing with his senior Shinde
5.	PW.45 Suresh Ramegowda	Circumstantial evidence	Supports the case of prosecution	Deposed that on 15.06.2016 Basavaraj Muttagi had contacted him and asked him to come to Chitradurga and while driving towards Bengaluru he was speaking with some person by borrowing his phone and addressing that person as "Sir" and later on they reached near Sankey Tank at about 01.30 a.m. and Muttagi had got down from the Car and went near a Car and conversed with some persons and after that he had requested him to

				drop to Sadashivanagar and at that time he had noticed a person aged about 50 years who was having white hairs and beard whom the witness had identified as A-16
6.	PW.46 Gowda Prakash Devendra	Circumstantial evidence	Supports the case of prosecution	Deposes that on 16.06.2016 he went to Dollars Colony and picked the customer who was referred to him and they have reached Sankey Tank about 09.00 AM in the morning and after 10 minutes he came to car and requested him to drive towards Chitradurga and near Nice Road junction he had got down from the Car.
7.	PW.48 Nagaraj	Circumstantial evidence	Supports the case of prosecution	Deposes that on 16.06.2016 Basavaraja Muttagi had called him at 09.30 AM and requested him to

				drop to Dharwad and accordingly he had reached Nice Road, Bengaluru at 12.00 PM in the afternoon and has also deposed that Basavaraja Muttagi had invested around Rs.37 lakhs in his real estate and he had asked him to give the money to his parents and accordingly after about 4 to 5 days he had given Rs.12 lakhs through cash to Vikas Kalburgi and Rs.8 lakhs through RTGS
8.	PW.49 Raghavendra	Circumstantial evidence	Supports the case of prosecution	Deposes that he knew Basavaraja Muttagi and on 15.06.2016 at about 12.00 PM he had called him and had requested him to meet near highway at Hospet and on his request he had booked one Hema Guest House at Virupapura

				Gaddi, Anegundi and later in the evening he had requested his mobile which he had handed over to him and has identified Keerthi Kumar, Mahabaleshwar, Vikas Kalburgi as the persons who had accompanied Basavaraj Muttagi
9.	PW.53 Vijay Kulkarni	Circumstantial evidence	Hostile	Deposes that he is the younger brother of A-15 Vinay Kulkarni and has feigned his ignorance about his presence on 15.06.2016 and also that of Somashekar Nyamagouda, Chandrashekar Indi and Kempegowda. He has specifically denied of meeting Basavaraja Muttagi on 15.06.2016 along with Vinay Kulkarni, Chandrashekar Indi and

				Somashekar Nyamagouda near Sanky Tank but has admitted of tendering his statement under Sec.164 of Cr.PC before the Magistrate and has volunteered that it was due to the pressure exerted on him by CBI
10.	PW.67 Umapathy	Circumstantial evidence	Supports the case of prosecution	Has deposed that on 15.06.2016 at about 05.30 to 06.00 p.m. Muttagi had called him on his mobile and requested his permission to stay in his house and later on in the next day he went away from his house

K. Police Witnesses and other witnesses who deposes about investigation and other circumstances that had taken place during the course of investigation by Dharwad Sub-Urban Police :

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.24 Shivananda Chalavadi	Circumstantial evidence	Hostile	Has deposed that he was working at

				Dharwad Town Police Station during the relevant period of time and has deposed that on 17.06.2016 and probably on 18.06.2016 and has also deposed that they were kept in the Guest House by the DCP, ACP Vasudeva Nayak and IO Tingarikar and he had visited the Guest House to pay respects to his superior officers and has stated that he was pressurized to give statement under oath before the learned Magistrate as per the say of CBI
2.	PW.44 Babu Katagi	Police witness	Hostile	Has deposed in chief examination that he had assisted the IO in conducting the investigation as

				per law. He was subjected to cross-examination by the prosecution and has deposed that he had given false evidence before the learned Magistrate under Sec.164 of Cr.PC due to the pressure exerted by CBI
3.	PW.51 Ramesh, Police Constable	Speaks about mahazar	Supports the case of prosecution	Has deposed that he worked as Assistant to IO Chennakeshava Tingarikar and ACP Vasudeva Nayak and further on 17.06.2016 at about 09.00 AM, Vasudeva Nayak had directed him to go to new CR Office at Hubballi to get the statement of the accused recorded and he had went there along with his staff and 5 accused persons were

				present at that place and at that time Shivananda Chalavadi along with his staff Shankaragouda Patil and Basavaraj Kadakola had come to the said place and had given them one wooden stick, one Koitha, iron rod to Tingarikar. Further he has deposed that on the same day evening he was called by the IO to draw the mahazar near Yerrikoppa at Kalaghatagi Road in the presence of accused persons and they were made to hold weapons depicting it to be a recovery mahazar. Further deposes that Tingarikar had requested to

				collect the blood of Yogesh Goudar at the time of Autopsy through the Havaldar by name Mattad and later on it was collected and handed over in the Police Station by Vinayak.N Badiger and has also admits of drawing the mahazar as per the say of the IO
4.	PW.54 Shankaragouda Basanagouda Patil	Police Constable	Hostile	Has deposed that he had not accompanied Shivananda Chalavadi nor met any other persons on 17.06.2016. Has admitted of tendering statement under Sec.164 of Cr.PC before the Magistrate of the prosecution case but deposes that it was due to the pressure exerted on him by CBI

5.	PW.55 Chandrashekar Thippanna, Head Constable	Police witness	Hostile	Has deposed that though he knew about the murder of Yogesh Goudar and worked along with Babu Katagi, he does not know anything about the case and has deposed that he had not handed-over any envelope to Tingrikar
6.	PW.56 Mushtaq Ahmed	Circumstantial witness	Hostile	Has denied of handed-over any weapon from his scrap shop
7.	PW.58 Raje Sab S Gunjal, Police Constable	Mahazar witness	Hostile	Has denied furnishing any articles at the behest of Channakeshava Tingrikar
8.	PW.60 Mahendra Kumar, Police Sub-Inspector	Sub-Inspector	Supports the case of prosecution	Has deposed of furnishing certified copy of FIR
9.	PW.91 Basavaraj	Mahazar witness	Supports the case of prosecution	Deposes about affixing signature to the mahazar as per the say of Tingrikar in the Police Station and after that again

				he was asked to visit Yerrikoppa village and a person got down from the vehicle holding Talwar and photographs were obtained
10.	PW.92 Basavaraj S/o Bheemappa Maikar	Mahazar witness	Supports the case of prosecution	Deposes that he was present at the time of drawing the inquest mahazar
11.	PW.97 Eshwarappa Madivalappa Kondikoppa	Mahazar witness	Supports the prosecution case	Deposes of affixing signature to the mahazar in the Police Station at Ex.P110
12.	PW.98 Hanumantha	Mahazar witness	Supports the case of prosecution	Deposes of affixing signature to the mahazar Ex.P98 and 106
13.	PW.99 Basavaraj Dayanand Thondikatti	Mahazar witness	Supports the case of prosecution	Deposes of affixing signature to the mahazar Ex.P 107
14.	PW.107 Motilal Pawar	Partly conducted investigation when the case being	Supports the case of prosecution	Deposes about taking over the further investigation from S.S.Hiremath

		investigated by Dharwad Sub-Urban Police Station		and recording the statement of witness and finally filing the charge-sheet
15.	PW.110 Vijay Kumar.M, Gunmen	Circumstantial evidence	Supports the case of prosecution	Deposes about Vinay Kulkarni receiving call from the then Police Commissioner of Hubli-Dharwad Mr. Rane on 15.06.2016 at 08.30 AM.
16.	PW.111 Yogappa Gujjannanavar	Circumstantial evidence	Supports the case of prosecution	Deposes about being present in the Police Station at the time of recovering Ex.P7 and Ex.P8 letter by the concerned Police

L. Other circumstantial witnesses:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.57 Mahesh	Circumstantial evidence	Supports the case of prosecution	Has deposed that he was Travel Agent and had booked Air Ticket for Vinay Kulkarni

				for his travel on 13.06.2016 to Delhi.
2.	PW.61 Ananth Kaskar	Additional Secretary, DPAR	Supports the prosecution case	Deposes about issuing three tour programs of Vinay Kulkarni as per Ex.P.125
3.	PW.62 Anand Gouda. F Badiyavar	Circumstantial evidence	Supports the case of prosecution	Deposes that he had received call on his mobile from Vinay Kulkarni wherein he was directed not to help the family members of Yogesh Goudar to obtain copy of the murder case and he has produced the mobile in which the conversation was recorded
4.	PW.63 Vishal Ballary	Brother of accused Vikram Ballary	Hostile	Though has categorically admitted of having Hero Honda Bike bearing Reg. No. KA-25-EA-6230 has denied of helping his brother and during the course of cross-examination has admitted

				that as on 15.06.2016 the motor bike was being used by his elder brother
5.	PW.64 Holabasavaiah G Matapathi	Circumstantial evidence	Hostile	Has denied of giving Rs.4 lakhs to Babu Katagi at the behest of Basavaraja Muttagi
6.	PW.65 Lakshman Thimmanna Karekal	Mahazar Witness	Supports the case of prosecution	Deposes about witnessing the mahazar with respect to reconstruction of the crime scene
7.	PW.66 Mahendra Nilekani	Mahazar Witness	Supports the case of prosecution	Deposes about witnessing the mahazar with respect to recovery of vehicle
8.	PW.68 Sanjeeva.K	Mahazar Witness	Supports the case of prosecution	Deposes about voluntary statement of accused Dinesh and recovery of Splendor Motor Bike
9.	PW.69 Anil Kumar P.S.	System Assistant, Dharwad Court	Supports the case of prosecution	Deposes that necessary precautions were taken at the remote point center of the court while

				recording statement under Sec.164 of Cr.PC through VC
10.	PW.70 Chandrashekar Pujar	Owner of the Chevrolet Car	Hostile	Has admitted during the course of cross-examination of owning the car bearing Reg. No.KA-25-B-8526 as per the B Extract at Ex.P132
11.	PW.71 Prabhu Shankar	Recovery Mahazar	Supports the prosecution case	Deposes of recovery three Pistols from the Farm House of Basavaraj Muttagi as per MO.12 to 14
12.	PW.72 G.Shyam Holla	Circumstantial evidence	Supports the case of prosecution	Deposes that as per the records transfer request was given by Sumithra Hanchitgeri with recommendations of Vinay Kulkarni as per the file as Ex.P136
13.	PW.73 Jamuna P Balaraj	Circumstantial evidence	Supports the case of prosecution	Deposes of providing travel details of passengers and in particularly Vinay Kulkarni on 16.06.2016

14.	PW.74 Sanjeev Kumar	Circumstantial evidence	Supports the case of prosecution	Deposes about signing of tour program of Vinay Kulkarni
15.	PW.75 Ramesh.C	Circumstantial evidence	Partly Hostile	Deposes about producing stay of Vinay Kulkarni at Hotel Mourya, Bengaluru in Room No.555 from 08.06.2016 to 20.06.2016
16.	PW.76 Mohammed Sadiq	Mahazar witness	Supports the case of prosecution	Deposes about recovery of Splendor motor bike under the Document at Ex.P130
17.	PW.77 Sathish Narayan Thalekar	Mahazar witness	Supports the case of prosecution	Deposes about recovery of the vehicle which is Tavera Car bearing No.KA-25-D-420
18.	PW.78 Akshay Katagi	Circumstantial evidence	Hostile	Deposes about using the SIM Card ending with No.339
19.	PW.79 Mohammed Zubair	Sub-Divisional Magistrate	Supports the case of prosecution	Deposes about conducting TIP
20.	PW.83 Rajesh S. Sulikeri	Circumstantial evidence	Supports the case of prosecution	Has deposed about according sanction to prosecute A-19 and A-20

21.	PW.84 Pramod Balagouda Panade	Recovery witness	Supports the case of prosecution	Deposes about furnishing register of Praveen Deluxe Hotel at Nippani
22.	PW.85 Harish Shetty	Recovery witness	Supports the case of prosecution	Deposes about furnishing register of Central Park, Dharwad
23.	PW.86 Santhosh.R Jadhav	Recovery witness	Supports the case of prosecution	Deposes about furnishing register of Hotel Ankitha Residency, Dharwad
24.	PW.88 Firoz Khan Jagirdar	Mahazar witness	Supports the case of prosecution	Deposes about recovery of 3 Pistols from the Farm House of Basavaraj Muttagi
25.	PW.89 Sangamesh Mallappa Madivalara	Recovery witness	Supports the case of prosecution	Deposes about providing CCTV footage from the Post Office
26.	PW.90 Ravi Morey	Recovery mahazar	Supports the case of prosecution	Deposes about providing the register of Hotel Rashi Farms, Dharwad
27.	PW.96 Lester Albuquerque	Recovery Mahazar	Supports the case of prosecution	Deposes of providing Guest Register extract at Ex.P54 and 201
28.	PW.100 Yousuf Shariff	Mahazar witness	Supports the case of prosecution	Deposes about recovery of CCTV footage

29.	PW.101 Vijay Dutt	Recovery witness	Supports the case of prosecution	Deposes of providing details with respect to Hotel Ashoka Chanakyapuri, New Delhi
30.	PW.102 Kishor Kumar Maloth	Mahazar witness	Supports the case of prosecution	Was present at the time of collecting specimen writings
31.	PW.103 Jagadish Buralabaddi	Newspaper Editor	Supports the case of prosecution	Deposes about publishing of news article in Vijayavani daily newspaper with respect to verbal altercation that had taken place
32.	PW.112 Kempegouda Rudragouda Patil	Circumstantial evidence	Hostile	Deposes that he had not met Vinay Kulkarni on 15.06.2016

M. Nodal Officers and other Telephone Operators:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.80 Gaddigeyappa Ballulli @ Praveen	Airtel Sales Promoter	Supports the prosecution case	Deposes about providing Airtel SIM
2.	PW.81 G.Suresh	Circumstantial evidence	Supports the case of prosecution	Has deposes about furnishing the address that has denied of purchasing any

				SIM Cards as shown in CAF Forms
3.	PW.82 Sathish Saudatti	Circumstantial evidence	Hostile	Has deposed that Mobile Number ending with 5321 was being used by his father
4.	PW.95 Ravi Naronha	Nodal Officer	Supports the case of prosecution	Deposes of providing CDR in 153 Pages pertaining to 7795853945
5.	PW.104 R.Sridharan	Media Consultant at TV9	Supports the case of prosecution	Deposes of producing footage of the interview telecasted in their news channel of the year 2016 and the CD with necessary Certificate was identified by him at Ex.P209
6.	PW.105 Prachi Gajendra Khade	Operation Manager at Simm-Samm Airways Pvt. Ltd.	Supports the case of prosecution	Deposes about producing the records pertaining to Charter Aero plane VTSSF for the date 13.06.2016 and 14.06.2016

7.	PW.106 Prakash.G	Nodal Officer at Vodafone	Supports the case of prosecution	Deposes about producing CAF and CDR details as per Ex.P211 to Ex.P220
8.	PW.109 Johnson Tom	Nodal Officer, Bharathi Airtel	Supports the case of prosecution	Deposes about furnishing CDRs

N. Medical Officers who had conducted autopsy and also the Scientific Expert of FSL, Bengaluru for conducting firearm analysis :

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.87 Dr. M. Kiran Kumar, Director, Firearm Section, FSL, Bengaluru	Analyzing the Firearm	Supports the prosecution case	Deposes about analyzing the firearm and furnishing Report
2.	PW.94 Dr. Santhosh Kumar.P	Medical Officer conducting Autopsy	Supports the case of prosecution	Deposes about conducting the Postmortem on the dead body of the accused Yogesh Goudar and furnishing opinion

O. Witness who speaks about assisting CBI IO and also the Investigating Officer of CBI:

Sl. No.	Name	Nature of their evidence	Status of witness	Brief description
1.	PW.108 P.S.Gopalakris	Providing technical	Supports the	Deposes about analyzing the

	hna, Programmer, TAFSU, CBI	and forensic assistance to IO	prosecution case	CDR and tower dump by using professional software and furnishing tower locations
2.	PW.113 Rakesh Ranjan	Investigating Officer	Supports the case of prosecution	Deposes about conducting the investigation and filing three additional/ supplementary final reports

50. POINT NO.1: In the instant case it is alleged that on 15.06.2016 Yogesh Goudar was attacked by some unknown assailants in front of Uday Gym and also chili powder was thrown to his eyes and he was attacked with sharp edged deadly weapons. Further it is narrated that due to the assault he had sustained bleeding injuries and had succumbed to the same. It is the case of the prosecution that later on the dead body of deceased Yogesh Goudar was taken to KIMS Hospital, Hubballi for the purpose of conducting autopsy on the dead body of Yogesh Goudar. In order

to justify the said contention, the prosecution has examined PW.94 Dr.Santhosh Kumar.P., who was summoned as additional witness in the above case. It is relevant to note that during the course of investigation conducted by Dharwad Sub-Urban Police, he was requested to conduct the autopsy on the dead body of Yogesh Goudar by contacting his Professor and HOD of Forensic Science Department. The aforesaid witness in his evidence has deposed that he was posted to conduct autopsy and accordingly on 15.06.2016 between 01.00 PM to 02.00 PM he had conducted autopsy at the mortuary of District Civil Hospital. Further he has deposed of noticing rigor mortis on the dead body of the deceased which was present over the face, neck, arms, forearm, abdomen, both thighs and both legs. He had deposed of noticing faint Postmortem staining over the back of the body and blood stains were present over the head, face, front of chest, front of abdomen, both upper limbs and

at places. The Medical Officer has deposed in detail about the injuries which were noticed on the dead body of the deceased which is culled out from the chief-examination and which are as follows;

1) Chop wound measuring 7CmsX2CmsXbone deep present over high parietal region.

2) Chop wound measuring 12cmX2cmXbone deep present over left temporal and left side frontal region.

3) Chop wound measuring 10CmX2cmXbone deep present over left side temporal region which was 4Cms below external injury No.2 and 6Cms above left ear pinna.

4) Chop wound measuring 19cmX7cmsXcranial cavity deep present over whole length of fore head exposing lacerated muscles, vessels, nerves underlying frontal bone fractured and fragmented.

5) Incised injury measuring 0.5cmX0.5cmXbone deep present over left side dorsum of nose,

underlying nasal bone was fractured.

6) Incised injury measuring 4cmX0.5cmsXmuscle deep present on the right side of the face which was 7cms inner to right ear and 5cms outer to right side Ala of nose.

7) Chop wound measuring 14cmsX5cmsXbone deep present over right side of cheek.

8) Chop wound measuring 15cmX6cmXbone deep pressure over left side of cheek extending till left side upper part of neck which was 8cm below left ear and 4cm below left angle of mouth.

9) Stab injury measuring 5cmX1.5cmsXcavity deep present over front of lower part of neck, 6cms below external injury no.8.

10) Stab injury measuring 2.5cmX0.5cmsXmuscle deep present over left side upper part of front of chest, 4cms outer to external injury no.9 and 7cms below external injury No.7.

11) Abrasion measuring 5cmX0.5cm over top of right shoulder.

12) Stab injury measuring 0.5cmX0.5cmXmuscle deep present over left side upper part of chest.

13) Stab injury measuring 1cmX0.5cmXmuscle deep present over outer end of left clavicle.

14) Abrasion measuring 1cmsX0.5cm present over front of left side upper part of chest.

15) Abrasion measuring 0.5cmX0.5cm present over left side upper part of chest.

16) Stab injury measuring 4cmX2cmXcavity deep present over front of left side lower part of chest.

17) Stab injury measuring 9cmX2cmsXcavity deep present over left side outer aspect of chest.

18) Abrasion measuring 4cmX1cms present over outer aspect of left shoulder.

19) incised injury measuring 5cmsX2.5cmsXmuscle deep present over outer aspect of left elbow.

20) Chop wound measuring 5cmX1.5cmsXbone deep present over back of left hand and 5th metacarpal bone was fractured.

21) Chop wound measuring 1cmX0.5cmsXbone deep present over left hand ring finger.

22) Chop wound measuring 5cmX2cmsXbone deep present over left hand index and middle finger.

23) Chop wound measuring 2.5cmsX1.5cmsXbone deep present over left foot great toe.

24) Chop wound measuring 3.5cmsX2.5cmsXmuscle deep present over outer aspect of lower third of left thigh.

25) Stab injury measuring 9cmX2cmsXcavity present in the mid line of upper part of abdomen.

26) Stab injury measuring 8cmX2cmsXmuscle deep present over left side upper part of abdomen.

27) Stab injury measuring 4cmX0.5cmsXmuscle present over left side upper part of abdomen.

28) Stab injury measuring 7cmsX1cmXmuscle deep present over left side upper part of abdomen.

29) Stab injury measuring 8CmX1cmXcavity present over left side mid line of abdomen.
30) Stab injury measuring 6cmX2cmsXcavity deep present over right-side upper part of abdomen.
31) Stab injury measuring 8cmsX1cmsXmuscle present over right-side upper part of abdomen.
32) Chop wound measuring 6cmsX4cmsXbone deep present over right-hand index finger.
33) Incised wound measuring 4cmX0.5cmXmuscle deep present over back of right hand.
34) Chop wound measuring 6cmsX2cmsXmuscle deep present over inner aspect of middle third of right thigh.
35) Abrasion measuring 16cmsX0.5cm was present over front of lower third of right thigh.

51. The Medical Officer has deposed that injury No.32 and 33 might have been caused due to probable defence injuries and had shown the fractures of bones on right hand. It is his specific opinion that the

external injury No.1 to 4, 7 to 9, 17 and 30 were fatal to life and injury No.19 to 22, 32 and 33 were probable defence injuries. It is deposed by him that the Postmortem was conducted by him along with their HOD Dr.Gajanan Nayak and has deposed about furnishing the Postmortem Report as per Ex.P.191. Further he has deposed that later on a requisition was sent by Dharwad Sub-Urban Police along with some sharp-edged weapons like metallic knife, a long machete with wooden handle, bamboo stick, another long machete and an iron rod. By comparing the weapons which were sent to them along with the external injuries mentioned in the autopsy report, they had arrived at a conclusion that the injuries could have been possible to be sustained by using of single weapon or in combination of similar type of weapons or the same weapons which were sent for examination and the injuries were fatal to life. He has also deposed of furnishing the report as per Ex.P.196. I have

carefully appreciated the chief evidence and also the cross-examination and juxtaposed with the autopsy report at Ex.P.191 and the opinion at Ex.P.196. If for a moment both the reports are looked into and compared, it would clearly indicate that deceased Yogesh Goudar had sustained nearly 35 external injuries, out of which injury No.1 to 4, 9, 17 and 30 were fatal to life. The aforesaid aspect is not denied or controverted during the course of evidence. Under the circumstances, the only probable cause which would indicate the cause of death of Yogesh Goudar was assault made by combination of several weapons. Hence, the prosecution has proved beyond reasonable doubt that the death of Yogesh Goudar was homicidal and accordingly point No.1 is answered in the **affirmative**.

CHAPTER: VII

WHETHER INVESTIGATION BY CBI CAN BE CLASSIFIED AS FURTHER INVESTIGATION OR RE INVESTIGATION OR FRESH INVESTIGATION.

52. **POINT NO.2**: In the instant case, a peculiar situation had arose wherein immediately after the death of Yogesh Goudar, the criminal law was set into motion on the basis of the complaint lodged by the wife of the deceased Smt.Mallavva Goudar and based on the same an FIR came to be registered in Cr.No.135/2016 and thereafter necessary investigation was conducted by Dharwad Sub-Urban Police. On the completion of investigation necessary charge-sheet came to be filed against accused No.1 to 6 and later on the case was committed to the 4th Addl. District and Sessions Judge Court at Dharwad and it was numbered as SC No.50/2017. After completing the statutory bound obligations, the Sessions Court at Dharwad had proceeded to frame necessary charges against the aforesaid accused No.1 to 6. The charges

which were framed by the Sessions Court at Dharwad are extracted supra for the sake of convenience. The Sessions Court at Dharwad had fixed the trial and had examined totally 61 witnesses and the prosecution had closed their side. Thereafter, the statement of the accused No.1 to 6 came to be recorded as contemplated under Sec.313 of Cr.P.C. It is relevant to note that from the inception the brother of deceased Yogesh Goudar by name Mr. Gurunath Goudar was vociferous about the nature of investigation which was conducted by the Investigating Agency at Dharwad. In fact, a Writ Petition was also filed before the Hon'ble High Court of Karnataka by the mother of the deceased by name Smt.Thungavva, seeking for investigation from CBI which came to be rejected. However, in the said Writ Petition, liberty was reserved to the petitioner to file necessary application under Sec.319 of Cr.P.C., if warranted. It is submitted that later on during the course of trial before the Sessions

Court at Dharwad on 16.07.2019, necessary application came to be filed under Sec.319 of Cr.P.C., through the applicant to protect their right. However, the application came to be rejected by the Sessions Court at Dharwad vide order dated 26.08.2019. Against the said order, the brother of deceased Gurunath Goudar had filed a Criminal Petition before the Hon'ble High Court of Karnataka, Dharwad Bench, in Crl.Petition No.101725/2019. However, the said petition came to be dismissed as having become infructuous. In the meantime, the Government of Karnataka had taken a decision to entrust the investigation to CBI. It is relevant to note at this juncture that the entrustment of investigation to CBI was questioned by the then accused No.1 Basavaraja Muttagi by filing Writ Petition before the Hon'ble High Court of Karnataka which was dismissed later on and the orders had confirmed by the Hon'ble Apex Court. When such being the case, now the question which is

required to be determined is whether the investigation which was entrusted to CBI can be construed as fresh investigation or further investigation and whether the procedure which is required to be followed would continue to commence from the stage where it was stopped before the Sessions Court at Dharwad by keeping in mind the three additional/supplementary final reports being filed by the CBI. The aforesaid aspect came up for consideration before this Court when the case was posted for framing of charges.

53. At the cost of repetition, it is pertinent to note that when the criminal law was set into motion by Smt.Mallavva Goudar, the wife of the deceased, all that it was narrated was the murder might have taken place due to political rivalry or for any other reason. Subsequently, the Dharwad Sub-Urban Police had investigated the case and had filed the final report against accused No.1 to 6 by contending that the

motive and intention for committing the murder of Yogesh Goudar was prevailing land dispute between the then accused No.1 Basavaraja Muttagi and Yogesh Goudar. However, when the investigation came to be entrusted to CBI under Sec.6 of DSPS Act, it was directed to conduct the further investigation. In order to better appreciate the same, the Government order is herewith extracted which reads as follows;

GOVERNMENT ORDER No. HD 48 PCB 2016,
BENGALURU, DATED 06/09/2019

Government of Karnataka hereby accords sanction to the Central Bureau of Investigation, under Sec.(6) of Delhi Special Police Establishment Act, 1946 for further investigation of Crime No.135/2016 u/s 302 of Indian Penal Code lodged in Dharwad Sub-Urban Police Station, Dharwad.

The concerned Department Officers/official/others shall hand-over data/information/records as and when required by the Central Bureau of Investigation and co-operate in the investigation.

The status report on the progress of the enquiry/investigation may be furnished to the State Government periodically.

54. On careful examination of the notification issued by the Home Department, it would clearly indicate that the State Government had entrusted the CBI to conduct further investigation in the above case. At this juncture, the contentions urged by the learned Senior Counsel with respect to further investigation is required to be appreciated. It is the submission of the learned Senior Counsel that unless it is specifically ordered by the Superior Constitutional Authority, the question of conducting investigation which is anterior to the earlier investigation does not holds water. In order to buttress his contention, the learned Counsel has relied upon the judgment of the Hon'ble Apex Court reported in **(2013)5 Supreme Court Cases 762 (Vinay Tyagi Vs. Irshad Ali Alias Deepak and others)** wherein it has been held as:

> ***22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in***

terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation.

49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

55. Even in the aforesaid judgment it has been held by the Hon'ble Apex Court that further investigation can be construed as the one where the Investigating Officer obtains further oral or documentary evidence after final report is placed. It is further clarified that the scope of such investigation is restricted to the discovery of further oral or documentary evidence and its purpose is to bring the true facts before the Court, even if they are discovered at a subsequent stage to the primary investigation. It has also been rendered in the said judgment that the basis for further investigation is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto which in other words means that it has to be understood in complete contra-distinction to a "re-investigation", "fresh", or "denova investigation". The learned Senior Counsel appearing for accused No.16 Sri.M.S. Shyam Sundar has submitted that

further investigation cannot be construed as the one which is totally anti-thesis to the earlier one. In my humble opinion, the said contention is not correct and as laid down by the Hon'ble Apex Court, what is required to be seen by the Court is whether the materials discovered are in furtherance of the same chain of events which is incidental thereto. In the instant case, what is required to be appreciated is a brutal murder had taken-place on 15.06.2016 at Uday Gym, Dharwad and immediately thereafter the criminal law was set into motion by filing FIR before the Dharwad Sub-Urban Police Station. The materials which are placed before the Court indicates that initially the complainant Smt.Mallavva Goudar was also not happy with the investigation that was being carried out by the local investigating agency. During the course of her evidence, wherein she was examined as PW.50 Mallavva Gouda Goudar, she has deposed that on learning about the incident she had rushed to

the Police Station and had lodged the complaint contending that the death might have been caused due to political rivalry or land dispute or some other reason. At the inception of the case, the Local Investigating Agency at Dharwad had arrived at a conclusion that the land dispute prevailing between Basavaraja Muttagi and deceased Yogesh Goudar was the root cause for commission of the murder. However, the case took an entirely different turn when it was entrusted to CBI.

56. In the interregnum, the brother of the deceased by name Gurunath Goudar and the mother of deceased was fighting with various authorities and forums seeking justice. Though the Court is not entirely basing its opinion on the versions of PW.2 Gurunatha Gouda, at this juncture it would be appropriate to appreciate that whether it was a tussle given by Gurunath Goudar for extraneous reasons or

not. In the instant case, it would be appropriate to look into the evidence of PW.2 Gurunath Goudar in this regard. It is his specific contention that from the beginning Yogesh Goudar and Vinay Kulkarni were at logger heads with each other and the political rivalry between them had led to the said situation. Repeatedly it has been stated by him even before the Court at Dharwad and the evidence would indicate that he was explaining the situations and turn of events that had taken place at the time of murder of Yogesh Goudar and also after the same. He has specifically deposed at the earliest point of time about the involvement of the Police Officers and also the political personalities. It is not that for the first time he had taken up the name of present accused No.15 for some extraneous reasons. The learned Additional Solicitor General of India and SPP Sri. S.V.Raju, during the course of his reply arguments has submitted that the further investigation being in later point of time

considers all materials which includes earlier material as well as fresh material and has also argued that the investigation is being done in proper direction is to be ascertained. In order to substantiate his contention, he has relied upon the judgment of the Hon'ble Apex Court reported in **(2023)1 SCC 48 (Devendranath Singh Vs. State of Bihar and others)**, wherein it has been held as follows:

> ***45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:***
>
> ***45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.***
>
> ***45.2. The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order***

further investigation in terms of Section 173(8)CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such

powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5. The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

57. Further in another judgment of the Hon'ble Apex Court reported in **(2004)5 SCC 347 (Hasan Bhai Vali Bhai Qureshi Vs. State of Gujarath and others)** it has been held as follows:

2. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an

> ***expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.***

58. In the aforesaid authority, the Hon'ble Apex Court has specifically held that the further investigation can be carried out under Sec.173(8) of Cr.P.C., even dehors any directions from the Court. At the same time, the judgment of the Hon'ble Apex Court reported in (2009)7 SCC 685 (Kishan Lal Vs. Dharmender Bafna and another), wherein it has been held as follows:

> ***15. An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter***

has recently been considered by a Division Bench of this Court in Mithabhai Pashabhai Patel v. State of Gujarat [(2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047 : (2009) 7 Scale 559] in the following terms: (SCC pp. 336-37, paras 12-13)

"12. This Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India did not direct reinvestigation. This Court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.

13. It is, however, beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a 'State' to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court

would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413 : (2008) 2 SCC (Cri) 631] , opined as under: (SCC p. 415, para 7)

'7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.' "

We have referred to the aforementioned decision only because Mr Tulsi contends that in effect and substance the prayer of the appellant before the learned Magistrate was for reinvestigation but the learned Magistrate had directed further investigation by the investigating officer inadvertently.

16. The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his

notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary.

59. In the said authority, it is clarified that the Investigating Officer may exercise his statutory power of further investigation in several situations when new facts come to his notice, when certain aspects of the matter have not been considered by him or he has found the necessity to conduct investigation from a different angle. At this juncture, it would be relevant to consider the submission of the learned Senior Counsel Sri. C.V.Nagesh on behalf of accused No.15, who has vehemently argued that during the course of examination of the Investigating Officer, PW.113 Mr. Rakesh Ranjan, it was elucidated from him that no one else apart from Mallavva Goudar had filed the

complaint nor any fresh materials were furnished at the time of registration of case by CBI in RC No. 17(S) of 2016 by CBI. At the first stroke of incidence, the submissions seem to be attractive. At the same time, it has to be kept in mind that the subsequent registration of FIR by the CBI was only for statistical purposes and in fact the statement of PW.2 Gurunath Goudar from the inception would indicate that he was making several allegations with respect to the manner in which the investigation was being carried out. As such, the said submission does not hold water. Even otherwise, the Court at the time of framing of the charge had specifically observed the reason for conducting new trial in the wake of the supplementary final reports being filed by the CBI.

60. At the cost of repetition, it is relevant to recall that the alleged motive and intention for the commission of murder during the course of

investigation by Dharwad Sub-Urban Police was the prevailing land dispute between deceased Yogesh Goudar and the accused No.1 Basavaraja Muttagi. Though the learned counsel for accused No.19 vehemently contends that the investigation which was carried out by them was appropriate and correct, the aforesaid aspect will be dealt in the later part of the judgment. However, at this juncture, it is noticed from the records that immediately after the registration of the FIR, the accused No.1 to 6 had surrendered before the concerned Police and thereafter the Mahazar and other materials were collected. Even otherwise, in the present case the first supplementary charge-sheet filed by the CBI indicates of prevailing land dispute. When the evidence of the persons who had intended to sell the land to Basavaraja Muttagi is appreciated, wherein the land owner Nagaraj Todkar was examined as PW7 And also the persons who were present at the time of said Agreement to Sale is considered, nowhere it is

pointed out that Basvaraja Muttagi had entertained a rivalry with deceased Yogesh Goudar. The learned Senior Counsels have vehemently argued that the evidence of PW.50 Mallavva Gouda Goudar, the widowed wife of the deceased indicates the presence of dispute amongst them is to be considered. At the same time, it is also relevant to note that during the course of cross-examination of PW.50 by the learned SPP it was submitted by her that at the earliest instance before the Sessions Court at Dharwad, she had deposed that accused No.1 to 6 were having cordial relationship with deceased Yogesh Goudar and even they were like brothers. Under the circumstances, the course of investigation which is taken-up by the present IO PW.113 Rakesh Ranjan is nothing but discovery of new facts and circumstances. As could be gathered from the materials, it indicates that during the course of trial before the learned Sessions Court at Dharwad, the motive and intention for committing the

murder was land dispute which is not found in the evidence before this Court. Even otherwise, PW.50 Mallavva was confronted with a TV interview, wherein she had given an interview to the TV9, Public TV and other media house that the murder had taken-place due to political rivalry in which the involvement of Minister was involved and there was no land dispute. The said interview which is in the Pen-drive came to be marked before this Court as Ex.P.103 and necessary Certificate was marked at Ex.P.104. The aforesaid Pendrive was marked subject to its relevancy and admissibility at that point of time. It is relevant to note that though it was objected that the interview cannot be exhibited before the Court since it cannot be considered as a previous statement as contemplated under Sec.145 of Indian Evidence Act, this Court had given a detailed finding permitting the prosecution to get the aforesaid document marked. That apart, it is also relevant to note that during the

course of investigation by the CBI, accused No.7 to 21 came to be arraigned as necessary accused and the motive and intention also drastically changed. If for a moment the provision of Sec.273 of Cr.PC is appreciated, which reads as follows;

> ***273. Evidence to be taken in presence of accused. —Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:***
>
> ***1[Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.]***
>
> ***Explanation. —In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code***

61. The aforesaid provision would indicate that the evidence is required to be recorded in the presence of the accused or their pleader. However, the evidence

which was recorded before the Sessions Court at Dharwad was with respect to the charge-sheet filed against accused No.1 to 6 and accused No.7 to 21 were totally navy to the aforesaid investigation process. Under the principles of natural justice, a proper opportunity and fair trial is also required to be conducted. As such, this Court had passed an order on 06.12.2023 to conduct new trial by framing necessary charges. The said order has reached its finality as the same had obtained the stamp of approval by the Hon'ble High Court of Karnataka. Later on, an application was filed under Sec.231(2) of Cr.P.C., seeking to continue with the trial from the stage where it was stopped at the learned Sessions Court at Dharwad. However, the aforesaid contention was not accepted and accordingly the same came to be rejected by this court. Even the said order was challenged before the Hon'ble High Court of Karnataka, wherein it had confirmed the orders

passed by this Court to conduct new trial. Hence, the submission of the learned Senior Counsel Sri.M.S. Shyam Sundar, falls like a pack of cards and the same is to be negated. Accordingly, the new trial is being conducted before this Court by independently examining the witnesses. Under the circumstances, the new trial which is being conducted is based on the further investigation which is being conducted by CBI. Accordingly, I answer point No.2 in the **affirmative**.

CHAPTER – VIII
MOTIVE AND INTENTION TO COMMIT THE MURDER:

62. As per the case of the prosecution, it is contended that the main motive and intention to commit the murder of the deceased Yogesh Goudar was the political rivalry which he had entertained with accused No.15 Vinay Kulkarni. The CBI has filed the final supplementary report indicating of the aforesaid rivalry that had taken-place on 23.04.2016 during the

meeting convened by accused No.15 Vinay Kulkarni who was the then District In-charge Minister at Dharwad at the Zilla Panchayath premises. The prosecution in order to establish the aforesaid aspect, has examined PW.4 Shivananda Basappa Salagatti who has deposed that he was Member of the Village Panchayath from 2010 to 2015 and has deposed that on the fateful day i.e., on 23.04.2016 a verbal altercation had taken-place in the said meeting which was attended by the CEO of Zilla Panchayath, PDO's of all Village Panchayath, President and Vice President of Village Panchayath, Taluk Panchayath and Zilla Panchayath along with Taluk Level Officials apart from the District In-charge Minister. It has also been deposed by him that the meeting was convened to discuss about the famine situation prevailing at Dharwad. Further he deposes that when the turn of Yogesh Goudar had come, a verbal altercation had taken-place with respect to Maradagi Panchayath.

During the course of cross-examination, the learned Senior Counsel for accused No.15 has confronted the witness with the notice of the meeting which was marked as Ex.D.2 and has elucidated from him that only the aforementioned persons were permitted to attend and also it is elucidated from him that the witness was neither the Member of Village Panchayath nor any other local bodies or was its President or Vice President. Further it is elucidated that after the meeting the grievances aired in the meeting along with the recommendations and suggestions were recorded as per Ex.D.3. By pointing out to the aforesaid aspect, it is argued that he had no iota of the meeting and he was an implanted witness. Apart from that, the prosecution has examined PW.5 Gangappa Shivappa Kallagoudthi, who has also deposed in consonance with the evidence of PW.4. During the course of his cross-examination, once again he was confronted with the meeting notice of Ex.D.2 and also with the meeting

notice at Ex.D.3. Though he has deposed that he was the Member of Managundi Ward No.1 Village Panchayath during the period 2015 to 2020, it is argued by the learned Senior Counsel that the meeting did not permit any other ordinary members to attend the same. I have carefully appreciated the said contentions. Even in the written arguments it is argued that PW.4 and PW.5 being not the President or holding any authoritative post in the Village Panchayath had not attended the meeting. The learned Senior Counsel has submitted that the Attendance Register pertaining to the aforesaid day also indicates of the fact that the signatures of PW.4 and PW.5 are not forthcoming. At the first instance, the aforesaid submission seems to be attractive. However, when the Attendance List is carefully appreciated which is marked along with Ex.D.2 the notice, it indicates the persons who had attended the meeting on the aforesaid day. Incidentally, the name of accused No.15

Vinay R Kulkarni is forthcoming in the Attendance List, but none of the political personalities whose name are forthcoming have affixed their signature to the same. The next sheet in the same indicates the Members of the Zilla Panchayath who had attended the meeting and in that the name of deceased Yogesh Goudar is forthcoming; however, he has not affixed his signature. It is relevant to note that in the list pertaining to the Taluk Panchayath Members, it specifically states the name of the members and the list does not indicate that it should be signed only by the members who are enjoying the post of the President or Vice President of their respective local body. The column would indicate them to be the members of the local body. Under the circumstances, if for a moment the contention of the defence is to be accepted, then it would be totally contrary to the notice which is issued at Ex.P.2, wherein it requires the President and Vice President of the local body to be

present in the meeting. That apart, I have also appreciated the Minutes of the meeting which was also marked by way of confrontation with PW.4 Shivananda Basappa Salagatti. The document was marked at Ex.D.3 and in the Minutes column, with respect to each Panchayath it has been referred that the President of the each Panchayath had discussed about the problems faced in each of their constituency. As such, it is clear that the attendance list does not have any nexus with the Minutes of the resolution which was passed in the said meeting. In other words, it can be construed that the same is not indicating of the true and correct picture with respect to the restriction on the participants to the said meeting. Even otherwise, if the minutes of the meeting are accepted that doesn't indicate that other persons were barred from attending the meeting. If the aforesaid conclusion is to be derived, then the question which requires to be

answered is whether the prosecution have established the aforesaid notice through any other witnesses.

63. I have bestowed my anxious reading to the evidence of PW.103 Jagadish Buralabaddi, who is the Resident Editor of Vijayavani Newspaper. During the course of his evidence, he has deposed that in the year 2016, he was working as second in-charge of Chief Sub-Editor at Vijayavani, Hubballi. He has specifically deposed that the Investigating Officer had enquired him about the news item which they had published in their newspaper on 24.04.2016. The said news item was pertaining to the verbal altercation that had taken place between the accused No.15 and the then Zilla Panchayath Member Yogesh Goudar. Further the certified copy of the newspaper was produced by him pertaining to 24.04.2016, which was marked as Ex.P.206. If for a moment, the aforesaid aspect is to be brushed aside as the one which was erroneously

reported, the same was required to be denied by accused No.15 at the earliest point of time itself. Even during the course of cross-examination, nothing has been suggested to indicate that it was a false and misleading report which was published in the newspaper nor there is any denial in this regard that the newspaper had published false and misleading report of the said incident. All that it is suggested is that the newspaper was part of VRL Media which was owned by Mr. Vijay Sankeshwar, who was elected as MP on the ticket of BJP Political Party. The aforesaid suggestion does not have any nexus and in the absence of any denial with respect to the veracity, the contention of the accused counsels cannot be accepted. Even otherwise, the witness has specifically deposed that with respect to city like Dharwad, one or two Reporters would cover all the news materials. Under the circumstances, the contention of the accused that the newspaper material cannot be relied

upon is not acceptable. Even otherwise, the newspaper report was published on 24.04.2016 and whereas the investigation to CBI was handed-over in the year 2019 and the newspaper report was collected by the Investigating Officer in the year 2021. As such, it cannot be presumed that the motive and intention were created by the Investigating Agencies to suit their needs after lapse of several years and in particularly after more than 5 to 6 years after the incident. The aforesaid aspect also assumes importance for the fact that it has been repeatedly contended by the defence counsel during the course of their cross-examination that the prominent political parties at Dharwad was BJP and Congress and since accused No.15 Vinay Kulkarni belonged to Congress Political Party, he has been falsely implicated in the above case.

64. At this juncture, it would be appropriate to marshal the entire evidence which is placed before the

Court to ascertain the motive and intention. The law is well settled that under the provisions of IPC, motive does not play an important role but at the same time when the case is based upon circumstantial evidence, the existence or otherwise of the motive is required to be looked into. At the first instance, the law with respect to the existence of motive is required to be ascertained. The learned Senior Counsel has vehemently argued that just because a verbal altercation had taken-place in the Zilla Panchayath meeting at Dharwad, the same cannot be construed as adequate motive for commission of the offence. Even otherwise, it is his submission that by looking into the evidence of PW.4 Shivananda Salagatti and PW.5 Gangappa Shivappa Kallagoudthi, there is no motive or intention as such pointed out. At this juncture, it would be appropriate to look into the evidence of PW.10 Basavaraja Muttagi, who has turned approver in the above case. The learned Senior Counsel has

vehemently argued that the entire cross-examination pertaining to PW.10 is ascertained, it would indicate that PW.10 is a damn lair and his entire evidence is of no consequences at all. With respect to the veracity of the evidence of approver Basavaraja Muttagi, the same will be considered in the later part of my judgment.

65. During the course of his chief-examination he has deposed that on 23.04.2016, he was near the building of Dharwad Zilla Panchayath along with other accused persons and later on Vinay Kulkarni had expressed to him that he was insulted by Yogesh Goudar in front of all small and big leaders of Dharwad by stating that they will have to face dire consequences. During the course of cross-examination of PW.113 Rakesh Ranjan, it was suggested to him that as per the CDR the tower location of accused No.1 Basavaraja Muttagi with respect to 23.04.2016 indicated of he being present near Gokul Road (Airport

Road), Hubballi at about 19.45 PM and further it was elucidated that as per the CDR apart from the above call there were no calls indicated on that particular day from different locations. It is also been elucidated that the Zilla Panchayath building at U.B.Hills, Dharwad and the Airport was at a distance of about 20 to 24 Kms. As such, it is submitted that the prosecution has not given any materials to believe the version of the approver. If for a moment the aforesaid aspect is to be accepted, then it is required to understand that the Call Detail Register (CDR) will only project the calls which were answered or connected from a particular number on that particular day. For instance, a number is reflected in CDR immediately after the completion of a call, SMS or a data session. If for a moment, the aforesaid aspect is to be considered then obviously in the absence of any call being received by him would not lead to a conclusion that he was not at all present at Zilla Panchayath

premises on that particular day. The aforesaid case is also required to be looked into from an angle wherein the Investigating Agencies are carrying out of the investigation of a case which had taken-place in the year 2016 and buried under labyrinth circumstances that had traversed from 2016 to 2019 when the investigation was handed-over to CBI. The evidence of the approver Basavaraja Muttagi as argued by the learned counsel for the accused is always required to be considered with a pinch of salt since he is the one who had changed his side from the arraign of accused persons and has joined the hands of the prosecution. At the same time, the Court is also required to consider the fact that whether the same leads to provide any additional link to the evidence of the prosecution which otherwise it would have been not possible for the prosecution to establish. During the course of his evidence PW.10 Basavaraj Muttagi had deposed that after about 2 days he was once again

called near Vinay Dairy, wherein Vinay Kulkarni had requested him to eliminate Yogesh Goudar. The aforesaid aspect would add as a linkage or a chain to the other aspects that had taken-place in the above case.

66. At this juncture, it would not be out of context to discuss about the other facet of the allegation which has been leveled against accused No.1 to 6. It is submitted by the learned counsel for accused No.15 that during the course of investigation by the Dharwad Sub-Urban Police Station, it was contended that the real motive and intention to commit the murder of Yogesh Goudar was the land dispute which was prevailing between them. At the cost of repetition, at this juncture the evidence of PW.50 Mallavva Goudar is required to be looked into whom the learned Counsel for accused No.15 in their written submission has contended as ***"no one could be more loyal than a***

King and the King being PW.50 Mallavva". It is submitted that the wife of the deceased would speak about the person who really had the motive to do away with the life of her husband. It is submitted that after the death of the deceased, the accused No.15 and other members of his family had met her to express their condolences consequent to the bereavement in her family. It is also submitted that she has admitted during the course of her cross-examination of the helping hand which was given by 15th accused to the deceased which had made the deceased as President of Taluk Panchayath even though he was elected as an independent candidate. The aforesaid aspect is also required to be appreciated with the evidence of PW.2 Gurunatha Goudar. If for moment his evidence is looked into, he has specifically deposed that during the period 2010-11, his brother Yogesh Goudar had become Member of Taluk Panchayath and later on he had become the President of the Panchayath.

Somewhere the evidence of PW.50 Mallavva Goudar to that extent is corroborated with the evidence of PW.2 Gurunath Goudar. However, PW.2 Gurunath Goudar further deposes that after about 15 months a 'No Confidence Motion' was moved at the behest of Vinay Kulkarni and he was made to resign which had led to developing of animosity. The aforesaid aspect has been denied by accused No.15 Vinay Kulkarni in his statement recorded under Sec.313 of Cr.P.C. at Question No.12. The further evidence of Gurunath Goudar indicates of winning the elections by Yogesh Goudar to Zilla Panchayath from Hebballi Constituency in the year 2016 on BJP Political Party ticket. When the evidence of PW.50 Mallavva Goudar is juxtaposed and examined with the cross-examination, it would indicate that Mallavva Goudar herself had admitted that there was rivalry prevailing between two prominent political parties at Dharwad which was BJP and Congress and of which accused No.15 Vinay

Kulkarni was the prominent leader of Congress Party. During the course of evidence of PW.50 Mallavva Goudar it was elucidated from her by the learned counsel for accused No.15 that a land dispute was prevailing between Basavaraja Muttagi and the land of Todkar. In her evidence she has deposed that Basavaraj Muttagi and his wife had virtually begged her to tender evidence in a particular manner before the Dharwad Court and had stated that the lands of Mr. Todkar was in her possession and they would not interfere with the same. It is her evidence that the lands in Sy.No.117, Sy.No.118 and Sy.No.119 of Managundi village were in her possession and the remaining portion of the land apart from the one in which they had entered into Agreement with Todkar was also in her possession. The aforesaid aspect is also required to be considered since as per the case of prosecution which was prevailing initially during the course of investigation by the Dharwad Sub-Urban

Police was the land dispute which was prevailing between Basavaraja Muttagi and Yogesh Goudar. However, when the evidence of PW.6 Nagaraj Todkar is carefully appreciated, it does indicate that he had entered into an Agreement to Sale with Basavaraja Muttagi. He was not at all subjected to any cross-examination by accused No.15. Now this leads to a situation wherein it is argued by the learned Counsel for accused No.15 that the wife of the deceased is the best suited person to depose about the ill-will or the rivalry which was prevailing between Yogesh Goudar and which can be construed as a motive. At the cost of repetition, the evidence of PW.50 is to be appreciated, it indicates that she was the one who had set the criminal law into motion by lodging a criminal complaint immediately after the murder of Yogesh Goudar. In her chief-examination she has admitted of filing the complaint as per Ex.P.1. If for a moment, the complaint at Ex.P.1 which was written in the

handwriting of PW.1 Dr. Dattatreya Gudaganti as per the say of PW.1 Mallavva Goudar is appreciated, she states that about 2 days prior to the murder, they had received an anonymous letter wherein Yogesh Goudar was warned of murder like another brother Uday Goudar. In her complaint at Ex.P.1, she has specifically stated that her husband was murdered by some persons who were not tolerating him politically and with some malafide intention he was murdered. Once again at the cost of repetition if the evidence which is elucidated from her is considered, the unequivocal inference which can be drawn is that the main political parties at Dharwad was BJP and Congress, of which accused No.15 Vinay Kulkarni was the prominent leader of Congress Party. That apart, PW.2 Gurunath Goudar in his evidence has specifically deposed that just prior to the election Yogesh Goudar was leveled with an allegation of distributing money and violating model pole of conduct and was arrested

and remanded to custody. The learned Senior Counsel has vehemently argued that the entire evidence of PW.2 Gurunath Goudar is required to be considered in its entirety, wherein it is elucidated that Gurunath Goudar was facing volley of criminal cases against him which included of henious offences. No doubt the said admission is true and correct, at the same time what could be drawn from the entire episode is the existing rivalry between both the parties. Now the question which is required to be answered at this juncture is whether the mere existence of some motive is sufficient to draw an inference or is it required by the prosecution to prove adequacy of motive. In this regard, it would be profitable to rely upon the judgment of the Hon'ble Apex Court reported **in 1981 (Supp.) SCC 31 (Krishna Pillai Shree Kumar and another Vs. State of Kerala)** wherein it is held as:

> ***9. It is undisputed that some bad blood existed between the deceased on the one hand and the appellants on the other***

prior to the occurrence. The animosity may not have been very bitter but then it is too much to say that it could not possibly form a motive for the occurrence. The variation in human nature being so vast, murders are known to have been actuated by much lesser motives. In any case, it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it.

67. Further in another judgment of the Hon'ble Apex Court reported in (1999)4 SCC 370 (State of Himachal Pradesh Vs. Jeeth Singh), wherein it has been held as follows:

33. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the per-

son whom he offended. In this context, we may extract the observations made by a two-Judge Bench of this Court (Dr A.S. Anand, J., as the learned Chief Justice then was and Thomas, J.) in Nathuni Yadav v. State of Bihar [(1998) 9 SCC 238 : 1998 SCC (Cri) 992] : (SCC p. 244, para 17)

"17. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in R. v. Palmer [Shorthand Report at p. 308 SCC May 1856] thus:
'But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.'

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental dispo-

sition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."

68. In the aforesaid judgment it has been held by the Hon'ble Apex Court that motive is essential for commission of a criminal act but at the same time if the prosecution has failed to prove the precise motive of the accused to commit it but has succeeded in showing the possibility of some ire between accused and the victim, the same is suffice. The aforesaid authority is aptly applicable to the case on hand. The motive for commission of offence could be traced from the fact that prior to the meeting at Zilla Panchayath, there was some ire between them with respect to political rivalry.

69. Now the other aspect which requires attention of the Court is with respect to the submission of the learned Senior Counsel that the evidence of PW.50 Mallavva Goudar itself would clarify the aforesaid contentions of the prosecution. As

already pointed out in the earlier part of discussion, it is deposed by her that the land in Sy.No.117 to 119 of Managundi village which belonged to PW.6 Nagaraj Todkar was in her possession. At the cost of repetition if the evidence of PW.10 Basavaraj Muttagi is to be considered, it would indicate that in his chief-examination he had specifically deposed that it was the idea of accused No.15 Vinay Kulkarni to portray some ill-will between Basavaraja Muttagi and deceased Yogesh Goudar for the commission of murder. PW.10 Basavaraj Muttagi, in his evidence has specifically deposed that he was advised by Vinay Kulkarni to enter into an Agreement to Sale with Nagaraj Todkar. As already discussed above, PW.6 Nagaraj Todkar was not at all subjected to any cross-examination by the learned counsel for accused No.15. At the same time, the incidences which was narrated by Basavaraja Muttagi with respect to holding negotiations with PW.6 Nagaraj Todkar and his family members and also

meeting them in the house of Ravi Patil are all corroborated in the evidence of PW.6 Nagaraj Todkar and in the evidence of PW.7 Veeresh Amrutheshwar Byahatti. In fact, PW.7 had explained in extenso about the manner in which the negotiation had taken-place and also tendering of advance amount. At this juncture it would be relevant to refer to the evidence of PW.8 Nataraj Maki Goudar. In his evidence he was treated as hostile and was subjected to cross-examination. He has specifically admitted of tendering statement under Sec.164 of Cr.P.C., before the learned Magistrate and deposing that on one late night he had given a call to Mr. Byahatti i.e., PW.7 at about 23.30 hours from the Dairy of Vinay Kulkarni and had stated that Basavaraja Muttagi was also present there and requested him to assist Muttagi to get the Agreement done. The aforesaid evidence reflects in the chief-examination of PW.7 Veeresh Amrutheshwar Byahatti, wherein at Para No.2 he had specifically deposed that

probably in the month of April/May-2016 at about 11.30 PM, Nataraja Maki Goudar had called him and had stated that Basavaraja Muttagi was intending to purchase the land which was situated at Managundi village measuring 25 Acres and 08 Guntas of land. This particular aspect would clearly indicate the conspiracy which was being hatched by Vinay Kulkarni towards the commission of offence.

70. Now coming to the aspect of relying upon the evidence of PW.50 Mallavva Goudar. As already discussed above, at the inception of the case, she had lodged a written information at Ex.P.1 stating that her husband might have been murdered due to political reasons. It is relevant to note that she had appeared before the Sessions Court at Dharwad and tendered her evidence. Though strictly speaking the Court is not entirely relying upon the evidence which was tendered before the Sessions Court at Dharwad, for the sake of

conclusiveness and to consider the veracity of the witness the same is now looked into wherein she was examined as PW.1 in SC No.50/2017. In her evidence she has feigned her ignorance about the reason for the murder of her husband and has specifically deposed that in the Newspaper it was reported that the murder had taken-place due to a land dispute. If the said aspect is to be accepted, then as contended by the learned Counsel for accused No.15 that ***"no one could be more than loyal than a King",*** requires explanation and she has to explain the circumstances which had led her to change her stand now and then. During the course of her cross-examination before the Sessions Court at Dharwad, she has specifically deposed that her husband did not have any rivals and did not know any quarrel that had taken place during the lifetime of her husband. It is rather curious to note that during the course of her cross-examination and in particularly at Para No.13 she has denied the suggestion that there

was no acquaintance with accused No.1 to 6 and Yogesh Goudar and further deposes that deceased Yogesh Goudar and accused No.1 to 6 were like own brothers. The aforesaid statement is looked into only for a limited extent to ascertain the veracity of the witness and further it could be noticed from her present evidence that she had given an interview to the media that is to TV9, Public TV and other media houses wherein she had specifically stated that the murder had taken-place due to political rivalry in which the involvement of Minister was forthcoming and it required to be thoroughly investigated as there was no land dispute. The aforesaid media interview was displayed in the open court and it was marked as Ex.P.103. It is also relevant to note that displaying and exhibiting of the interview was resisted by the learned defence counsel on the premises that the same is not covered under Sec.145 of Indian Evidence Act. However, this Court had passed a detailed order with

respect to admissibility of the same and after that the above interview was marked subject to its admissibility. With respect to the interview, the prosecution has examined PW.104 R.Sridharan who was working as Media Consultant at TV9 Kannada, Bengaluru. He has specifically deposed of telecasting a video footage pertaining to the year 2016 and also issuing of necessary Certificate under Sec.65(B) at Ex.P.208 and the CD at Ex.P.209. The aforesaid aspect when juxtaposed and considered together would lead to a situation indicating that the witness was changing her stand at every stage of her evidence. In short, she deposed that the murder of her husband might have taken-place due to some political rivalry at an undisputed point of time of lodging the complaint. The Court is fully aware of the factual aspect that the prosecution is required to establish their case beyond reasonable doubt. At the same time, in matters pertaining to circumstantial evidence, the chain of link

is required to be established by the prosecution. Though Mallavva Goudar was treated as hostile, several aspects were elucidated from her during the course of her cross-examination by the prosecution. During the course of her initial cross-examination, she has admitted of giving interview in a Press Conference and also of giving bites to the Newspaper. She has also admitted that the main opponent of her husband was Congress Party and also admitted of giving an interview in the News Channel that the investigation by Dharwad Police was not conducted properly. If for a moment an aspersion is casted with respect to the motive alleged by the prosecution, then at the same time the evidence of PW.50 Mallavva Goudar nullifies the same wherein she states that the investigation by Dharwad Police was not proper wherein they had stated that the motive for committing the murder as learnt by her was land dispute between her husband and Todkar. As per Ex.P.7 to 9, which are the revenue

records pertaining to lands at Managundi, the same stands in the name of Nagaraj Todkar and his brother Shivananda Todkar, whereas Mallavva Goudar deposes before the Court that she is in possession over the said land. Further she has deposed by admitting the signature to Ex.P.101, which was letter dated 16.01.2017 requesting for proper investigation. The aforesaid cross-examination had taken-place on 30.08.2025 and later on she was subjected to cross-examination by the defence on 09.10.2025 and there she gives an explanation for the evidence which she had tendered in her chief-examination. If for a moment the aforesaid aspect is considered it indicates that the version of the witness cannot be believed.

71. It is also relevant to note that PW.50 had admitted of tendering her statement under Sec.164 of Cr.P.C., before the learned Magistrate explaining about the aforesaid aspects. However, she has denied certain

portion of the statement and it was marked as Ex.P.105 and Ex.P.105(a). She has admitted of receiving Rs.20 lakhs from the house of Nagaraj Gouri and Shivananda Karigar at the behest of Vinay Kulkarni, but she has deposed that Shivananda Karigar had given her Rs.4 lakhs towards digging a bore well. She has also admitted of receiving threatening letters as per Ex.P.7 prior to the murder of her husband. If for a moment, the evidence led by PW.50 is appreciated, it does indicate that she keeps on changing her stand at every instance. It is her evidence that her husband Yogesh Goudar had distributed money to the voters and in fact she goes to an extent of deposing that even she had distributed money. If for a moment, her earlier complaint at Ex.P.1 when compared with the interview which she had given to the media at Ex.P.209 is looked into, it does indicate that she has deposed that her husband was incarcerated due to his own fault. The aforesaid

evidence is looked into and compared with the evidence of other family members of deceased Yogesh Goudar i.e., PW.11 Anjana Basavaraj Dollin, who has deposed that Mallavva was a maternal aunt and she has deposed about the verbal altercations that had taken-place between Vinay Kulkarni and Yogesh Goudar and also receiving of a threat letter prior to the murder of Vinay Kulkarni. Even during the course of her cross-examination, it has been elucidated from her that Congress and BJP were the two dominant political parties who were at logger heads with each other and she has also deposed of Yogesh Goudar contesting for Zilla Panchayath election on BJP ticket and at that time Vinay Kulkarni was supporting Congress Party. She has also deposed of personally being present in the house of Yogesh Goudar when he had received the threat letter prior to his murder. Likewise, the evidence of PW.12 Suma Subhash Gouda Goudar, who is related to Yogesh Goudar is also required to be

appreciated. She has deposed in her chief-examination that she had accompanied Mallavva and Suresh Gouda, the Driver, when Mallavva had intended to take treatment at Sirsi in the month of December-2017. She has deposed of visiting Vaishnavi Lodge and also on the same day evening Suresh Gouda, Nagaraj Gouri, Karigar Shivanna had come to the lodge and had discussed something with Mallavva. However, the said aspect was denied by Mallavva. The aforesaid witness during the course of her cross-examination has been consistent of staying at Vaishnavi Lodge. All the aforesaid aspects when combined and looked into, would only lead to an inference about the existing rivalry between Yogesh Goudar and Vinay Kulkarni. I have also considered the judgment of the Hon'ble Apex Court which is relied upon by the learned Counsel for accused No.15 reported in **2024 SCC Online SC 3683 (Nusrat Parween Vs. State of Jharkhand)**, wherein it has been held as follows:

12. Immediate cause of the incident as per the prosecution was a quarrel which allegedly took place between the accused-appellants and Hamida Parween(deceased) on the morning of 11th March, 1997 just before her children i.e. Md. Sahid Khan(PW3) and Md. Javed Khan left for school. However, upon a close scrutiny of the depositions of Md. Sahid Khan(PW3) and the immediate neighbours, namely, Chand Mohammad(PW1), Matiur Rahman(PW2), Md. Sagir Ahmad Ansari(PW5), Fazal Khan(PW6) and Ragho Sharma(PW7), we do not find anything in their evidence which can even remotely suggest that there had been any quarrel between the accused-appellants and Hamida Parween(deceased) on the day of the incident. Hence, there is a total lack of evidence to convince the Court that there was any immediate strife on the fateful day which could have fueled the accused-appellants with such rage that they were impelled to murder Hamida Parween.

15. Thus, we have no hesitation in holding that the evidence led by the prosecution to prove the theory of motive for commission of the crime as attributed to the accused-appellants is far from convincing and a vital link in the chain of incriminating circumstances is snapped. In view of the above finding, unquestionably, the trial Court as well as the High Court erred in holding that the prosecution has been able to prove the motive for the murder against the accused-appellants beyond all manner of doubt.

72. Further, another judgment has been relied upon by the learned counsel for the accused reported in (2022)19 SCC 301 (Nandu Singh Vs. State of Madhya Pradesh), wherein it has been held as follows:

> ***9. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.***
>
> ***11. In the subsequent decision in Shivaji Chintappa Patil v. State of Maharashtra [Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , this Court relied upon the decision in Anwar Ali [Anwar Ali v. State of H.P., (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] and observed as under : (Shivaji Chintappa Patil case [Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5 SCC 626 : (2021) 2 SCC (Cri) 679] , SCC p. 635, para 27)***
>
> ***"27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive. ..."***

73. And finally, the defense has relied upon the judgment of the Hon'ble Apex Court reported in **2025 SCC Online SC 1459 (Baljinder Kumar @ Kala Vs. State of Punjab)** wherein it is held as:

> ***35. Having examined the above testimonies in thorough detail, it becomes evident that once PW1 and PW2's statements are discarded for absence of reliability, the prosecution case effectively loses its vertebrae and comes crumbling down to its feet.***
>
> ***36. Further, to make matters even worse for the prosecution, there are key deficiencies in the investigation and the evidentiary value of the alleged recoveries remains questionable. Neither the arrest of the accused nor the alleged recovery of the blood-stained clothes and the weapon (purportedly based on the disclosure statement of the accused) is supported by any independent witness. While the recovery may not be wholly discarded due to the lack of a supporting witness, however, it undoubtedly becomes highly questionable, especially with the factum of long delay of two months in the discovery being effected.***

74. The sum and substance of the aforesaid judgment are that in case of direct evidence motive will

not be relevant and the prosecution has to prove the chain of link that exist. Here in the instant case, the evidence of PW.50 Mallavva Goudar, PW.10 Basavaraja Muttagi and with that of PW.4 Shivananda Salagatti, PW.5 Gangappa Shivappa Kallagoudthi is looked into and juxtaposed with the evidence of PW.11 Anjana Basavaraj Dollin, PW.12 Suma Subhash Gouda Goudar, the same would indicate the chain of link or the corroboration with respect to the existing rivalry. At the same time, it is noticed that the contention of the Dharwad Police of existence of a land dispute is not established. With respect to the settled principles of law, it would be trite to rely upon the judgment of the Hon'ble Apex Court reported in **(2008) 16 SCC 73 (State of UP Vs. Kishan Pal),** wherein it has been held as:

> ***38. Regarding the motive, according to the prosecution, the accused persons had enmity with the complainant's party, including the deceased persons and their family members. There was an ancestral land of Suraj Pal Singh,***

Raghubir Singh and Jograj Singh. A sheesham tree was standing therein. The chak of Daulat Singh, accused is adjacent to the said land. Daulat Singh and Yudhishtir Singh wanted to cut the said tree but they were not permitted and Raghubir Singh lodged a report against Daulat Singh, Yudhishtir Singh, Onkar Singh, Kishanpal, Naresh Singh, Suresh Singh, Gyan Singh, Sher Singh, Mahendra and Amol Singh. The said report dated 9-3-1978 has been marked as Ext. Ka-15. Thereafter, Naresh Singh and Onkar Singh got a false report lodged by Tok Singh under Section 392 IPC against Ranvir Singh, Balbir Singh and Rambir Singh on 6-5-1978. Onkar Singh and Daulat Singh, accused persons in the case on hand, were cited as prosecution witnesses. This is evident from Ext. Ka-17. The police, however, submitted final report which infuriated Daulat Singh and Onkar Singh. Further, two days prior to the present occurrence when Raj Mahesh and Kaptan Singh were going in front of the shop of Onkar Singh, the latter extended threat to them of dire consequences. Though it was pointed out that for such a serious crime, the said motive was highly insufficient, as rightly observed by the trial Judge, the motive is a thing which is primarily

known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

40. As pointed out, even the accused persons have stated that they have been falsely implicated due to previous enmity. In such circumstances, it cannot be said that the accused

persons had no motive to commit the crime in question. In fact, the prosecution witnesses have specifically adverted to this without any contradiction and all of them denied the suggestion that the alleged incident was due to attack by the dacoits and the accused persons have nothing to do with it.

75. And also, another judgment of the Hon'ble Apex Court reported in (1998)9 SCC 238 (Nathuni Yadav Vs. State of Bihar) wherein it is held as follows:

16. Learned counsel advanced an argument, very vehemently, based on the motive attributed to the appellants for committing this dastardly murder. According to the counsel, if the appellants were the murderers, they should have had insatiable thirst for the blood of Sona Devi, but the prosecution suggested only a puerile or fragile motive for them to perpetrate the brutal murder of an unarmed sleeping woman. What PW 10 Bhagelu Singh Yadav suggested as motive for the crime is this: He had given his child Sheela Kumari in marriage to somebody else. As he has no other male progeny, the first appellant Balroop Yadav had an eye on his landed property. But Bhagelu Singh Yadav had gifted it away to his wife Sona Devi — this

embittered the appellants and drove them to murder Sona Devi — is the case of the prosecution. Learned Sessions Judge treated it as a very weak motive for this gory murder. Learned counsel for the appellant rightly contended that by murdering Sona Devi the appellants could not succeed in securing the property which was gifted away by Bhagelu Singh. Does it mean that the appellants would have had no motive at all for gunning down Bhagelu Singh Yadav and his wife? The mere fact that motive alleged by the prosecution is not strong enough for others to develop such a degree of grudge would not mean that the assailants had no serious reasons to do this.

17. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in R. v. Palmer [Shorthand Report at p. 308 CCC May 1856] thus:

"But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant. In Atley v. State of U.P. [AIR 1955 SC 807 : 1955 Cri LJ 1653] it was held:

"That is true; and where there is clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion."

In some cases, it may not be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the

mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes, it may appear that the motive established is a weak one. That by itself is insufficient to lead to any inference adverse to the prosecution.

76. In the aforesaid authority it has been held by the Hon'ble Apex Court that motive for committing a criminal act is generally a difficult area for prosecution and one cannot normally see into the mind of another. Further motive is the emotion which impels a man to do a particular act and said impelling cause need not be proportionally grave to do grave crimes. The aforesaid aspect is clearly established by the prosecution through the evidence discussed above and hence the prosecution has established the existence of motive to commit the murder of Yogesh Goudar by accused No.15 Vinay R Kulkarni.

CHAPTER: IX

HATCHING OF CONSPIRACY TO COMMIT THE OFFENCE VIS-À-VIS THE EVIDENTIARY VALUE OF APPROVER

77. The next aspect wcohich is required to be appreciated at this juncture is with respect to entering into a conspiracy by accused No.15 with the then accused No.1 Basavaraja Muttagi. As already discussed above, accused no. 15 Vinay Kulkarni had entertained an ill will against deceased Yogesh Goudar due to the political rivalry which he had entertained on 23.04.2016 at the meeting which was conveyed at the Zilla Panchayath premises at Dharwad. It is also submitted that immediately after 2 to 3 days, the accused No.15 Vinay Kulkarni had called upon accused No. 1 Basavaraja Muttagi to his Vinay Diary at Dharwad and had stated that the act of deceased Yogesh Goudar had exceeded the limits and as such necessary steps were required to be taken from his side. The prosecution mainly relies upon the evidence

of PW.10 Basavaraja Muttagi, who had turned approver in order to connect the dotted lines to indicate the existence of conspiracy entertained between the accused persons. It is relevant to note at this juncture that the settled principles of law indicate that the conspiracy will always be hatched in darkness and secrecy and no direct materials would be available for the purpose of proving the conspiracy. Even in the above case, what is tried to be pointed out by the prosecution is that at the behest of accused no. 15 Vinay Kulkarni, the then accused no. 1 Basavaraja Muttagi had contacted the Dharwad boys i.e., accused no. 2 to 6 and had requested them to commit the murder of Yogesh Goudar. It is also the case of the prosecution that they had not agreed to do so and as such Basavaraja Muttagi being the active member of Jaya Karnataka Association had thought it fit to contact accused no. 7 to 14 who were termed as Bangalore Boys by him during the course of his

evidence. As they had agreed to commit the murder by receiving a sum of ₹ 20,00,000/- Basavaraja Muttagi had once again conveyed the same to Vinay Kulkarni but putting up a rider and that the Bangalore boys were not agreeable to get surrendered before the concerned Police. The prosecution has contended that at this juncture the accused no. 15 had stated that the accused no. 2 to 6 along with Basavaraja Muttagi shall surrender before the concerned Police in the place of accused no. 7 to 14 who were to be the assailants in the above case. With this background now it is required to appreciate the case of the prosecution. To appreciate whether there are incidences of conspiracy being projected by the prosecution is established by them beyond reasonable doubt, it would be appropriate to recapitulate the evidence of PW.10 which is led before this Court. The Learned Senior Counsel appearing for the accused no. 15 has vehemently argued that the evidence of PW10

Basavaraja Muttagi itself is inadmissible since he is not a trustworthy witness. It is his submission that the evidence of the approver shall always be considered with a pinch of salt, since he is the one who has changed the sides and was deposing totally against his erstwhile accomplices.

78. In order to point out the said aspects, the Learned Senior Counsel has taken this Court through the entire course of sesquipedalian cross-examination, wherein the witness i.e., PW10 Basavaraja Muttagi had deposed of not remembering the incidents to the majority of the cross examination that were put to him. The Learned Senior Counsel has deposed that though Basavaraja Muttagi was fully aware of the aforesaid aspects at the earliest point of time, he had not taken any steps to reveal the same before the then Investigating Agency i.e., Dharwad Sub-Urban Police or before CBI and also he has pointed out to the fact that on earlier three occasions, Basavaraja Muttagi

had filed necessary application and even an un-dated application was placed before this CBI, wherein he had chosen not to disclose anything about the aforesaid aspects. By pointing out to all the aforesaid aspects and also to the other intricacies involved in the above case, it has been vehemently argued by the Learned Senior Counsel that the entire evidence of PW.10 Basavaraja Muttagi itself is not in accordance with law and the same cannot be believed upon by the prosecution to join the link between them, much less pointing out the circumstances.

79. I have bestowed my anxious reading to the submissions made by the Learned Senior Counsel in this regard. The Learned Senior Counsel has also pointed out the incidences that had taken place prior to the commission of the offences which would indicate the existence of rivalry between the accused no. 15 and the deceased. First of all, it is his contention that the evidence of PW.50 Mallava Goudar itself would be

sufficient to indicate that no rivalry was in existence between deceased Yogesh Goudar and with the accused no. 15 Vinay Kulkarni. It is his contention that PW.50 Mallava Goudar who is the widow of the deceased Yogesh Goudar has specifically deposed of having a cordial relationship with the family of Vinay Kulkarni and as such, the question of having ill will or a grudge against the deceased by accused no. 15 cannot be constituted or assumed by the court. Further he has argued that the name of the accused No.15 as a conspirator in the above case came to be introduced for the first time when the second additional report came to be filed by the Investigating Agency and prior to that no materials were produced nor in the remand application it was explained about the manner in which the name of accused no. 15 Vinay Kulkarni had figured out to be an additional accused in the above case. It is also submitted that the Implication of accused No.15 commenced with a letter

said to have been addressed by the then accused no. 1 Basavaraja Muttagi that the deceased would be made over to death and he should be cautious in his activities and movements. The undated letter was placed before this court and was marked as Ex. P7. It is also submitted that the deceased who had received the letter at Ex. P7 would have ignored the same. It is been projected by the CBI Authorities that after the incident PW50 Mallava Goudar had lodged the complaint and she had also handed over the letter to the Investigating Officer Channakeshava Tingrikar who had recovered the same by drawing the mahazar on the next day in the presence of PW2 Gurunatha Goudar and other witnesses. However, it is been submitted by the Learned Senior Counsel that the letter which was shown before the court was not properly identified by PW50 Mallava Goudar and in fact she was clear in her evidence that the letter which was now marked as Ex. P7 before this court was not

the one which her husband had received. It is also been argued by the Learned Senior Counsel that when the letter itself was not established by the prosecution the contention of PW10 Basavaraja Muttagi that he had warned the deceased of dire consequences and also requesting him to be cautious in his activities were all farrago and it was meant only to derail the Investigating Agencies. That apart it is his contention that even the person i.e., PW1 Dr. Dattatreya Gudaganti who had drafted the complaint as per the say of PW50, Mallava Goudar had not identified the same and in fact he was very much positive in his cross examination wherein he had deposed that the said letter was not the one which was produced to the concerned Police at the inception of the case. By pointing out to the aforesaid aspects, the Learned Senior Counsel has argued that the evidence of PW10 Basavaraja Muttagi does not inspire confidence and it is required to be rejected lock, stock and barrel. In

order to indicate the differences in the evidences prevailing between that of PW2 Gurunatha Goudar and that of PW50 Mallava Goudar, the Learned Senior Counsel has pointed out that as per the case of prosecution Ex. P6 and Ex. P7 were produced before the police on 16.06.2016 itself and it was recovered by drawing a panchanama by the then Investigating Officer of Dharwad Sub-Urban Police Station. It is submitted that PW2 Gurunatha Goudar during the course of his cross examination has admitted that on 15.06.2016 itself he had handed over the letter at Ex. P7 to the police and it is also been deposed by him that the same was produced before the concerned Police came to be recovered by drawing a seizure panchanama on the next day. The learned Senior Counsel has argued that the foundational fact which is sought to be projected by the prosecution was that the accused No.15 had hatched a conspiracy prior to the commission of the murder of the deceased does not

have its own legs to stand despite the fact that the approver Basavaraj Muttagi in his evidence had stated that he was the one who had authored Ex.P6 and Ex.P7 letter. It is his submission that if only Basavaraja Muttagi wanted to save the life of deceased Yogesh Goudar, whom he claims to be his friend, then what had prevented him from stopping to do the particular act and intimating Yogesh Goudar directly about the conspiracies that were being hatched against him. It is also been argued that the CBI had intentionally roped the present PW10 as the Approver in the case only to suit their needs. Further pointing out to the evidence which has been placed before the court, the Learned Senior Counsel has argued that if the witness i.e., PW10 Basavaraja Muttagi himself has identified the contents of Ex.P7 letter which had cautioned deceased Yogesh Goudar, then there was no necessity for the Investigating Officer to send the same for an opinion by the Handwriting Expert to ascertain

the veracity of the same. By pointing out to the same it is argued that even the Investigating Officer was doubtful about the claim of PW10 Basavaraja Muttagi and that had led him to refer the same to the handwriting expert. The learned counsel then has taken this court through the evidence of PW93 Kumudha Rani, who is the handwriting expert in the above case. It is his submission that the manner in which the expert has examined the documents particularly of the disputed and admitted writings and the manner of its verification by the Handwriting Expert would clearly indicate that she cannot be considered as an expert. It is argued at length by the learned counsel that to the bare eyes itself it is clearly visible that the words which are used in the admitted documents with that of the disputed documents would clearly indicate of glaring differences between them. However, without verifying the aforesaid aspects an opinion has been furnished by the Handwriting Expert

to the Investigating Agency that the writings which are found are one and the same is highly illegal and contrary to the settled principles of law. The Learned Senior Counsel has also taken this court to the evidence which has been placed by the prosecution in order to prove the conspiracy. It is his submission that immediately after the incident it is submitted by the approver that he had visited legislator home during the year 2016. However, during the course of his cross-examination it was elucidated from him that prior to visiting Vidhana Soudha, Vikasa Soudha, Legislator's Home and Raj Bhavan which are considered as high security zone necessary entries were required to be made in the official Register with respect to identity, purpose of visit and also the place of visit. However, no materials which were produced before the Court indicated of the fact that PW.10 Basavaraja Muttagi had visited the Karnataka Legislature Home at Bengaluru during the period 01.02.2016 to

30.06.2016. On his admission, the said Register came to be marked as Ex. D23. By pointing out to the same, it is argued that the submission of the approver himself is not valid and it is not fully corroborated. The learned counsel for accused No.15 has also dispute with respect to meeting of PW.10 Basavaraja Muttagi with Vinay Kulkarni on 13.06.2016 at his Dairy. It is the submission of the learned Senior Counsel that there is a categorical admission being made by the approver himself that several CCTV Cameras were installed in and around Vinay Dairy and further he deposes by feigning his ignorance about making entry in the necessary Register at the time of entering the Dairy at Dharwad. By pointing out to the same, the learned Senior Counsel has argued that the aforesaid aspects are not backed by any materials and in fact it is a concocted and created story of CBI to suit their needs. The next aspect which is argued by the learned Senior Counsel is with respect to the presence

of Natraj Sarj Desai near the Dairy. Without any materials in this regard, it is argued that the prosecution has failed to give necessary connection to the contentions urged by them as it is their bounden duty to prove their case beyond reasonable doubt.

80. If for a moment, the aforesaid aspects are carefully appreciated, the fact which emerges is that the law with respect to conspiracy is well settled by the catena of judgments and there will not be any direct evidences to prove the conspiracy and as such no overt-act is required to be proved by the prosecution in order to prove the conspiracy. In order to substantiate the same, the prosecution has relied upon the judgment of the Hon'ble Apex Court reported in ***(2003)3 SCC 641 (Ram Narayan Popli Vs. CBI)***, wherein it has been held as follows;

> ***354. It was noticed that Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with the English law by making an overt act inessential when the conspiracy is to***

commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence, whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860.

355. I may usefully refer to Ajay Aggarwal v. Union of India [(1993) 3 SCC 609 : 1993 SCC (Cri) 961 : JT (1993) 3 SC 203] . It was held : (SCC p. 617, paras 8-9)

"8. ... It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements : (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal

object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones case [R. v. Jones, 1832 B & Ad 345 : 110 ER 485] that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means' and was elaborated by Willies, J. on behalf of the Judges while referring the question to the House of Lords in Mulcahy v. R. [(1868) 3 HL 306] and the House of Lords in unanimous decision reiterated in Quinn v. Leathem [1901 AC 495 : 85 LT 289 : (1900-03) All ER Rep 1 (HL)] :

'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.'

9. This Court in E.G. Barsay v. State of Bombay [AIR 1961 SC 1762 : (1961) 2 Cri LJ 828] held:

'The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Penal Code, 1860, an act would be illegal if it is an offence or if it is prohibited by law.'

'... The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means

sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators.'

10. In Mohd. Usman Mohd. Hussain Maniyar v. State of Maharashtra [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] it was held that for an offence under Section 120-B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."

356. After referring to some judgments of the United States Supreme Court and of this Court in Yash Pal Mittal v. State of Punjab [(1977) 4 SCC 540 : 1978 SCC (Cri) 5] and Ajay Aggarwal v. Union of India [(1993) 3 SCC 609 : 1993 SCC (Cri) 961 : JT (1993) 3 SC 203] the Court in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : JT (1996) 4 SC 615] summarized the position of law and the requirements to

establish the charge of conspiracy, as under : (SCC p. 668, para 24)

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." [See State of Kerala v. P. Sugathan [(2000) 8 SCC 203 : 2000 SCC (Cri) 1474] (SCC p. 212, para 14)]

357. As was observed by this Court in State of Kerala v. P. Sugathan [(2000) 8 SCC 203 : 2000 SCC (Cri) 1474] it would be extremely difficult to find direct evidence in case of criminal conspiracy.

The circumstances and surrounding factors have to be taken note of. In the instant case, Accused 1, 2 and 5 have submitted that the role of A-5 as described is that he did not want to be directly shown in the picture. In fact, A-1 wanted that MUL did not want to involve brokers and did not want to deal with them. This itself deals a fatal blow to the stand taken by the accused that there was no prohibition of acting through brokers and the intention was that dealing would be directly with the Bank and not through any broker or intermediary. Much has been made out of use of the word "through" in the resolution. If the clear understanding of A-1 was that the deal should not be dealt with or involve any broker then the question of A-5 acting as broker does not arise. Use of the expression "through" is indicative of the fact that emphasis was on securities being not purchased in the open market, but "through" a named PSU. These PSUs were admittedly not brokers. They were either banks or financial institutions. Evidence clearly shows that A-5 wanted that he will not directly come into the picture, and would not appear in the books of accounts of MUL, but would stand to gain by way of commission and as a brokerage from the Bank. The statement of A-1 that he would look into any good proposals if A-5 does not come

into the picture shows that the actual state of affairs was intended to be hidden from MUL authorities and a totally distorted picture was sought to be given. These are factors which do not go in favour of the accused as contended, and on the contrary clearly prove conspiracy.

81. The aforesaid judgment clearly depicts the manner in which the investigation is required to be conducted to prove the incidence of entering into conspiracy. For the sake of convenience, the entire material which is placed before the Court is once again appreciated. By looking into the aforesaid aspects, it is clear that the prosecution has established the entering of criminal conspiracy by Accused No.1 to 15 and 18 to cause the murder of Yogesh Gouder.

CHAPTER: X

ADMISSIBILITY AND EVIDENTIARY VALUE OF THE EVIDENCE OF THE APPROVER COMPARED WITH THE SETTLED PRINCIPLES OF LAW:

82. Much has been submitted with respect to the evidentiary value of the approver. It is the

submission of the learned counsels appearing for the defence that the testimony of the approver is required to be corroborated and the conviction cannot be based on the uncorroborated testimony of the approver. That apart, it is also argued that the accused No.1 Basavaraj Muttagi himself being the main conspirator in the above case was granted with pardon and now the evidences which are placed before the Court through him cannot be accepted. However, in this regard, it would be appropriate to rely upon the authority of the Hon'ble Apex Court reported in ***1995 Supp. (1) SCC 80 (Suresh Chandra Bahri Vs. State of Bihar)***, wherein it is held as follows;

> ***42. We have already reproduced above Section 306 of the Code the provisions of which apply to any offence triable exclusively by the Court of Special Judge to any offence punishable with imprisonment extending to seven years or with a more serious sentence. Section 306 of the Code lays down a clear exception to the principle that no inducement shall be offered to a person to disclose***

what he knows about the procedure (sic). Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person

believed to be involved directly or indirectly in or privy to an offence.

43. The evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. Consequently in the event the suspicion which is attached to the evidence of an accomplice is not removed his evidence could not be acted upon unless corroborated in material particulars. But where the suspicion is removed and the evidence of an approver is found to be trustworthy and acceptable then that evidence may be acted upon even without corroboration and the conviction may be founded on such a witness. Here in this connection, it would be appropriate to make reference to the provisions of Section 133 of the Evidence Act which deal with the testimony of an accomplice. It contemplates that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The first part envisages that an accomplice, in other words, a guilty companion in crime, shall be a competent witness while the second part states that conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice. But if we read Section 133 of the Evidence Act with

illustration (b) of Section 114 of the Evidence Act it may lead to certain amount of confusion and misunderstanding as to the real and true intention of the Legislature because quite contrary to what is contained in Section 133 illustration (b) to Section 114 of the Evidence Act lays down "that an accomplice is unworthy of credit, unless he is corroborated in material particulars". A combined reading of the two provisions that is Section 133 and illustration (b) of Section 114 of Evidence Act goes to show that it was considered necessary to place the law of accomplice evidence on a better footing by stating in unambiguous terms that according to Section 133 a conviction is "not illegal or in other words not unlawful" merely because it is founded on the uncorroborated testimony of an accomplice while accepting that an accomplice is a competent witness. But at the same time the Legislature intended to invite attention to illustration (b) of Section 114 of the Evidence Act with a view to emphasise that the rule contained therein as well as in Section 133 are parts of one and the same subject and neither can be ignored in the exercise of judicial discretion except in cases of very exceptional nature. However, the difficulty in understanding the combined effect of the aforementioned two provisions arises largely due to

their placement at two different places of the same Act. It may be noticed that illustration (b) attached to Section 114 is placed in Chapter VII of Evidence Act while Section 133 is inserted in Chapter IX of the Act. The better course was to insert illustration (b) to Section 114 as an explanation or in any case as a proviso to Section 133 of the Act instead of their insertion at two different places and that too in different chapters of the Evidence Act. In any case since an approver is a guilty companion in crime and, therefore, illustration (b) to Section 114 provides a rule of caution to which the courts should have regard. It is now well settled by a long series of decisions that except in circumstances of special nature it is the duty of the court to raise the presumption in Section 114 illustration (b) and the Legislature requires that the courts should make the natural presumption in that section as would be clear from the decisions which we shall discuss hereinafter.

83. Further in another judgment of the Hon'ble Apex Court reported in ***(2005)1 SCC 237 (Hashim Vs. State of Tamilnadu)***, wherein it has been held as follows;

25. In Bhuboni Sahu v. R. [AIR 1949 PC 257 : 50 Cri LJ 872] it was observed that the rule requiring corroboration for acting upon the evidence of an accomplice is a rule of prudence. But the rule of prudence assumes great significance when its reliability on the touchstone of credibility is examined. If it is found credible and cogent, the court can record a conviction even on the uncorroborated testimony of an accomplice. On the subject of the credibility of the testimony of an accomplice, the proposition that an accomplice must be corroborated does not mean that there must be cumulative or independent testimony to the same facts to which he has testified. At the same time the presumption available under Section 114 [Ed. : Ill. (b)] of the Evidence Act is of significance. It says that the court may presume that an accomplice is unworthy of credit unless he is corroborated in "material particulars".

26. Section 133 of the Evidence Act expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with Section 114 Illustration (b).

The latter section empowers the court to presume the existence of certain facts and the illustration elucidates what the court may presume and makes clear by means of examples as to what facts the court shall have regard to in considering whether or not the maxims illustrated apply to a given case. Illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars. The statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in Illustration (b) to Section 114 of the Evidence Act strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration must be clearly present in the mind of the judge. (See Suresh Chandra Bahri v. State of Bihar [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60 : AIR 1994 SC 2420] .)

27. Although Section 114 Illustration (b) provides that the court may presume that the evidence of an accomplice is unworthy of credit unless corroborated, "may" is not must and no decision of court can make it must. The court is not

obliged to hold that he is unworthy of credit. It ultimately depends upon the court's view as to the credibility of evidence tendered by an accomplice.

32. In Jnanendra Nath Ghose v. State of W.B. [(1960) 1 SCR 126 : AIR 1959 SC 1199 : 1959 Cri LJ 1492] this Court observed that there should be corroboration in material particulars of the approver's statement, as he is considered a self-confessed traitor. This Court in Bhiva Doulu Patil v. State of Maharashtra [AIR 1963 SC 599 : (1963) 1 Cri LJ 489 : (1963) 3 SCR 830] held that the combined effect of Sections 133 and 114 Illustration (b) of the Evidence Act was that an accomplice is competent to give evidence but it would be unsafe to convict the accused upon his testimony alone. Though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. In this regard the Court in Bhiva Doulu Patil case [AIR 1963 SC 599 : (1963) 1 Cri LJ 489 : (1963) 3 SCR 830] observed (AIR pp. 600-01, para 6):

"6. In coming to the above conclusion we have not been unmindful of the provisions

of Section 133 of the Evidence Act which reads:

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.'"

84. The aforesaid judgment would clearly indicate that the rule requiring corroboration for acting upon the evidence of accomplice is a rule of prudence. But the rule of prudence assumes great significance when its reliability on the touch stone of credibility is examined. In order to better consider the same, I have bestowed my anxious reading to the entire evidence lead by PW.10 Basavaraja Muttagi. At the cost of repetition, it is to be recapitulated that the application which was filed by Basavaraja Muttagi seeking to tender pardon was initially accepted by this Court and the same was challenged before the Hon'ble High Court of Karnataka. The order of granting pardon had attained finality in the wake of the kind orders passed

by the Hon'ble High Court of Karnataka in WP No.383/2025. The said order was also confirmed by the Hon'ble Apex Court. With this background, now the deposition of PW.10 has to be looked into. As already discussed above during the discussions made with respect to existence of motive or intention, it is already held that a verbal altercation had taken place between deceased Yogesh Goudar and Vinay Kulkarni at the time of meeting convened at Zilla Panchayath, Dharwad on 23.04.2016. It is also relevant to note that during the course of evidence of PW.2 Gurunatha Goudar, has deposed of entertaining an ill-will between them due to the no confidence motion which was brought at the behest of Vinay Kulkarni against Yogesh Goudar when he was the President of Taluk Panchayath. Though the evidence of PW.50 Mallavva Goudar indicates that her husband Yogesh Goudar and Vinay Kulkarni were having cordial relationship and also that cordiality had lead to the election of

Yogesh Goudar as Taluk Panchayath Member, the other incidents which is deposed by PW.11 Anjana Basavaraja Dollin and PW.12 Suma Subhash Gouda Goudar, would only fortify the contention of Gurunatha Goudar and the one which is being deposed by PW.10 Basavaraja Muttagi. In this backdrop, the evidence is required to be appreciated. It is submitted by PW.10 that he had spoken to Vinay Kulkarni about two days after 23.04.2016 and there for the first time Vinay Kulkarni had requested for eliminating Yogesh Goudar. The witness has further deposed that initially Vinay Kulkarni had requested Basavaraja Muttagi to complete the work with the help of Dharwad Boys who were very close to him. In order to appreciate the said aspect, it would be appropriate to look into the CDRs which are collected and marked as per Ex. P220, Ex. P241 and Ex. P242. The records would indicate the continuous conversation that had taken place between accused No.2 to 6 with accused

No.1 Basavaraja Muttagi during the period 01.01.2016 to 13.06.2016. The CDRs which are marked before the Court would indicate of continuous conversations that had taken place between them. Hence, the conversation probablizes the acquaintance of the aforesaid accused persons. The Court is not drawing any inference or attaching credibility on the basis of the telephonic conversations that had taken place between the accused No.1 to 6. But at the same time, the Court is intending to examine the veracity of the witness on the basis of the materials which are placed before the Court. The telephonic conversations between them are one of the factors which would indicate about the veracity of the evidence of PW.10 Basavaraja Muttagi. It is submitted by him that after the aforesaid incident, he had contacted his other members and had discussed with them. The continuous telephonic contacts which are reflected in the CDRs would clearly indicate of their closeness and

continuous conversations between them. For instance, the CDR which is the extract retrieved from the hard disc which was initially seized by the Dharwad Sub-Urban Police Station and the Chart at Ex. P62(a) indicates of conversation between Mahabaleshwar @ Muduka with Basavaraja Muttagi continuously on 05.06.2016 and 06.06.2016 and also between Kirti Kumar and Muttagi during the said period. Curiously in majority of the instances, the tower location was located at Saraswathpur, Dharwad. The aforesaid aspects were specifically brought to the notice of accused No.2 to 6 and accused No.18 during the course of their statement being recorded under Sec.313 of Cr.P.C. They have denied the incriminating material and have deposed that Basavaraja Muttagi had not discussed with them in this regard. If that is so, then the accused were liable to answer and explain the circumstances which lead them to converse with Basavaraja Muttagi constantly or at least on regular

basis. The law in this regard is well settled wherein the Hon'ble Apex Court has clearly held that the recording of the statement under Sec.313 of Cr.PC., is not an empty formality but it is a stage wherein the accused are required to explain about certain incriminating materials against them. Further it has been held that at times the non-explanation of the accused can be construed as a missing link leading to the circumstances of the case. In this regard, the Court has relied upon the judgment of the Hon'ble Apex Court reported in **(2012)11 SCC 205 (Sunil Clifford Daniel V State of Punjab)** wherein it is held as:

> ***50. It is obligatory on the part of the accused while being examined under Section 313 CrPC to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide as to whether or not, the chain of circumstances is complete. The aforesaid judgment has been approved and followed***

in Musheer Khan v. State of M.P. [(2010) 2 SCC 748 : (2010) 2 SCC (Cri) 1100] (See also Transport Commr. v. S. Sardar Ali [(1983) 4 SCC 245 : 1984 SCC (Cri) 827 : AIR 1983 SC 1225] .)

51. This Court in State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] held that, when the attention of the accused is drawn to such circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the said decision only to highlight the fact that the accused has not given any explanation whatsoever, as regards the incriminating circumstances put to him under Section 313 CrPC.

85. At the same time, I have also considered the judgment which has been relied upon by the learned counsel for Accused No.7, which is reported in 2025 SCC Online SC 1481 (Rahil and others V State[Govt of NCT, Delhi]) wherein it is held as:

34. It would be argued that Navjot Sandhu (supra) which did not insist on production of certificate for admissibility of computer-generated printouts was prevailing at the time when the case was decided by the Trial Court and the Appellate Court. The judgment in Anvar PV (supra) was delivered subsequently and cannot be a ground to render the CDRs inadmissible. It is also brought to our notice that issue of retrospective application of the ratio in PV Anvar (supra) is pending for consideration before this Court[11].

35. Be that as it may, it is relevant to note the larger bench in Khotkar (supra) while reiterating PV Anvar (supra) did not hold that its ratio shall apply prospectively. Furthermore, in Mohd. Arif @ Ashfaq v. State (NCT of Delhi)[12] this Court while hearing a review petition in a death penalty case retrospectively applied the ratio in Anvar PV to cases decided earlier and eschewed secondary electronic evidence dehors certificate under section 65-B(4), holding as follows:—

"23. Navjot Sandhu was decided on 4-8-2005 i.e. before the judgment was rendered by the trial court in the instant matter. The subsequent judgments of the High Court and this Court were passed on 13-9-2007 and 10-8-2011 respectively affirming the award of death sentence. These two judgments were delivered prior to the decision of this Court in Anvar P.V. which was given on 18-9-2014. The judgments by the trial court, High Court

and this Court were thus well before the decision in Anvar P.V. and were essentially in the backdrop of law laid down in Navjot Sandhu. If we go by the principle accepted in para 32 of the decision in Sonu, the matter may stand on a completely different footing. It is for this reason that reliance has been placed on certain decisions of this Court to submit that the matter need not be reopened on issues which were dealt with in accordance with the law then prevailing. However, since the instant matter pertains to award of death sentence, this review petition must be considered in light of the decisions made by this Court in Anvar P.V. and Arjun Panditrao Khotkar.

24. Consequently, we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act."

Similar view was taken in Sundar @ Sundarrajan v. State by Inspector of Police[13].

36. Though the present case does not involve death penalty, it is undeniable that appellants were facing a criminal trial and the prosecutor was required to prove a fact beyond reasonable doubt strictly in accordance with law. Appellants during trial raised objections to admissibility of the secondary electronic evidence relating to Rahil which was marked as exhibit PW23/B-D. Thereby the prosecutor was put on due notice and had opportunity to fill the lacuna by producing the requisite

certificate under Section 65-B(4) but did not do so.

In Sonu (supra), this court held if an objection is taken to CDRs being marked without a certificate and the same was not cured by the prosecutor at relevant stage the document shall be inadmissible in law.

In these circumstances we are inclined to apply the ratio in PV Anvar and Khotkar to the case and hold that the exhibits are inadmissible in law being secondary evidence without certification.

37. Even if the CDRs and other electronic records were admitted in evidence they merely contain the cell tower location information, that is to say, which tower mobile phone was connected to and how long the calls lasted when it was connected to that tower. These data give an approximate area corresponding to the operational area of the cell tower and not the exact site where the phone is located.

42. It is settled law in a criminal case whether based on direct or circumstantial evidence, the burden of proof always rests on the prosecution. Only when the prosecution discharges the initial onus, that is, proves the incriminating attending circumstances to establish the cause of death are within the 'special knowledge' of an accused does the onus shift and an adverse inference against such accused may be drawn if he fails to discharge such onus.

86. There cannot be any qualms with respect to the ratio laid down by the Hon'ble Apex Court. Even in the instant case, the court is looking after for corroboration even when the prosecution is contending of hatching conspiracy.

87. The learned Senior Counsel appearing for accused No.15 has vehemently argued that it cannot be safely relied upon the testimony of the approver since approver is a person of low morals and for the reason he being a co-participator in the crime has lead down his companion. Hence, for the said reason the Court has to cautiously appreciate his evidence and always necessary corraboration is required to be insisted by the Court. In order to buttress his submission he has relied upon the judgment of the Privy Council reported in **1949 SCC Online PC 12 (Bhuboni Sahu Vs. The King)**, wherein it has been held as follows;

The danger of acting on accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence, and the story may be true in all its details as to eight of them, but untrue as to the other two, whose names have been introduced because they are enemies of the approver. This tendency to include the innocent with the guilty is peculiarly prevalent in India, as judges have noted on innumerable occasions, and it is very difficult for the court to guard against the danger. An Indian villager is seldom in a position to produce cogent evidence of alibi. If he is charged with having

taken part in a crime on a particular night when he was in fact asleep in his hut, or guarding his crops, he can only rely, as a rule, on the evidence of his wife, members of his family, or friends to support his story, and their evidence is interested and not likely to carry weight. The only real safeguard against the risk of condemning the

innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused. This aspect of the matter was well expressed by Sir George Rankin in Ambica's case17.

In the present case their Lordships are in complete agreement with the judges of the High Court in declining to act on the evidence of the approver supported only by the confession of Trinath. These two persons appear to have been nothing but hired assassins. They had ample opportunity of preparing their statements in concert, and, in addition, the approver has sworn to two contradictory stories, and Trinath has denied that his confession was true. It is true that no motive is shown for their falsely implicating the appellant, but motive is often a matter of conjecture. It may be that these two men thought it advisable to say falsely that they were acting on the instigation of another rather than on their own initiative, or they may have had reasons of their own for wishing to conceal the name of the real instigator.

88. He has also relied upon another judgment of the Hon'ble Apex Court reported in **1995 Supp. (1) SCC 80 (Suresh Chandra Bahri Vs. State of Bihar)**, wherein it is held as follows;

44. In Bhiva Doulu Patil v. State of Maharashtra [AIR 1963 SC 599 : (1963) 1 Cri LJ 489 : 1963 All LJ 253] this Court took the view that the combined effect of Sections 133 and 114, illustration (b) may be stated as follows. According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. There should be corroboration of the approver in material particulars and qua each accused. Similar observations were made by this Court in Ram Narain v. State of Rajasthan [(1973) 3 SCC 805 : 1973 SCC (Cri) 545] in the following words: (SCC headnote)

"Section 133 expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this section has to be read along with illustration (b) to Section 114. The latter section empowers the court to

presume the existence of certain facts and the illustrations elucidate what the court may presume and make clear by means of examples as to what facts the court shall have regard in considering whether or not the maxims illustrated apply to a given case before it. Illustration (b) in express terms says that an accomplice is unworthy of credit unless he is corroborated in material particulars. The statute permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) of Section 114 strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the Judge."

45. Further in Ravinder Singh v. State of Haryana [(1975) 3 SCC 742 : 1975 SCC (Cri) 202 : AIR 1975 SC 856] this Court while considering the approver's testimony within the meaning of Section 133 of the Evidence Act made the following observations: (SCC headnote)

"An approver is a most unworthy friend, if at all, and he, having

bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected brevi manu. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case, taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, as determined by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

> ***Thus it is clear that a definite rule has been crystallized to the effect that though a conviction can be based on uncorroborated evidence of an accomplice but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver as required by illustration (b) of Section 114 of the Evidence Act.***

89. The aforesaid authorities would definitely lay down the dictum that though conviction of an accused on the testimony of an accomplice is not illegal, but the Court as a matter of practice is required not to accept such evidence without corroboration in material particular. Even in the above case, the Court is not blindly accepting the testimony of the accomplice but still the Court is looking into the various facets of evidence with the circumstances in the case to ascertain the veracity of the evidence of accomplice.

90. That apart, it is seriously disputed with respect to the place where the conspiracy was allegedly hatched between the parties. As per the evidence of

PW.10 Basavaraja Muttagi, initially he was requested by accused No.15 Vinay Kulkarni to eliminate Yogesh Goudar in his Vinay Dairy after about 2 to 3 days from 23.04.2016. The learned Counsels for accused had vehemently argued that none of the CDRs indicate conversation or tower location of Basavaraja Muttagi near Vinay Dairy on 25.04.0216. As noticed from records, the said contention seems to be attractive, at the same time the Court is also required to appreciate the fact that the investigation was handed-over to CBI about 3 ½ years after the incident and as such there will be some sort of limitations to the Investigating Agency to point out each and every aspect. That does not mean that the prosecution will be exonerated from the factual fact of proving their case beyond reasonable doubt. However, by looking into the evidence of PW.10, the Court is now required to draw an inference with respect to the materials to link the aforesaid incidents.

91. The prosecution has examined PW.13 Pramod Narahari Rao Deshpande, who has deposed that the land in Plot No.17 of Saraswathpura, Dharwad in No.4/39/L belonged to them and it is contention that his sister had got the property gifted to her name by manipulating certain documents and in the year 2016 he was thrown out of the house by some persons and he had feigned his ignorance to identify them. He was considered as hostile witness and it was suggested to him that Vinayaka Kattagi, the accused herein had visited their house as a prospective buyer for which he has categorically admitted but has deposed that he cannot identify Vinayaka Katagi in the Court but he was very much present in the Police Station at Dharwad. Curiously he was not at all cross-examined by the accused person which would once again fortify the contention of the prosecution. The next aspect which is required to be considered is the evidence of PW.14 Anand Kumar.H., who has deposed

that Dr.Usha Narahari had executed a GPA in his favour and he was introduced to one Thippanna through Vinayaka Katagi. Further it is deposed by him that Vinayaka Katagi had approached him to sell the house and he had also received Rs.1,20,000/- as the advance towards his commission and he has also identified accused No.5 Vinayaka Katagi in the Court. The aforesaid aspects are categorically denied by accused No.5, but nothing much was elucidated from him with respect to collection of evidence or entering into a GPA. The aforesaid aspect requires to be considered with the recovery mahazar drawn by PW.113 Rakesh Ranjan. PW.113 during the course of his evidence has deposed that on 02.03.2020 he had recorded the confession statement of accused No.8 Dinesh, who had stated that he would show the house where they had hatched the conspiracy and they were led to the house at Saraswathpura, Dharwad. The document came to be marked as Ex.P.262. The learned

counsel for the accused has seriously disputed to the same and had contended that since the signature of the witness are obtained, the same cannot be construed as a confession statement and in fact the title of the document indicates it as the proceedings being drawn. I have bestowed my anxious reading to the aforesaid aspect in this regard. I have relied upon the judgment of the Hon'ble Apex Court reported in (1999) 3 SCC 507 (***State of Rajasthan v. Teja Ram***), wherein it has been held as follows;

> ***28. Learned counsel in this context invited our attention to one step which PW 21 (investigating officer) had adopted while preparing the seizure-memos Ex. P-3 and Ex. P-4. He obtained the signature of the accused concerned in both the seizure-memos. According to the learned counsel, the aforesaid action of the investigating officer was illegal and it has vitiated the seizure. He invited our attention to Section 162(1) of the Code which prohibits collecting of signature of the person whose statement was reduced to writing during interrogation. The material words in the sub-section are these:***

"162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it;"

No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. (Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231] and Razik Ram v. Jaswant Singh Chouhan [(1975) 4 SCC 769 : AIR 1975 SC 667].) But if any investigating officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witness's testimony in the court would thereby become contaminated or vitiated. The court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon.

29. That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act, 1872. It is clearly provided in sub-section (2) of Section 162 which reads thus:

> ***"Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act."***
>
> ***30. The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure-memo for the recovery of any article covered by Section 27 of the Evidence Act. But if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in the contention of the learned counsel for the accused that the signatures of the accused in Exs. P-3 and P-4 seizure-memos would vitiate the evidence regarding recovery of the axes.***

92. The aforesaid authority would clearly indicate that mere obtaining of signature on the confession statement or on the seizure memos would not vitiate the evidence regarding the same. The other aspect now which would be appropriate to consider is the evidence of PW.63 Vishal Bellary, who is the

younger brother of accused No.2 Vikram Bellary. Vishal Bellary speaks about the motor bike which he had collected from NTTF premises at Dharwad as on the date of incident i.e., on 15.06.2016. Further he has deposed that as on that day it was being used by Vikram Bellary. Curiously, he feigns his ignorance that he does not have knowledge whether PW.10 Basavaraja Muttagi and Vikram Bellary were close with each other and were conversing with each other. Though the aforesaid witness is working as a Police Constable for the last 12 years, has interestingly feigned ignorance about various aspects. In this aged of electronic era, where human testimony may waver, electronic evidence remains steadfast nor the materials which was in existence can be falsified. As already discussed supra, the CDR records clearly indicate of their continuous conversations. If not, they were having any acquaintances, then it was for accused No.2 Vikram Bellary to explain the aforesaid aspects.

93. Apart from this, it would be appropriate to now consider the evidence of PW.78 Akshay Katagi, who is also the relative of accused Vinayaka Katagi. The witness has deposed that he was working as Attender at Commercial Tax Department and Mobile Number ending with the No.339 belonged to him. On perusal of his evidence, he has deposed positively before the Court that he was using the SIM card and he had not given the SIM to any other person. Further it is his evidence that his office was situated next to DC Office Compound at Dharwad. He was considered as hostile witness and he had deposed that he had never spoken with accused Mahabaleshwar Hongal @ Mudukappa during the period 01.06.2016 to 16.06.2016. However, the CDR records which are marked at Ex.P62, would clearly indicate of his continuous conversations with each other. In other words, the aforesaid act tallies with the evidence of the approver Basavaraja Muttagi wherein he has deposed

that accused No.18 Vikas Kalburgi had provided logistic support for them immediately after the incident and also the overt-act of accused No.18 is found in the manner in which he was participant to the conspiracy which was leveled against him. It is also strange to note that initially he had attended the TIP as witness, he has feigned his ignorance to identify the accused persons. Only thereafter, he was arraigned as additional accused in the above case. The digital records would clearly indicate of his overt-act in the above case. The electronic records would clearly indicate of all the accused No.1 to 6 being in touch with each other. However, during his evidence he had went to an extent of feigning his ignorance with respect to Basavaraj Muttagi, Vikas Kalburgi, Sandeep Saudatti, Santhosh Saudatti, Kirti Kumar, Vikram Bellary at any point of time. The witness has gone to an extent of submitting that he had attended his work on 15.06.2016 at Commercial Tax Department. But

the CDRs clearly indicated that on the date of incident, Basavaraja Muttagi had called upon Vinayaka Katagi at 06.41.48 hours the tower location indicated of CITB Layout, Gokul Road, Hubli. It is relevant to note that the incident had taken-place between to 07.15 AM to 07.45 AM on the aforesaid date and after that the accused No.1 to 6 had visited in front of the Uday Gym to get themselves assured about the murder. The evidence indicates that a faint effort has been made by the witness to protect his brother Vinayaka Katagi. Further he has deposed that Babu Katagi was his relative and uncle. It is pertinent to note that a specific court question was posed to him that with whom the mobile SIM bearing No.959186339 was with on 15.06.2016. The witness has deposed that it was with him from morning till evening. The aforesaid aspect would clearly indicate that the witness had intentionally turned hostile to help his brother Vinayaka Katagi and also it is relevant to note that

certain serious allegations are leveled against PW.44 Babu Katagi, who had helped accused No.15 to win over the witnesses after the commission of the murder. The aforesaid aspect will be discussed in the later part of my judgment. Now the aforesaid aspect is required to be juxtaposed and appreciated with the further evidence of PW.10 Basavaraja Muttagi. The witness has deposed that after agreeing to act on behalf of accused No.15 Vinay Kulkarni, it was suggested to him that it would be appropriate for him to enter into an Agreement to Sale with Todkar's land so as to project the incident of murder as a consequence of land dispute. Already with respect to the above is discussed by me at the time of appreciating the existence of motive or otherwise with the evidence of PW.50 Mallavva Goudar who has deposed about Yogesh Goudar having land dispute with the Todkar's. Though the learned Counsel for the accused disputes the same, the fact remains is that a statement under oath

was recorded before the learned Magistrate under Sec.164 of Cr.PC. The witnesses have deposed that they had given such a statement before the learned Magistrate due to the pressure exerted on them by CBI. However, from the date of tendering their statement in the year 2019-20, till the date of tendering their statement before the Court, no little finger was raised with respect to the alleged pressure or harassment exerted by CBI on them. However, all of a sudden, the witnesses who have turned hostile are deposing before this Court that they were pressurized and harassed to depose in a particular manner before the learned Magistrate and now at present the threat against them was lifted. In my humble opinion, this is a serious attempt being made by the witnesses in connivance with the accused persons to circumvent the judicial process and to cast aspersion against the majesty of justice. If the witnesses are permitted to sledge allegations or to sully the faith of the people in

the judicial system than the entire system would be collapsed. Be that as it may, the aforesaid evidence finds corroboration in the evidence of PW.7 Veeresh Amrutheshwar Byahatti who has specifically deposed that in the month of April-May 2016 at about 11.30 PM in the night PW.8 Nataraj Makki Goudar had called him with respect to the aforesaid land. Though it is argued that there is no connection with the murder of Yogesh Goudar, the evidence of PW.10 would clearly indicate that the Agreement was entered upon only to misguide the Investigating Agency and to project that the incident had taken place due to the land dispute. As already noticed from the records, PW.50 has deposed that they were in possession of the land though the revenue records indicate of possession being with Todkar's. Even otherwise at any point of time Basavaraja Muttagi had never intended to purchase the property as deposed by him, but the

materials are indicating of creating a motive to deviate the people from real intention can be ascertained.

94. Now coming to the other aspect of the evidence of PW.10 Basavaraja Muttagi, he has deposed that he had stayed at Ankitha Residency Hotel at Dharwad from 12.06.2016 to 15.06.2016. In order to justify the said aspect, the Register of the Hotel is produced before the Court and marked as Ex.P.13, which would justify the same. Though it is submitted that residing at Ankitha Residency by PW.10 Basavarja Muttagi is inconsequence to the facts of the case, it is relevant to note that the evidence would only indicate of further link in the case. For instance, PW.10 during the course of chief-examination has deposed that in furtherance of the conspiracy, he had purchased a Car from PW.70 Chandrashekar Pujar. I have carefully appreciated the evidence of PW.70 Chandrashekar Pujar, who had deposed that he was having Chevrolet

Car bearing Reg. No. KA-25-P-8526 which was black in colour. At the cost of repetition, it is observed that the movement of the black-colored Chevrolet Car is clearly visible in the CCTV footage pertaining to 15.06.2016 which was collected by the Investigating Officer. Further PW.70 Chandrashekar Pujar deposes that he had not given the Car to Muttagi at any point of time and he had not sold it to him. However, he was treated as hostile witness and has admitted the 'B' Extract of the vehicle at Ex.P.132 and also admitted of getting the vehicle released from the Dharwad Court. During the course of his cross-examination, he has deposed that he had not visited Uday Gym on 15.06.2016 at the time of the murder of Yogesh Goudar. However, the CCTV footage clearly indicates of its presence near the Gym at that point of time. It is curious to note that the CCTV footage at Ex.P.80 was displayed to the witness with respect to 15.06.2016 at about 07.42.53 hours. It indicates that the witness with a clear motive has

deposed that he could identify whether it was his Car. However, he admits that the Car which was seen in the CCTV footage was a black colored Chevrolet Car and he had not lodged any complaint stating that his Car was stolen and given by some other persons on 15.06.2016. The aforesaid cross-examination would clearly cast an aspersion on his evidence. Though the learned Counsel for accused No.7 has cross-examined him wherein an admission has been obtained that the CCTV footage at 07.42 hours does not belong to him and there are several black colored Chevrolet Cars at Dharwad. However, when the cross-examination of the prosecution is appreciated, it does indicate that the witness admits that he was working as part-time driver to the Car belonging to Dy.SP Thulajappa Sulfi prior to the murder and his Car has not passed Haveri-Hospet National Highway on 15.06.2016 though it was having Fastag affixed to it. At this juncture, once again the evidence of PW.2 Gurunath Goudar is required to be

appreciated. PW.2 Gurunath Goudar in his evidence has repeatedly taken the name of Thulajappa Sulfi as the one who was a close confident of accused No.15 Vinay Kulkarni and in fact in his evidence before the Sessions Court at Dharwad also he had deposed about the very same aspects and had stated that the Thulajappa Sulfi was the one who was trying to negotiate the case with him on behalf of Vinay Kulkarni. Even before this Court, the same aspect has been deposed by him. The Court at the first instance itself is not blindly accepting the contentions of this witness i.e., PW.2 Gurunath Goudar or PW.10 Basavaraja Muttagi, it is to be borne in mind that initially the investigation was entrusted to Dharwad Sub-Urban Police and the CBI had commenced the further investigation only in the year 2019. As such, collection of materials with respect to movement of the vehicle in the National Highway may not be possible for the Investigating Agency.

95. The other aspect which corroborates in this regard is the evidence of PW.49 Raghavendra. PW.49 Raghavendra in his evidence has supported the case of prosecution. He has deposed that on 15.06.2016, Muttagi had called him at 12.00 PM in the afternoon and requested to meet him on the Highway near Hospet. As such, he had met him between 01.00 PM to 01.15 PM, wherein they had come in a black Sedan Car and another yellow board Tavera Taxi which ended with the No.420. The aforesaid aspect once again corrobates that PW.10 Basavaraj Muttagi had travelled in a black Chevrolet Car on that day. Further the witness has deposed of arranging a guest house by name Hema Guest House at Virupapura Gaddi, Anegundi and at that time PW.10 had requested him to hand-over the mobile phone since his mobile was having some problem in it. He has deposed of handing over his mobile phone which was returned to him after about 4-5 days. The witness has also identified

accused No.3 Kirthi Kumar, accused No.6 Mahabaleshwar @ Muduka, accused No.18 Vikas Kalburgi as the persons who had accompanied PW.10. It is his specific evidence that at present Hema Guest House was demolished by the competent Hampi Authority as it was constructed illegally. During the course of his cross-examination nothing much was elucidated from him. However, as per the evidence of PW.10, it is relevant to note that several calls were made by him by using the phone of Raghavendra. For instance, he deposes that as per the directions of Vinay Kulkarni who had requested him to meet him at Bengaluru, he had called upon PW.20 Natraj Sarj Desai, who was the brother of Vinay Kulkarni to ascertain the place where he was suppose to meet Vinay Kulkarni on that day. PW.10 has deposed that when he had crossed Nelamangala, he had again contacted Natraj Sarj Desai and he was told to meet Vinay Kulkarni near Sanky Tank at about 01.00 AM in

the mid-night. Though it is seriously contested by the defence that no such telephonic call was made, I have considered the tower location of CDR pertaining to Basavaraja Muttagi for the day 15.06.2016. Now the evidence of PW.20 Natraj Sarj Desai is required to be appreciated. Natraj Sarj Desai had turned hostile and has deposed that though he knew Basavaraja Muttagi, he did not have any acquaintance with him. However, after treating him as hostile, the prosecution had subjected him to cross-examination. During the course of his cross-examination, he has categorically admitted when he was confronted with the CDR pertaining to 15.06.2016 that at about 22.09 hours he had made a call to mobile number i.e., 9844267730. It is not in dispute that the very same mobile number was being used by Basavaraja Muttagi and it was also elucidated during his evidence. Further it is pertinent to note that PW.20 has also admitted that several missed calls were received by him from the aforesaid number and

specifically admits of receiving the call and conversing at 22.10 hours, 22.18 hours and 22.20 hours. This particular evidence clearly corroborates with the evidence of PW.10 Basvaraja Muttagi, wherein he has deposed that he was asked by PW.20 Nataraj Sarj Desai to call him again when he is near to Bengaluru. Though the witness has deposed that he had called back the missed call which he had received, he had once again deposed that due to lot of disturbances in the background, he could not hear properly and as such he had made a return call to that number. The aforesaid aspect once again fortifies the contention of the prosecution and also the evidence of PW.10 Basavaraja Muttagi. The above aspects would only indicate that the materials which are deposed by PW.10 Basavaraja Muttagi who was given the status of approver is corroborating with the evidence of other circumstantial witnesses.

96. That apart, I have also bestowed my anxious to the evidence of PW.27 Bharath Kalsur. He has deposed of having close nexus with Basavaraja Muttagi and it is his evidence on that 18.06.2016 he was supposed to take oath as President of Jaya Karnataka Organization of Haveri District and he had invited Basavaraja Muttagi also. He has deposed of reserving two rooms at Panchavati Hotel and also Mr. Anup Churi of booking rooms at Hithaishi Palace. It is his evidence that Mr. Girish Pathri had furnished the ID proof for the purpose of booking room. He was considered as hostile witness and during the course of cross-examination he has admitted that PW.10 had visited Haveri one or two days prior to 18.06.2016, which in other words would justify and fortify the contention of PW.10 Muttagi who has deposed of staying there at Haveri after the commission of murder. Though he has denied of identifying any vehicle, it is pertinent to note that in his cross-

examination he has admitted that one Mr. Parashuram Belladavar was his landlord and he was having close acquaintance with Vinay Kulkarni and has obtained several contractual works with respect to running smart classes from the Government to an extent of Rs.09,25,00,000/-. Further he has also deposed by denying the suggestion that due to the threat given by Vinay Kulkarni he was deposing falsely before the Court. All the aforesaid aspects when compared with the evidence of PW.28 Anup Churi and PW.29 Girish Pathri, would only fortify the case of prosecution.

97. I have also bestowed my anxious reading to the further evidence of PW.10 Basavaraja Muttagi. It is his evidence that he had called upon the taxi driver PW.45 Suresh Ramegowda. He has deposed that he was having contact with Basavaraja Muttagi and on 15.06.2016 he had requested him to come to Chithradurga and from there they had visited

Bengaluru. It is also deposed by him that he had called upon some person and was addressing him as “Sir” during the conversation. During the course of his further evidence, he has deposed that his mobile number was 9844267730. The aforesaid number is the one to which PW.20 Natraj Sarj Desai had contacted. The aforesaid aspect would definitely prove as a link to the circumstances. Thereafter, it is deposed by him that he had visited Sanky Tank at about 01.30 AM in the mid night and there he had met accused No.15 Vinay Kulkarni and also accused No.16 Chandrashekar Indi. If for a moment, the evidence of PW.45 is looked into, he deposes that they had reached Sanky Tank at the aforesaid time and a person had got down from the Car who was aged about 50 years and was smoking cigarette and witness particularly identifies accused No.16 Chandrashekar Indi as the same person. During the course of cross-examination, he was questioned to recall the mobile number to

which allegedly Basavaraja Muttagi had called. However, the witness has feigned his ignorance. Further he has deposed of obtaining the aforesaid mobile number by furnishing KYC documents. During the course of cross-examination nothing much was elucidated to cast aspersion to his evidence.

98. With these aforesaid aspects, now the question which is required to be determined is whether the contention of the prosecution that accused No.15 Vinay Kulkarni, accused No.16 Chandrashekar Indi were present near the Sanky Tank during the intervening night of 15/16.06.2016 at about 01.30 AM in the mid night. The Investigating Officer has contended that prior to reaching Sanky Tank, accused No.15 had requested Chandrashekar Indi and also his brother who was examined as PW.53 Vijay Kulkarni. In his evidence he has deposed of purchasing a flat at Bengaluru and had got it registered on 17.06.2016.

Though he has denied meeting Chandrashekar Indi or Somashekar Nyamagouda near Sanky Tank on the intervening night of 15/16.06.2016, has deposed of making two calls from his mobile phone to then Police Commissioner Mr. P.H.Rane on 16.06.2016. The aforesaid evidence is required to be juxtaposed with the evidence of PW.10 Basavaraja Muttagi, wherein he has deposed that he was assured by Vinay Kulkarni that he had spoken with the Commissioner Mr.P.H.Rane, who would make arrangements for his surrender. He has also admitted of giving a statement under oath under Sec.164(5) of Cr.P.C., explaining of all the aforesaid aspects. However, it is his contention that he had tendered false evidence before the learned Magistrate due to the pressure exerted on him by the CBI. It is rather astonishing to note that the aforesaid witness is the younger brother of Vinay Kulkarni and he feigns his ignorance about the procedures to be dealt in the event of exerting pressure by any agency.

Further he has admitted of visiting Bengaluru and having dinner at Hotel Mourya with Kempegowda, Vinay Kulkarni, Somashekar Nyamagouda and Chandrashekar Indi. The aforesaid aspects only fortify the contention of the prosecution and that of the approver which would act as a chain in the link.

99. I have also appreciated the evidence of PW.67 Umapathy, who has deposed that he was using the mobile number ending with 4505 and on 15.06.2016 he had received call from Basavaraja Muttagi requesting him that he may be permitted to stay in his house. Further he has deposed that at about 01.30 AM in the midnight PW.10 had come to his house and immediately on the next day he got up and was ready to leave by 08.30 AM. He had deposed that he wanted to meet Somashekar Nyamagouda near Sadashivanagar on that day. During the course of cross-examination by the learned Counsel for accused

No.21 it is suggested that the witness was also involved in the conspiracy of murder with Raghavendra and persons of Jaya Karnataka Organization. The said suggestion was denied by the witness and thereafter another suggestion was made that the witness had falsely deposed that Basvaraja Muttagi had stated that Nyamagoudar was the Personal Secretary of the Minister. It is also been elucidated from his that he had not intimated about the incident after he had learnt about it through the news channel. If for a moment, the aforesaid suggestions in the cross-examination are considered, it does indicate of categorically supporting the contention of PW.10.

100. With the aforesaid aspects, now it would be appropriate to consider whether the evidence tendered by the approver inspires confidence. The learned counsel for the defence has vehemently argued that the testimony of the accomplice cannot be relied upon

so easily as it is stigmatized evidence in criminal proceedings. Further it is submitted that to the majority of questions the witness has feigned his ignorance and has deposed that he does not know anything about the incident. No doubt the aforesaid aspects are forthcoming in the evidence of PW.10 Basavaraj Muttagi. It is also been elucidated from him that he had not narrated about those aspects before the learned Sessions Court at Dharwad or during the course of his evidence before the court at Dharwad. It is relevant to note that he was contesting the case at that point of time and further it is not expected from the accused to give self-incriminatory materials against himself during the evidence. The law with respect to appreciation of approver's evidence has been laid down by the Hon'ble Apex Court in the judgment rendered in ***(1996)9 SCC 98 (Niranjan Singh Vs. State of Punjab)***, wherein it has been held as follows;

12. The important question that arises for our consideration is whether there is sufficient evidence in this case to arrive at a conclusion that the approver and the appellant were the persons responsible for causing the murder of Harnek Singh (deceased). It is also equally important to find out as to whether evidence of Gurjant Singh (PW 3) the approver is trustworthy and can be relied upon to sustain the conviction of the appellant before us. It is well settled that the approver's evidence must pass the double test of reliability and corroboration in material particulars. It is said that the approver is a most unworthy friend and he having bargained for his immunity must prove his worthiness for credibility in court. Firstly, we will have to scrutinize the evidence of Gurjant Singh (PW 3), approver carefully to find out as to whether his evidence can be accepted as trustworthy. Secondly, once that hurdle is crossed the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Ordinarily, combined effect of Sections 133 and 114 of the Evidence Act, 1872 is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated

testimony of an approver. Section 114 Illustration (b) incorporates a rule of caution to which the courts should have regard. See Suresh Chandra Bahri v. State of Bihar [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] .

20. There is also another circumstance which supports the prosecution in this behalf. The tractor and trolley owned by Amrik Singh, the accused, developed a fault and was stranded near the railway track and thereafter Amrik Singh contacted Gandoor Singh (PW 4) and Ranjit Singh (PW 5) residents of Village Chotian to tow-chain the said tractor and trolley and bring it to Village Chotian. This all happened on 8-12-1980 at about 5.00 a.m. Both these witnesses then brought the tractor and trolley to Village Chotian. On the following day Amrik Singh and Niranjan Singh, the appellant went to the said village and after knowing the suspicion entertained by Gandoor Singh (PW 4) and Ranjit Singh (PW 5) as regards the foul play since the blood was found on the trolley, Amrik Singh and Niranjan Singh (accused) brought the said tractor to their village. The evidence of Gandoor Singh (PW 4) and Ranjit Singh (PW 5) corroborates the evidence of Gurjant Singh, the approver on this issue. In these circumstances we are of the opinion that the High Court

was right in upholding the conviction of the appellant under Sections 120-B, 201 of the Penal Code, 1860. We accordingly uphold the conviction of the appellant for the offences punishable under Sections 120-B and 201 IPC.

101. Further in another judgment of the Hon'ble Apex Court reported in ***(1998)2 SCC 372 (State of Tamilnadu Vs. Suresh)***, wherein it has been held as follows;

21. The testimony of an accomplice is, no doubt, a stigmatised evidence in criminal proceedings. It is on account of the inherent weakness which such evidence is endowed with that illustration (b) to Section 114 of the Evidence Act suggests that it is open to the court to presume that the uncorroborated testimony of an accomplice is unworthy of credit. But the legislature had advisedly refrained from including the said category of evidence within the ambit of legal presumptions but retained it only within the area of factual presumptions by using the expression "the court may presume". In order to make the position clear the same enactment has incorporated Section 133 saying that it is not illegal to convict a person on the uncorroborated testimony of an accomplice. The raison d'être for such legislative marshalling is

to enable the court to have its freedom to act on the evidence of an accomplice in appropriate cases, even without corroboration, if the court feels that a particular accomplice evidence is worthy of credence.

22. Thus, the law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circumspection and care when dealing with the evidence of an accomplice. Though there is no legal necessity to seek corroboration of accomplice's evidence it is desirable that the court seeks reassuring circumstances to satisfy the judicial conscience that the evidence is true.

CHAPTER: XI

EVIDENCE OF HANDWRITING EXPERT AND APPRECIATION OF EVIDENCE VIS-A-VIS ADMISSION BY THE APPROVER:

102. With the aforesaid ratio the other limb of submission made by the defence with respect to the veracity of the evidence of PW.10 Basavaraja Muttagi is to be considered. It is contended by PW.10 that he had addressed a letter to deceased Yogesh Goudar prior to his death cautioning him about his life. The aforesaid

letter and its cover marked as Ex.P.6 and 7 before this Court. The learned counsel for the accused No.15 has vehemently argued that the Report which is furnished by PW.93 Smt.Kumudha Rani itself is not in accordance with law. It is his contention that for a moment if Basavaraja Muttagi himself had admitted of addressing a letter to Yogesh Goudar prior to his death, then what was the necessity to refer the same to a Handwriting Expert. As such, it can be held that the investigating officer was not believing the version of PW.10 approver. Even otherwise it is his submission that the entire materials would only indicate a clear-cut distinction in the manner in which it has been authored. Further it is argued that no permission was obtained from the Court for referring to Handwriting Expert. In this regard, the learned Senior Counsel for accused No.15 has relied upon the judgment of the Hon'ble Apex Court reported in **(2023)19 SCC 321**

(Santhosh @ Bhure Vs. State [GNCT of Delhi]), wherein it is held as follows;

> ***No doubt, by Act 25 of 2005, with effect from 23-6-2006, Section 311-A has been inserted in the Code thereby empowering a Magistrate of the First Class to direct any person including an accused to give specimen signature or handwriting for the purposes of investigation but this provision would have no bearing on this case as it came into effect in the year 2006, whereas the instant case is of the year 2000. In Sukh Ram v. State of H.P. [Sukh Ram v. State of H.P., (2016) 14 SCC 183 : (2016) 4 SCC (Cri) 342] , this Court held that the amended provisions of Section 311-A of the Code would apply prospectively. Otherwise also, the purpose of obtaining permission/order of the Magistrate is to maintain the sanctity of those specimens so as to obviate fabrication. In Ashish Jain v. Makrand Singh [Ashish Jain v. Makrand Singh, (2019) 3 SCC 770 : (2019) 2 SCC (Cri) 256] , it was held that the object of the provisions of Section 5 of the 1920 Act for obtaining an order from a Magistrate to take specimens is to eliminate the possibility of fabrication of evidence. There it was also held that those provisions are directory and not mandatory. Similar view has been taken in Sonvir v. State (NCT of Delhi)***

[Sonvir v. State (NCT of Delhi), (2018) 8 SCC 24 : (2018) 3 SCC (Cri) 486] .

103. In the aforesaid judgment it has been held that it is always necessary for obtaining permission from the Magistrate and no forcible specimen signatures can be collected. However, in the instant case, the accused persons at the time of collecting their specimen signatures were not in custody and in fact they had voluntarily given their specimen writings. Even otherwise, during the course of cross-examination no such materials are forthcoming or even a suggestion was put-forth to the witnesses in this regard. This particular aspect would lead to a situation that what happens when the specimen signature is obtained without there being prior intimation to the Court and that too when the accused is not in judicial custody.

104. In this regard, I have relied upon the judgment of the Hon'ble Apex Court which is cited by

the prosecution and reported in ***(2011)2 SCC 490 (Rabindra Kumar Pal @ Dhara Singh Vs. Republic of India)***, wherein it has been held as follows;

> ***75. Another question which we have to consider is whether the police (CBI) had the power under CrPC to take specimen signature and writing of A-3 for examination by the expert. It was pointed out that during investigation, even the Magistrate cannot direct the accused to give his specimen signature on the asking of the police and only after the amendment of CrPC in 2005, power has been given to the Magistrate to direct any person including the accused to give his specimen signature for the purpose of investigation. Hence, it was pointed out that taking of his signature/writings being per se illegal, the report of the expert cannot be used as evidence against him.***
>
> ***76. To meet the above claim, the learned Additional Solicitor General heavily relied on a eleven-Judge Bench decision of this Court in State of Bombay v. Kathi Kalu Oghad [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10] . This larger Bench was constituted in order to re-examine some of the propositions of law laid down by this Court in M.P.***

Sharma v. Satish Chandra [AIR 1954 SC 300 : 1954 Cri LJ 865 : 1954 SCR 1077] .

77. After adverting to various factual aspects, the larger Bench formulated the following questions for consideration : (Kathi Kalu Oghad case [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10] , AIR pp. 1810 & 1812, paras 2 & 4)

"2. ... On these facts, the only questions of constitutional importance that this Bench has to determine are; (1) whether by the production of the specimen handwritings, Exts. 27, 28 and 29, the accused could be said to have been 'a witness against himself' within the meaning of Article 20(3) of the Constitution; and (2) whether the mere fact that when those specimen handwritings had been given, the accused person was in police custody could, by itself, amount to compulsion, apart from any other circumstances which could be urged as vitiating the consent of the accused in giving those specimen handwritings. ...

***

4. ... The main question which arises for determination in this appeal is whether a direction given by a court to an accused person present in court to give his specimen writing and signature for the purpose of comparison under the provisions of Section 73 of the Evidence

Act infringes the fundamental right enshrined in Article 20(3) of the Constitution."

The following conclusion/answers are relevant : (AIR pp. 1814-17, paras 10-12 & 16)

"10. ... 'Furnishing evidence' in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that—though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English law on the subject—they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. ...

11. ... When an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal

testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness'.

12. ... A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'.

***

16. In view of these considerations, we have come to the following conclusions—

(1) An accused person cannot be said to have been compelled to be a witness

against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not

included in the expression 'to be a witness'.

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.

(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

78. In view of the above principles, the procedure adopted by the investigating agency, analysed and approved by the trial court and confirmed by the High Court, cannot be faulted with. In view of the oral report of Rolia Soren, PW 4 which was reduced into writing, the evidence of PW 23, two letters dated 1-2-2002 and 2-2-2002 addressed by

Mahendra Hembram (A-3) to the trial Judge facing (sic confessing) his guilt coupled with the other materials, we are unable to accept the argument of Mr Ratnakar Dash, learned Senior Counsel for Mahendra Hembram (A-3) and we confirm the conclusion arrived at by the High Court.

105. In order to better appreciate the veracity of the evidence tendered by the Handwriting Expert PW.93 Kumudha Rani, I have bestowed my anxious reading to the evidence and also the Report furnished by her. In her chief-examination she has specifically deposed that the specimen writings and the admitted document was examined by her. Further she has deposed that the person who wrote the specimen writings at S-1 to S-45, S-389 to S-400 also wrote the questioned documents. The aforesaid aspects only indicates that the 57 sheets of specimen writings were noticed by her which was sent by the Investigating Officer. During the course of her cross-examination, it

is elucidated from her that different alphabets in Kannada language would have different writing skills and well-known authorities on handwriting examination were Osborne, Hilton and Harrison. She has also deposed that the standard writings mean admitted writings which the experts' desires that the standard writings should come into existence when on or about the time the questioned documents came into existence. She has admitted that she was not having the advantage of standard writings. Further she has deposed that the questioned writings are to be dictated to the person to avoid the chances of imitation and disguise. Further she has denied the suggestion that the pictorial script at Ex.P.177 does look like Telugu script than the Kannada language. Further she has sticked on to her contention about the similarity in the alphabets. In order to better appreciate the same, I have relied upon the authoritative book published in this regard titled as **"Questioned Documents, A study of**

questioned documents with an outline of methods by which facts may be discovered and shown" authored by Albert Sherman Osborn which was first published in the year 1910. In the said book it has been discussed with respect to ascertaining the similarities is discussed as below;

> ***Two handwritings in the same language must inevitably have similarities, but, as we have seen, certain similarities show only that the writers belong to the same class or nationality. Although all writing in the same language is bound to be somewhat similar, like men of the same race, from this fact it does not logically follow that individuality cannot be distinguished. It would be as absurd to say that because Americans can easily be distinguished from Chinamen that therefore all Americans are alike. As a matter of fact they are alike in certain race features, but individuality is shown by a combination of variations of individual and general characteristics. Writing is individualized in precisely the same manner. Writing that we often see has about it that which we instantly recognize as something that gives it a personality and a character which it may be difficult or im-possible for the inexperienced to describe and analyze. It is not the form alone nor any one feature but a com-bination of all that mainly appeals to us, and we name the water without hesitation. This individuality,***

which is recognized even by the untrained, results from the combination and proportion of all the varied elements which make it up, and irrespective of individual peculiar forms, may strongly affect judgment as to identity.

The undisguised handwriting of a friend thus becomes to us almost as recognizable as the friend's face, and this general appearance or pictorial affect is always of assistance in identifying a writing, but, it must be added, is also the means of leading many into error who are not able to distinguish general from personal characteristics.

This instant recognition of a writing simply by intuition the careful examiner not only does not attempt but, on the contrary, studiously avoids: he reserves judgment until the characteristics of the writing have all been observed, compared and carefully weighed[1] resemble somewhat that which it is intended to resemble, A forged or simulated handwriting must naturally and a disguised writing will inevitably diverge in some degree from a genuine writing and, as stated above, the whole problem is to determine and show what characteristics are of controlling force as a basis for an opinion. A signature may be unusual in a number of particulars and yet contain undoubted evidence of genuineness, and again a signature may, in general appearance and superficial characteristics, bear strong resemblance to the writing it imitates and yet upon closer examination be positively shown to be a forgery. As was considered in the preceding chapter some writers write a fixed and uniform hand that diverges but

little from a normal type, while others are extremely erratic, and these facts must always be taken into consideration in forming a judgment in such a case and each inquiry must be weighed and measured by itself by examination of the standard writing in the case. The fact must be carefully investigated and considered as to the manner and degree in which writing is affected by changes in conditions, and this matter must always be given due consideration and weight whether the conditions under which the writing was done are known or not.

That a questioned and a genuine handwriting resemble each other in that they were written on a slant of about fifty-two degrees from the horizontal would alone be of little significance as showing identity, except that they belong to the same general class, for the reason that up to a recent date this has been the normal slant, nor would it be significant as showing identity that the downward strokes all slanted alike, because this is the standard form. If, however, in such a handwriting it is shown that certain letters repeatedly depart from normal forms in slant and for no apparent cause, then such characteristics at once become significant.

106. Further in the judgment rendered by the Hon'ble Apex Court reported in **(2010)11 SCC 120 (Ravichandran V State by Deputy Superintendent of Police, Madras)** it has been held as follows:

15. In Murari Lal v. State of M.P. [(1980) 1 SCC 704 : 1980 SCC (Cri) 330 : AIR 1980 SC 531] this Court held as under: (SCC pp. 711-12, para 11)

"11. We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted."

107. In the aforesaid judgment it has been held that in cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted. There cannot be any inflexible

rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. When the aforesaid aspects are compared with the evidence which is tendered by the Expert before the Court, it would indicate that the same is in consonance with the settled principles of law. Even otherwise, the approver himself has admitted of addressing a letter to deceased Yogesh Goudar prior to the incident. This particular aspect once again raises the question that if only the approver had an intention to save the deceased person, then why he had not directly contacted him. The learned Senior Counsel is right to some extent in this regard. However, how the human mind behaves is not within the scope of imagination by any person nor it can be easily deciphered. As such, the Court is required to now appreciate the materials which is available on record to ascertain whether there are any materials to indicate of the overt-act of the accused person.

108. The learned Senior Counsel has also argued at length that the evidence of PW.10 does not inspire confidence for the reason that the said letter which was produced before the then Investigating Officer was not fully corroborated in the evidence of PW.1 Dr. Dattatregya Gudaganti. It is his submission that if at all the letter was produced by PW.50 Mallavva Goudar, then PW.1 Dattatreya Gudaganti would not have deposed that the letter which is at Ex.P.7 was not the one which he had seen on the date of incident. Admittedly, the letter was recovered by accused No.19 Channakeshava Tingarikar by drawing a mahazar on 16.06.2016. At the time of mahazar, PW.111 Yogappa Gujjannanavar has deposed that on 15.06.2016 itself Mallavva Goudar has narrated to the Investigating Officer that she was in possession of another letter and subsequently the letter came to be produced and mahazar at Ex.P8 was drawn. He has also identified the photograph at Ex.P.224. All the aforesaid aspects

when compared with the cross-examination made by the learned counsel for accused No.19, it would indicate that it was suggested that on 12.06.2016 when Mallavva and her husband along with their family members had visited Ambulli Ghat, they were being followed by a black colored Car and two motorbikes, due to which they had returned back. It is relevant to note that if such suggestions were made by accused No.19 himself who was the then Investigating Officer, then the fact which is required to be answered is why the black colored vehicle was not recovered not any investigation was made by the Dharwad Police in this regard.

109. The aforesaid evidence would only corroborate with the evidence of PW.2 Gurunatha Goudar who has also deposed in a similar manner. Be that as it may, when the evidence of PW.50 is scrupulously considered, it does indicate that they have deposed of being followed by a black colored

vehicle and they had returned back on that particular day itself. That apart, the letter at Ex.P.7 would clearly indicate that it was being produced by Smt. Mallavva. Though Smt. Mallavva Goudar has denied of producing the letter to the Investigating Officer and also about its veracity, it is curious to note that Smt. Mallavva Goudar was examined as PW.1 before the Sessions Court at Dharwad and there she had identified the letter as the one which they had received as an anonymous letter prior to the incident and at that time she had identified the same and accordingly it was marked as Ex.P2 andEx.P3 which is now again marked as Ex.P6 and 7. As such, the witness cannot take a different stand at different interval of time and hence not much weight-age can be given to the evidence of PW.50 Mallavva Goudar that she was deposing truly with respect to motive, intention and conspiracy.

110. I have also bestowed my anxious reading to the authorities which is relied upon by the learned

Counsel for the accused which is reported in **2021 SCC Online SC 1184 (Praveen @ Sonu Vs. State of Haryana)** wherein it is held as follows;

> ***12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused. In the case of Indra Dalal v. State Of Haryana[1], this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, this Court has held in paragraphs 16 & 17 as under:***
>
> ***"16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession***

made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countlessly by this Court as well as the High Courts.

17. The word "confession" has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible.

111. He has also relied upon the judgment reported in (2012)9 SCC 696 (Baliya @ Balakishan Vs. State of Madhya Pradesh) and also another judgment reported in (2022)16 SCC 166 (Ram Sharan Chathurvedi

Vs. State of Madhya Pradesh). In the aforesaid two authorities, it has been laid down by the Hon'ble Apex Court that in order to draw any inference the prosecution has to establish the existence of conspiracy and also such agreement must be proved through direct or circumstantial evidence. There cannot be any qualms with respect to the ratio laid down in the aforesaid authorities. Even in the case on hand the materials which are produced before the Court would clearly indicate of existence of criminal conspiracy.

CHAPTER: XII

IDENTIFICATION OF THE ACCUSED/ASSAILANTS AND SILENT WITNESS THEORY

112. In the instant case, at the cost of repetition it is submitted that the incident of murder had taken place on 15.06.2016 at Uday Gym wherein Yogesh Goudar was made over to death by some unknown assailants wherein he was assaulted with deadly

weapons like Long, Machette, Dagger, Knife and he was thrown with chilly powder on his eyes. The fact also remains on record that as per the contention of the Dharwad Sub-Urban Police Station, accused No.1 to 6 were the assailants and whereas as per the contention of the CBI, accused No.7 to 14 were the assailants. In order to ascertain the same, once again the evidence is required to be revisited. Admittedly in the above case, the eye-witnesses who have been cited are PW.1 Dr.Dattatreya Gudaganti, PW.30 Lakshmi Benakatti, PW.31 Shashank Jain, PW.32 Anand Erappa Uddannanavar, PW.33 Vinayak Binjiyavar, PW.34 Mohan Yecharappa Malmuttal, PW.35 Vivekananda Dalawai, PW.36 Shwetha Kulkarni. It is relevant to note that except PW.30 Lakshmi Benakatti all other witnesses have turned hostile. In the instant case, once again it is required to fall back on the evidence of PW.10 Basavaraja Muttagi, who has turned approver. Basavaraja Muttagi in his evidence has

deposed that after about 11 months incarceration in the above case, he was admitted to bail and on the basis of the final report placed by the Dharwad Sub-Urban Police, the trial was fixed before the Sessions Court at Dharwad in the year 2017. He has deposed that as such he had requested PW.40 Logendra.C., who was a Taxi Driver and confident of Basavaraja Muttagi to pick him from Bengaluru. He has deposed of picking up Dr.Dattatreya near Esteem Mall who was the main witness in the above case. Further he has deposed that PW.10 had sent him a Toyota Etios Car and he had picked-up Dr.Dattatreya. He has also deposed of reaching Ramya Residency at Dharwad and had requested him to take the name of PW.10 with the owner Mahesh Shetty. After that, they were allotted with a room and later on he had met Basavaraja Muttagi, PW.44 Babu Katagi and later on visited the Dairy of Vinay Kulkarni. It has also been deposed by him that later on Vinay Kulkarni had directed PW.10

to send Dr.Dattatreya and three other persons to Goa for two days. He had also deposed of traveling in a Red coloured Tavera Car along with Nithin Shetty and Amith Reddy. Though PW.1 Dr.Dattatreya, PW35 Vivekananda Dalawai and PW.34 Mohan Yecharappa had denied of travelling to Goa with any other persons, it is relevant to note that they had stayed at Jullie Jolly Resort at Goa. In order to appreciate the same, firstly the evidence of PW.1 Dr. Dattatreya in this regard is required to be appreciated. He has admitted of availing rooms at Jullie Jolly Resort at Ex.P.54. But he has denied of traveling together with PW.40 Logendra. At this juncture, if the evidence of PW.96 Leaster Albuquerque is appreciated, it would indicate that he was the Proprietor of Jullie Jolly Resort at Goa. For the better appreciation of the evidence, I have considered the extract at Ex.P.54 which is seriously disputed by the defence. In his evidence, he has deposed that their Resort was situated at Vagator

Anjuna Goa and they accept online booking, email booking and also walk-in guest to their Resort. Further he has deposed that in the year 2020-21, CBI Officer had enquired him with respect to certain persons staying in their Resort and accordingly he had furnished the extract of the Register along with the scanned copy of the ID Proof as per Ex.P.54(d). During the course of his cross-examination, the learned Counsel for accused No.15 had put a specific question that the entry in the Register would be made in seriatim. To the aforesaid question it was answered by the witness that when there was telephonic booking made by the party, they would enter their name and request them to send their ID proof and would make entry of their arrival and departure only when they were physically present in the Resort. It is submitted by him that the aforesaid procedure was adopted only to ensure hassle free entry to the customers at the time of check-in. The aforesaid aspect seems to be

convincing since the date and time of arrival in the first two columns reflects as 22.11.2017. Thereafter the name of PW.40 Logendra, Amith Doddamani, Nithin Shetty, PW.35 Vivekananda Dalawai, PW.1 Dr. Dattatreya Gudagandi and PW.34 Anand Uddannanavar are forthcoming. Their signatures are also admitted by the parties. All the aforesaid aspects would lead to a situation that why the eye-witnesses had travelled with Logendra and stayed at Jullie-Joly Resort. Even if it is to be considered as a coincidence, the evidence of PW.44 Babu Katagi casts a serious aspersion over the manner in which the investigation is being handled by the Dharwad Sub-Urban Police.

113. PW.44 Babu Katagi in his chief-examination has not supported the case of prosecution and has deposed that he was harassed and physically tortured by CBI and he was even stripped down of his clothes and assaulted. The aforesaid aspect requires a serious consideration to be made since a serious allegation is

leveled against the Investigating Agency. The Hon'ble Apex Court and also the Hon'ble High Court of Karnataka has come down heavily upon the Investigating Agencies where third-degree methods are adopted. In order to better appreciate the same, it would be trite to rely upon the evidence of PW.44 Babu Katagi. Though PW.44 Babu Katagi was considered as a hostile evidence, certain factors affecting the credibility of PW.44 itself came to be revealed during the course of his cross-examination. It is relevant to note that Babu Katagi is related to Vinayaka Katagi, the accused in the above case. He has deposed that for the aforesaid reason he was requested by the then Investigation Officer accused No.19 Tingarikar to keep away from the investigation. However, it is relevant to note that he was the one who had served the summons to Dr. Dattatreya. As per the evidence of Dr. Dattatreya, he was served with the summons by some Policemen at Ramya Residence, Dharwad. If for a

moment, the aforesaid evidence is looked into, Dr. Dattatreya has specifically deposed that Babu Katagi had telephonically called him and requested to come in a Car which was being arranged. Further he deposes that he had alighted the taxi near Esteem Mall, Bengaluru and stayed at Hotel Ramya, Dharwad. This particular evidence would clearly corroborate with the evidence of the approver Basavaraja Muttagi wherein he had stated that he had arranged the taxi for Dr. Dattatreya and he was accompanied by PW.40 Logendra. Even otherwise, it is to be answered by Babu Katagi or by Dr. Dattatreya that why a Police Constable would make arrangements for a key eye-witness to reach Dharwad from Bengaluru in a taxi. It is rather surprising that the so called highly educated practicing Medical Doctor had also fallen to the bait of providing with free transportation and of providing with free excursion to Goa. Though the witness deposes that they had visited Goa on their own, the

Hotel extract at Ex.P.54 indicates that PW.1 had traveled with Logendra and two other persons. That apart, the evidence of PW.41 Mahesh Shetty, who happens to be owner of Hotel Ramya Residency had provided two rooms. During the course of his cross-examination, he has specifically deposed that no entry in the Register was made for the reason that the rooms were sought by Basavaraja Muttagi and for family members and friends he never used to make entry in the Register. The aforesaid portion would now lead to a situation that how Babu Katagi was knowing Dr. Dattatreya to serve the summons. Even the Court had specifically posed question to him that whether he had acquaintance with Dr. Dattatreya prior to service of summons, for which he had answered in the negative and he had deposed that he was provided the phone number by his superior officer. The above answer would create further suspicion with respect to the character of Babu Katagi. Normally in a criminal case,

the character of a witness will not be under scrutiny. But here is a case wherein several aspersions are leveled against the witness himself. The witness has categorically admitted that he was having love affair with the sister of deceased Yogesh Goudar, whom he had married at Dharmasthala and later on deserted her. He has also admitted that for the aforesaid reason a confrontation had taken place in the Police Station itself wherein Yogesh Goudar had lodged a complaint against Babu Katagi due to which he was suspended from the services. That apart, it is also elucidated from the witness that he was having illicit affair with another lady, due to which a child was born who was named as Pradeep Babu Kattagi and also, he had made the settlement by paying Rs.2,50,000/-. It is elucidated from him that several public persons had assaulted him due to which he was once again kept under suspension. Though he has denied the same, he has admitted of publication of a newspaper article in

this regard. The learned Senior Public Prosecutor Sri. Shivananda Perla has vehemently contended that it was not the CBI who had subjected Babu Kattagi to third degree method by striping him half naked, however it was the general public who at an undisputed point of time being frustrated with the perverted acts of Babu Katagi had assaulted him and in order take advantage of the said situation he had created the aforesaid theory.

114. Even otherwise, the Court is astonished with the manner in which evidences are being tendered before the Court. The rustic villagers if any had shown any disrespect to some extent, it would have been a matter ignored for the reason that they may be illiterates. However, in the instant case, it is noticed that the custodians of the law enforcement machinery are showing scant respect to the procedures of the Court and without any remorse have deposed before the Court that they have tendered false evidence before

the learned Magistrate at Dharwad due to the pressures exerted by the CBI. If for a moment, it is to be accepted for the sake of arguments that certain high-handedness was dealt by the Investigating Agency, then the million-dollar question which requires to be answered is what prevented the Police Authorities and that too Dy.SP i.e., PW.24 Shivananda Chalavadi or for that matter PW.44 Babu Katagi to report it to the higher authorities. Unfortunately, after lapse of about 5 years for the first time the witnesses have appeared before the Court in a blatant manner have deposed of deposing falsely at the time of recording their statement on oath under Sec.164 of Cr.P.C before the learned Magistrate. It is nothing but a classic case where the act of the concerned Police is to be depreciated so as to prevent the eroding of faith by the public on judiciary.

115. Be that as it may, when the evidence of PW.30 Lakshmi Benakatti is appreciated, it does

indicate that she was present on the fateful day i.e., on 15.06.2016 when the incident had taken place. It is her evidence that after completing her gym activities, she was standing in front of Gym and conversing with PW.36 Shwetha Kulkarni. However, on hearing a loud noise and on witnessing persons assaulting Yogesh Gouder, they had started to run towards the adjacent building i.e., the Post Office. Somewhere the evidence of PW.1 Dr. Dattatreya, PW.30 Lakshmi Benakatti and other eye-witnesses co-relate with the aspect that they all had run towards the Post Office building and later on they had returned back. PW.36 Shwetha Kulkarni has specifically denied of witnessing any incident or running towards the Post Office building, it is noticed from records that when she was subjected to cross-examination through video conferencing, she had admitted categorically of being frightened and standing near the gate of Post Office. All the aforesaid aspects would indicate that she had also noticed the incident.

With respect to the other eye-witnesses i.e., PW.31 to 35 have deposed in the similar manner. The learned counsel for accused No.15 has contended that none of the accused were identified by the so-called eye-witnesses to the incident. It is his contention that the evidence of PW.30 does not inspire confidence.

116. In order to better appreciate the same, the concept of winning over the witness as propagated by the CBI in comparison with that of the approver is required to be looked into. PW.30 in her evidence has admitted that she was examined by the Sessions Court at Dharwad at the first instance wherein she has deposed that she had joined the evening batch and not the morning batch on the fateful day. She was also considered as hostile witness. Now the main question which requires to be determined is how the Court can place reliance on the evidence of PW.30 Lakshmi Benakatti by ignoring the stand of other eye-witnesses who had turned hostile in the above case. In order to

better appreciate the same, it would be appropriate to consider the chief examination of PW.30 Lakshmi Benakatti. She has specifically deposed that in the year 2017 through Babu Katagi she had received the summons and immediately thereafter she was requested to come near Sai Temple at Dharwad. There two Advocates had met her in the evening and later on was made to sit in a Car wherein an Advocate had stated that one lady Advocate would examine her in the Court, for which she has to depose by feigning her ignorance about the incident and stating that she was not attending Gym in the morning. After that she was again asked to come near the same place and she had narrated the incident to her father and sister and they were scared and accompanied her. Further at about 08.00 PM they were taken to one Rashi Farms and she had stayed in the last room along with her father, sister and one Nagaraj Yadav, the family friend. If for a moment, the aforesaid aspect is considered, it would

indicate the fearful situation which an unmarried girl was made to pass through at that point of time. Somewhere the evidence of PW.30 finds corroboration in the evidence of PW.43 Shivakumar Nijaguni Bendigeri, Advocate, who has deposed that in the year 2017 at about 06.30 PM when he was having a cup of Tea near Hotel Ganesh, opposite to District Court, a Car had come and his senior A.S.Shinde had asked him to accompany in that Car and they had travelled till Sai Baba Temple at Kalageri Road, Dharwad wherein he was requested to get down of the Car and he had seen a lady coming near the Car and conversing with his Senior A.S.Shinde. Further he deposes that his Senior was practicing on criminal side. During the course of cross-examination, it was suggested to him that he was Special Public Prosecutor for CBI, for which the witness has admitted and deposes that since from 2025 he was working as Special Public Prosecutor. For the sake of arguments

and corroboration it is relevant to note that his statement was recorded at a point of time when he was not working for CBI. However, he was not subjected to any cross-examination by the learned counsel for the accused apart from accused No.15. With this aspect, if the evidence of PW.30 Lakshmi Benakatti is appreciated, it seems plausible that she might have been pressurized to depose in a particular manner and that too being an unmarried girl she was not in a position to swim against the current at that time. Further it is noticed from records that she has specifically identified the accused No.9 Ashwath before the Court as the one who was the main assailant holding Long Machette and assaulting deceased Yogesh Goudar on the fateful day. The learned defence counsels have vehemently argued that in the absence of any proper Test of Identification Parade being carried out or identifying the assailants, the Court cannot draw any inference with respect to the

allegations leveled against the accused persons. The said submissions seem to be attractive at the first brush of incidence. However, when the materials are examined in detail, the said presumption and inference cannot be made. This particular aspect leads to a crucial aspect that how the identity of the accused can be established without following the aforesaid procedures and whether the CCTV footage can be construed as substantive piece of evidence.

SILENT WITNESS THEORY

"Men may falter, memories may fade, but digital evidence endures and speaks the truth."

117. The aforesaid proverbial adage is aptly applicable in the present context and particular in the above case, where the majority of the eye witness have turned hostile. Though it is contended by the prosecution that the aforesaid eye witness had witnessed the incident, they had turned hostile and had denied being so. However, in the wake of the

digital evidence in the form of CCTV footage being displayed to the aforesaid witnesses they have identified themselves in the vicinity of the incident and the pictorial image of the accused persons are also forthcoming in the aforesaid CCTV footage. The aforesaid aspect leads to a situation to juxtapose the digital evidence with the ocular evidence and ascertain the truth. Ultimately the voyage of criminal trial is the discovery of truth. In the instant case, the court is now required to appreciate the digital records which are placed before the court for the appreciation. As noticed from the records, photographs, video documents and electronic devices have been placed before the court in order to prove the guilt of the accused persons by the prosecution. It is relevant to note that the materials which are produced in the audio-visual content is required to be considered as evidence. A document, which is defined as per Sec.3(18) of General Clauses Act, which defines the document as hereunder:

> ***"Document shall include any matter written, expressed, or described upon any substances by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used for the purpose of recording that matter."***

118. Further, as per Section 29 of Indian Penal Code, it explains that the word document denotes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used as evidence in that matter. Going by the definitions of document, it includes not only all materials or substances upon which thoughts of a man are represented, by writing or any other specious of conventional mark or symbol, but also records and it includes the records of information of some sort. Hence by looking into the definition clause, it is crystal clear that the document means something which conveys or affords information, notwithstanding the matter or medium on which it is exhibited, inscribed or

contained. It also includes writing, picture, caricature, map or plan printed, lithographed or photographed on a piece of paper and document includes an inscription on a metal plate or a stone as could be noticed from the records, photographs, audio and video aspects also would be considered as documents. Witnesses may with their personal knowledge state that a photograph is a fair and accurate representation of fundamental facts which appears therein. In such a case, the evidence of the witnesses will be the primary matter rather than what is depicted in the photograph and the photographer need not be examined in the court. They are explained by Wigmore as nothing more than illustrated testimony of the witness. This principle gave rise to 'Pictorial testimony theory' or a communication theory. But when a photograph itself is taken as a probative and substantial evidence of the matters appeared therein, it acquires the glorified status of independent '***Silent witnesses'***. In **Black's Law**

Dictionary, 9th edition, at Page 1508 Silent Witness Theory is mentioned as hereunder:

> "***A method of authenticating and admitting evidence (such as a photograph), without the need for a witness to verify its authenticity, upon a sufficient showing of the reliability of the process of producing the evidence, including proof that the evidence has not been altered."***

In ***Halsbury's Laws of England, Fourth Edition, Vol. 1 7, at Page 158,*** it is noticed as follows:

> ***"224. Photographs: Photographs properly verified on oath by a person able to speak to their accuracy are generally admissible to prove the identity of persons, or the configuration of land as it existed at a particular moment (scientific deductions from them being made by a witness both skilled and experienced in such a task, or radar echoes or the contents of a lost document. In the High Court a photograph is receivable in evidence at the trial only when certain provisions have been complied with."***

In ***Halsbury's Laws of England, Fifth Edition, Vol.11, at page 723,*** it is stated as follows:

> ***"958. Photographs, films, records, tape recordings and video recordings. At common law, photographs properly verified on oath by a person able to speak***

to their accuracy were generally admissible to prove the identity of persons, or the configuration of land as it existed at a particular moment (scientific deductions from them being made by a witness both skilled and experienced in such a task), or radar echoes or the contents of a lost document. For the purpose of Civil Evidence Act 1995, 'document 'means anything in which information of any description is recorded and a similarly wide definition applies for the purposes of disclosure under the Civil Procedure Rules. Thus photographs, films, records, tape recordings and video recordings are all admissible in evidence, subject, if appropriate, to the statutory safeguards with regard to hearsay evidence. Prior notice must be given of a party's intention to put photographs and certain other items in evidence.

119. The law of evidence has progressively evolved from an era dominated by oral testimony and human perception to one increasingly reliant upon scientific and electronic modes of proof. In this transition, courts have recognized that truth is not always spoken—it is often recorded. The Silent Witness Theory emerges from this shift, acknowledging that mechanically or electronically generated evidence can

itself serve as a witness, independent of human narration.

120. The Silent Witness Theory originated in Anglo-American jurisprudence to address the admissibility of photographs and recordings in the absence of an eyewitness. Traditionally, such evidence was admitted only if a witness testified that it accurately represented what they had personally observed—this was known as the pictorial testimony theory. The Silent Witness Theory marked a doctrinal shift by holding that:

> **a. Evidence generated by a machine is admissible if the integrity of the process that produced it is established, even in the absence of a human witness to vouch for its contents.**
>
> **b. Thus, a camera, recording device, or computer system becomes a "silent witness", narrating events through data rather than words.**

121. In order to better appreciate the above said aspects it would be appropriate to consider the

evidence which has been produced by the prosecution in order to prove the aforesaid aspects. Firstly, the evidence of PW.39 Kushal A Master is required to be appreciated. The aforesaid witness is working as Scientific Officer, Forensic Science lab, Gujarat. In his evidence he has deposed about the expertise which he has got in the subject and even during the course of cross examination nothing much was elucidated to dismantle his professional expertise. Further he has deposed that under a covering letter with proper seal, the Superintendent of Police, HOB/ACB, CBI Bengaluru had sent him with certain materials in the form of hard disk of Western Digital make with Sl. No. WCC4M5TY6JZK which was of 2TB capacity and also another pen drive with Sandisk make of 8GB capacity. He has deposed of scientifically examining the same and by using the software and hardware 'DVR Examiner Version 2.9.0' which was available and 'ENCASE Version 6.19.7.2" which was available in

their Forensic Department. Further he has deposed of examining the materials which were available in the pen drive and had found that the contents of the pen drive were the controlled CCTV footage which was available in the Hard disk. It is his evidence that on examining the aforesaid materials he had arrived at a conclusion that the video footage for the given date, time and camera for the date 14.06.2016 and 15.06.2016 between 6.00 AM and 10.00 AM for camera 6 were copied and he had found that there were no signs of editing or altercations with the CCTV video footage. The aforesaid witness was cross examined by the learned counsel for accused No.8 to 14 and it is noticed that he was not examined extensively. That apart, the court is now required to consider the evidence of PW.93 Dr. Kumuda Rani is required to be appreciated. She has appeared before the court to tender her evidence as expert. During the course of her chief examination, she has explained her

educational and professional credentials so as to be called as expert witness. In her evidence she has deposed that she was sent with 2 TB hard disc of Western digital make. She has also deposed that the entire video files were carefully and forensically searched for their genuinity. It is her evidence that the videos were subjected to frame analysis by using forensic software by name 'forevid'. The forensic system generated the details which were enclosed in the soft copy as Annexure-A1 and Annexure-A2 (DVD). It is deposed by her that on the basis of the same she had furnished her opinion as per Ex.P187. I have carefully appreciated the Certificate which has been furnished by the witness. By verifying the entire aspects it has been opined that the video files present in 2 TB Western Digital internal hard disc contained the duration of 07.00.00 to 08.00.00 were genuine and also content of the video file which was present in the DVD marked as D1 during the time interval found in

the hard disc were also found to be genuine. I have also bestowed my anxious reading to the nature of cross-examination to which she was subjected to. As noticed from the records, much cross-examination was made with respect to the specimen writing. During the course of cross-examination by the learned counsel for accused No.2 to 6, all that it was suggested was the witness had not analyzed any video and has not furnished the 65-B Certificate to the Investigating Officer. Even during the cross-examination by accused No.8 to 14 much thrust was given with respect to the opinion furnished on the handwriting. By looking into the aforesaid aspects, now the Court is required to determine whether the evidence tendered through CCTV footage can be considered as substantial piece of evidence. In order to better appreciate the same, it would be appropriate to rely upon the judgment of the Hon'ble Apex Court reported in **(2017)6 SCC 1 (Mukesh**

Vs. State [NCT of Delhi]), wherein it has been held as follows;

> ***102. Once it is proved before the court through the testimony of the experts that the photographs and the CCTV footage are not tampered with, there is no reason or justification to perceive the same with the lens of doubt. The opinion of the CFSL expert contained in the CFSL report marked as Ext. PW-76/E authenticates that there was no tampering or editing in both the exhibits, Ext. P-67/1 and Ext. P-67/2, and that a bus having identical patterns as the one parked at Thyagraj Stadium is seen in the CCTV footage, which includes the word "Yadav" written on one side, "backside dent (left)" and absence of wheel cover on the front left side. The contents of the report is also admitted to be true by its author, PW 76, Gautam Roy. Quite apart from that, it is perceptible that the High Court, in order to satisfy itself, had got the CCTV footage played during the hearing and found the same to be creditworthy and acceptable.***
>
> ***311.3. There is no reason or justification to disregard the CCTV footage, for the same has been duly proved and it clearly establishes the description and movement of the bus.***

122. In the aforesaid authority, it has been held that unless there are other compelling reasons or

materials to indicate that the testimony of the experts that the photographs and the CCTV footage were tampered, the same cannot be doubted. The facts in the above case for which it was sent to Forensic examination is quite similar to the present case. It is also relevant to note from the testimony of PW.89 Sangamesh Mallappa Madivalara, who was the Postal Assistant at PMG Office, Sapthapura, Dharwad, it could be ascertained that the CCTV was installed in their office during the period 2015-16 and also outside the office near the main gate which he was monitoring. It is his evidence that the concerned Police had addressed a request to their higher authority who in turn had directed him to furnish the CCTV footage which was recovered by the concerned Police along with a Technician on 16.06.2016 under a mahazar at Ex.P167. He has also deposed that at the time of recovery itself, the relevant footage was copied into a DVD which he had identified as Ex.P168. During the

course of his cross-examination, it was elucidated from him by the learned counsel for accused No.7 that he was only looking after the CCTV footage. He has also deposed of receiving a written directions by his higher authorities to look after the CCTV. By looking into the aforesaid aspects it is clear that the CCTV footage were collected properly and in accordance with law. Even otherwise, the CCTV footage were collected by the then Investigating Officer Chennakeshava Tingrikar during the course of his investigation. The CCTV footage though was collected by him and even though PW.10 Basavaraja Muttagi also deposes of accused No.19 Chennakeshava Tingrikar of having confronted him, there is no explanation nor any materials are available to indicate that why the then IO and present accused No.19 Chennakeshava Tingrikar had not examined the presence of accused No.7 to 14, who were seen running at the place of incident of murder. All the aforesaid aspects once again cast a serious aspersion

against the evidence which was collected by the erstwhile Investigating Officer.

123. I have also carefully appreciated the evidence of eye-witnesses in the above case. The materials on record indicate that the admitted eye-witnesses in the case dehorns that of PW.30 Lakshmi Benkatti have all turned hostile. As such, the question which requires to be considered is whether any reliance can be placed on the evidence of the witnesses who have turned hostile. It is the settled principles of law that merely because the witnesses have turned hostile, the Court cannot ignore or brush aside the evidence which is placed before the Court. In that event, it would be fit and appropriate to look into the evidence which is placed before the Court. Admittedly, the CCTV footage which is produced before the Court consists of the footage pertaining to 14.06.2016 and 15.06.2016. The approver PW.10 Basavaraja Muttagi has deposed that as per their initial plan, the incident

should have taken place on 14.06.2016, but the same was postponed for the reason that at a particular point of time a vehicle belonging to Vinay Dairy was noticed to be passing in front of the Gym. Hence, they had decided that the same may attract the wrath of some superior officers or from the general public and hence they had waited for the next day. As noticed from the records, the CCTV footage pertaining to 15.06.2016 indicates of some chaos that had taken place near the Gym area on the fateful day. Just prior to the arrival of the car of Yogesh Goudar, the accused persons are seen moving in front of the Gym. The learned PP has pointed out towards accused No.1 to 6 and has deposed that they were not at all seen at the alleged time of incident and whereas the movement of accused No.7 to 14 could be easily traced. As such, it can be clearly held that accused No.7 to 14 had formed an unlawful assembly armed with deadly weapons and in furtherance of the common intention which they had

entertained with accused No.1 to 6 as per the conspiracy entertained with accused No.15, 16 and 18, they had committed the murder of Yogesh Goudar on the fateful day.

124. The common factors which are noticed from the evidence of the eye-witnesses who have turned hostile are as follows;

(a) PW.1 Dr. Dattatreya Gudagunti and also the other eye-witnesses who had turned hostile i.e., PW.31 to 36 have specifically admitted that the CCTV footage which is displayed in the Court was having full clarity and also they have deposed unequivocally that much vehicles and persons were traversing in front of the Gym on 15.06.2016 at about 06.46.59 AM to 07.45 AM.

(b) All the aforesaid witnesses have admitted that the very same persons were seen in the CCTV footage pertaining to 14.06.2016.

(c) All the aforesaid witnesses have admitted the movement of vehicles and also three persons raiding the motor bike immediately after the incident of murder.

(d) The witnesses have also admitted by identifying themselves and also their companion Gym mates running towards the Post Office building which was adjacent to the Gym and after some time returning back to the Gym area.

(e) The cross-examination also indicates that the witnesses have identified the movement of a black Chevrolet Car after the incident. When the evidence of PW.1 is carefully appreciated, he has not specifically denied the presence of accused persons near the place of incident when during the cross-examination of PW.1, it was suggested by the prosecution.

(f) PW.1 has also identified the Car in which Yogesh Goudar had entered into the Gym which further corroborates the submission of the approver. Likewise, PW.31 Shashank Jain has also identified PW.36 Shwetha Kulkarni and has deposed that he was shown with CCTV footage by Dharwad Sub-Urban Police wherein a person was wearing red jacket and cap coming to the road from Post Office towards Gym. It is deposed by him that by looking into the CCTV footage, he had not identified any accused persons.

(g) PW.32 Ananda Irappa Uddannanavar, has also admitted that CCTV footage was very clear and also, he had admitted of noticing two persons of which one was wearing blue jerkin and another wearing green checks full shirt was seen near the place of incident. Likewise, he has also deposed by identifying a person wearing red jacket and has categorically identified the motorbike.

(h) PW.33 Vinayak Pinjiyavar has also admitted about the clarity of CCTV and also about the assailants who seem to have been running in front of the Gym.

(i) PW.33 has admitted the presence of his other Gym mates who were seen to be running behind him towards Post Office building.

(j) PW.34 Mohan Yecharappa Mulmuttal has also deposed in consonance with the aforesaid evidence and has admitted that he was standing at a 10 feet distance from the Gym.

(k) PW.35 Vivekananda Shivshankar Dalwai, Gym Trainer, though had turned hostile, has admitted that the CCTV footage was clear and persons were clearly visible. With respect to the movement of the assailants, he had admitted the same. During the course of his cross-examination it was elucidated from him

by putting the suggestions in the form of questions which has all been admitted by the witness.

(l) PW.36 Shwetha Kulkarni, who was examined through VC has deposed that she was attending the Gym in lady's batch. The cross-examination would clearly indicate the manner in which the witness was won over by the accused. Though the witness deposes of attending the lady's batch, she has categorically admitted that as per the CCTV footage, her presence could be noticed on 15.06.2016 and it was seen that she was panting from fear. It was specifically questioned to her that whether she had come running in the similar manner or in any previous occasions to the Gym, she has denied the same. When she has further probed for the reason of running inside the Gym area, she has feigned her ignorance. However, she has admitted that she was looking outside the gate from the Post Office building at 07.38.01 hours. He has also admitted that the lady standing next to her was also standing in fear wherein she too had closed her mouth due to fear. At the height of feigning ignorance, she has deposed that she does not remember the reason for her run towards the Post Office building.

125. By considering the evidence, the fact which emerges and requires appreciation is that accused No.1 to 6 were from Dharwad and they were not seen near the place of incident as on 15.06.2016. Further it is pertinent to note that initially the investigation was commenced by accused No.19 Chennakeshava Tingarikar and the evidence of PW.39 and PW.93 would indicate that the CCTV footage which were all collected were not tampered and were in accordance with law. The aforesaid aspect boils down to another important questions being cropped up that if accused No.7 to 14 were not having any nexus with the crime, then why they were present on the fateful day at relevant point of time and that too when Yogesh Goudar was being murdered. Admittedly, accused No.8 to 14 were from Bengaluru and they did not had any job or work at Dharwad and also the reason for their movement in front of Uday Gym and the reason for their fanatic run immediately after the murder by

raiding the vehicles. It is relevant to note that during the course of investigation by Dharwad Sub-Urban Police, he had only seized the motorbike belonging to accused No.18 Vikas Kalburgi which is also admitted during the course of evidence of PW.63 it is noticed that the motorbike bearing Reg. No.KA-25-EA-6230 was not seized during the course of his investigation. Though the Bike and Scooter on which the accused persons had fled from the place of incident, no recovery was made by accused No.19 during the course of his investigation. As such, it would cast a serious aspersion with respect to the manner in which the investigation has been carried out by the State Police. Even during the course of cross-examination, it has been elucidated from the witnesses that one of the assailants was showing gesture towards another assailant when the vehicle of Yogesh Goudar had arrived near the Gym. As it was suggested that the person who was showing the gesture was accused

No.14 Harshith to accused No.12 Shahanawaz, the witnesses have deposed that they do not know about it. As could be noticed from the records, there is no specific denial with respect to the presence of accused persons. As per the records which is placed before the court, the call detail extracts pertaining to accused No.1 to 6 and 18 indicate their presence in and around the Gym area and not exactly near the Gym at the time of incident. As such, the contention of accused No.19 Tingariker, the then IO would be falsified since the aforesaid accused persons were not at all present. The CDRs at Ex.P220, Ex.P241, Ex.P242, Ex.P243 and Ex.P62(a) are required to be juxtaposed and looked into. The aforesaid documents would indicate that the evidence which is tendered by Basavaraja Muttagi is corroborated with the other materials placed before the court.

126. The learned Counsel for accused No.2 to 6 and 18 and also accused No.8 to 14 have seriously

disputed with respect to the same and have contended that unless the prosecution establishes the presence of accused, the CDR cannot be made as the basis for the same. It is relevant to note that the CDRs were obtained from various service providers and also necessary Certificate was obtained from them. It is to be kept in mind that under Cr.P.C., no specific schedule or manner of Certificate is prescribed for issuing the Certificate under Sec.65(B), unlike the provisions of Sec.63(4)(c) of Bharathiya Sakshya Adhiniyam, 2023. Though the evidence of PW.106 and PW.109 is seriously disputed by the defence on the premises that the Certificates which are issued are not in consonance with law. I have bestowed my anxious to the same and appreciated the evidence of PW.106 Prakash.G, who is the Nodal Officer at Vodafone India. In his evidence he has deposed of furnishing CDRs as per Ex.P211 to 220 and the Certificate as per Ex.P221. During the course of his cross-examination by the

learned Counsel for accused No.1, it was elucidated that CDR tower location was not available and it consists of only Cell ID which he had used to map the tower location. He was specifically questioned that whether he remembers the mapping of mobile number ending with 0003 during the period 15.06.2016 and 16.06.2016, he has deposed that he does not remember about the same and likewise when the evidence of PW.109 Johnson Tom is considered who was also Chief Nodal Officer of Bharathi Airtel Ltd., it is elucidated from him of furnishing the CDR during the period 01.01.2016 to 30.06.2016 as per Ex.P249 and three Certificates under Sec.65(B) of Indian Evidence Act was issued by him as per Ex.P250. He was also cross-examined at length by the learned counsel for accused No.7 and 15. The witness has deposed that the IO had not requested to identify the hand-set used by the suspected persons. Further he has deposed that he had issued the CDR in a CD

which was only a readable one and which could not be re-writted. The aforesaid aspects when compared with his further cross-examination wherein it is suggested that the mobile Number 9663406677 was activated on 05.03.2014, the witness had admitted the same. The aforesaid mobile number belongs to accused No.15 Vinay Kulkarni himself and when his CDR is carefully looked into and in particularly for the date 15.06.2016, a call was received by him from Natraj Sarj Desai, who is none other than his cousin and whereas PW.10 has specifically deposed that on the date of murder he had called Natraj Sarj Desai on several occasions to ascertain the whereabouts of accused No.15 Vinay Kulkarni and the call duration indicated that they are conversed for about 08.18.34 minutes and the tower address of accused No.15 Vinay Kulkarni indicated near Boys Hostel, inside Indian Institute of Science, C.V.Raman Avenue, Bengaluru. Further the tower location of Basavaraja Muttagi on 16.06.2016 at about

13.35.35 hours indicates of passing near Nice Road, Bengaluru. The learned counsel for accused No.21 has vehemently argued that if at all the accused had collected money near Sanky Tank and left the same, then how the tower location indicated of movement near Nice Road at 13.35 hours. The said aspect seems to be attractive. However, it is to be noticed from records and also from the incident that has taken place that a person cannot be expected to have a photographic memory with respect to the time. Admittedly, the incident had taken place in the year 2016, for which the evidence was being recorded in the year 2025 and hence the Court cannot expect a photographic memory from them. However, by looking into the materials, it is clear that accused No.7 to 14 were very much present near the Gym at the time of incident of murder and that too when they were not the residents of Dharwad, the question of their presence requires explanation from them.

127. Further, I have also considered the evidence of PW.108 P.S.Gopalakrishna, who has deposed he worked as Technical Assistant to the Investigating Officer in analysis of the connectivity chart which he had prepared by using IBM i2 analyst application and has also identified the chart at Ex.P247. He has deposed of assisting the Investigating Officer for segregation of the call details of Basavaraja Muttagi and Vinay Kulkarni and also the call details between Basavaraja Muttagi and Smt. Shivaleela Kulkarni which were collectively marked at Ex.P248. On perusal of the aforesaid documents, it does indicate that during the aforesaid period PW.10 was in continuous contact with accused No.15 till 02.06.2016 and they had conversed with each on 57 occasions commencing from 26.01.2016 to 02.06.2016. It is also noticed from the CDRs that during the period 16.04.2016 to 30.05.2016, totally 94 calls were made by PW.10 Basavaraja Muttagi to the wife of Vinay Kulkarni by

name Smt. Shivaleela Kulkarni. Curiously, after the aforesaid date and just prior to the commission of the crime no calls were seen from each other's mobile which once again raises the eyebrow that for what reasons suddenly the calls had stopped. In the matters pertaining to conspiracy, which rests on circumstantial evidence, the aforesaid aspect is required to be looked into. It is curious to note that with respect to the call details between Basavaraja Muttagi and Vinay Kulkarni and also between Basavaraja Muttagi and Shivaleela Kulkarni, specific question was posed by this Court under Sec.313 of Cr.P.C., at Question No.292. For the aforesaid question, the accused No.15 has not denied the same, but has deposed that he does not know about it. The aforesaid act also indicates of one of the circumstances which requires to be looked into. Further it is the settled principles of law that when the case rests on circumstantial evidence, the accused are required to

offer an explanation with respect to their presence near the place of incident. In this regard, it would be appropriate to rely upon the judgment of the Hon'ble Apex Court reported in **(2000)8 SCC 382 (State of West Bengal Vs. Mir Mohammed Omar and others)** wherein it is held as follows;

> ***31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.***
>
> ***32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.***

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the

Court what else happened to Mahesh at least until he was in their custody.

35. During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a

reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 SCR 199 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus:

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

> ***39. In the present case, the facts which the prosecution proved including the proclaimed intention of the accused, when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that victim's death was caused by the same abductors. If any deviation from the aforesaid course would have been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts, the inference would stand undisturbed.***

128. With respect to the admissibility of CDR, it would be appropriate to consider the judgment of the Hon'ble Apex Court reported in **(2010)6 SCC 1 (Siddarth Vasishta @ Manu Sharma Vs. State [NCT of Delhi])**, wherein it has been held as follows;

> ***223. The evidence of the telephone calls in the present case is admissible under Sections 8 and 27 of the Evidence Act. PW 16, Raj Narain Singh, has deposed that Tel. No. 3782072 is installed at 15, B.R. Mehta Lane in the name of O.P. Yadav, Ext. PW 16-C. The printout for the period***

25-4-1999 to 11-5-1999 is Ext. PW 16/C-1. The evidence of PW 19 further proved that Tel. No. 4642868 was installed at Majid Chakkarawali, Mathura Road vide Ext. PW 16-D and the printout for the period 3-5-1999 to 5-5-1999 is Ext. PW 16/D-1. PW 17, Mohd. Jaffar stated that Tel. No. 4642868 was installed at his PCO. Phone calls were made to USA from his STD booth on 4-5-1999. The photocopy of calls made is Ext. PW 17-A. PW 16 also proved that Tel. No. 3793628 was shifted to 23, Safdarjung (Ext. PW 16-E) and printout for the period 3-4-1999 to 31-5-1999 is Ext. PW 16/E-1. It is further in evidence of PW 45, Sanjay Garg, that Tel. Nos. 660550, 660499, 705692, 741001, 741002 are installed in the various premises of Piccadilly and the same is Ext. PW 45-B.

226. The above phone call details show that the accused were in touch with each other which resulted in destruction of evidence and harbouring. Thus the finding of the trial court that in the absence of what they stated to each other is of no help to the prosecution is an incorrect appreciation of evidence on record. A close association is a very important piece of evidence in the case of circumstantial evidence. The evidence of phone calls is a very relevant and admissible piece of evidence. The details of the calls made by the various accused to one another are available in Exts. PW 66-B, PW 66-D and PW 66-C.

129. The aforesaid judgment is aptly applicable to the case on hand and even there the Hon'ble Apex Court has held that as per the phone call details the accused were in touch with each other which resulted in destruction of evidence and harboring. Further it was held that the observation of the trial court that in the absence of materials to indicate that what they had stated to each other was of no help is not correct and further held that the evidence of phone call is very much relevant and admissible piece of evidence. As already discussed above, the digital records cannot be erased so easily even though human memory fades or even when attempts are made by witnesses of feigning their memory for extraneous reasons.

130. Last but not the least with respect to the manner in which the materials are collected by the Investigating Agency, it is contended that the procedures with respect to seizure and recovery are not properly made by the Investigating Agency. In

order to better appreciate the same, it would be appropriate to rely upon the judgment of the Hon'ble Apex Court which was considered as the first judgment in India with respect to Silent Witness Theory. In the judgment rendered in (1973)1 SCC 471 (R.M.Malkani Vs. State of Maharashtra), it has been held as follows;

> ***25. This Court in Magraj Patodia v. R.K. Birla [AIR 1971 SC 1295] dealt with the admissibility in evidence of two files containing numerous documents produced on behalf of the election petitioner. Those files contained correspondence relating to the election of Respondent 1. The correspondence was between Respondent 1 the elected candidate and various other persons. The witness who produced the file said that Respondent 1 handed over the file to him for safe custody. The candidate had apprehended raid at his residence in connection with the evasion of taxes or duties. The version of the witness as to how he came to know about the file was not believed by this Court. This Court said that a document which was procured by improper or even by illegal means could not bar its admissibility provided its relevance and genuineness were proved.***
>
> ***27. The admissibility of evidence procured in consequence of illegal searches and other unlawful acts was***

applied in a recent English decision in R. v. Maqsud Ali [(1965) 2 All ER 464] In that case two persons suspected of murder went voluntarily with the police officers to a room in which, unknown to them, there was a microphone connected with a tape-recorder in another room. They were left alone in the room. They proceeded to have a conversation in which incriminating remarks were made. The conversation was recorded on the tape. The court of criminal appeal held that the trial Judge had correctly admitted the tape-recording of the incriminating conversation in evidence. It was said "that the method of the informer and of the eavesdropper is commonly used in the detection of crime. The only difference here was that a mechanical device was the eavesdropper". The courts often say that detention by deception is a form of police procedure to be directed and used sparingly and with circumspection.

30. It was said that the admissibility of the tape recorded evidence offended Articles 20(3) and 21 of the Constitution. The submission was that the manner of acquiring the tape-recorded conversation was not procedure established by law and the appellant was incriminated. The appellant's conversation was voluntary. There was no compulsion. The attaching of the tape-recording instrument was unknown to the appellant. That fact does not render the evidence of conversation inadmissible. The appellant's

conversation was not extracted under duress or compulsion. If the conversation was recorded on the tape it was a mechanical contrivance to play the role of an eavesdropper. In R. v. Leatham [(1961) 8 Cox CC 498] it was said "it matters not how you get it if you steal it even, it would be admissible in evidence". As long as it is not tainted by an inadmissible confession of guilt evidence even if it is illegally obtained is admissible.

131. Under the circumstances, as already discussed above, the CCTV footage can be construed as a silent witness which indicates of the existence of materials and also the true set of facts. The Certificates which are issued under Sec.65(B) of Indian Evidence Act and also the testimony of the expert witnesses does justify the contentions of the prosecution.

CHAPTER : XIII

TEST OF IDENTIFICATION PARADE AND ITS RELEVANCE:

132. In the instant case the learned Counsel for accused No.2 to 6 and also the learned Counsel for

accused No.7 to 14 and 18 has vehemently argued that the Test of Identification Parade which is carried out is not in accordance with law. It is vehemently argued that the law with respect to Test of Identification Parade is well settled and that too in matters pertaining to heinous offences and when the accused persons are not known to the witnesses, the TIP is required to be conducted in a proper manner. PW.79 Mohammed Zubair.N has deposed that he was the Sub-Divisional Magistrate who had conducted the Test of Identification Parade at Dharwad Jail premise. He had also deposed that he had conducted TIP with respect to accused by name Dinesh, Ashwath, Sunil, Nazeer Ahmed, Shahanawaz and Nutan on 11.03.2020, 12.03.20220 and 13.03.2020 in the presence of 5 witnesses i.e., Anand Eranna, Dr. Dattatreya, Mahabaleshwar, Vikas Kalburgi and Vinayaka Basavaraj. He has also deposed about the procedures which was adopted by him to carry out the

TIP. The witness has also deposed that subsequently on 12.03.2020 he had conducted the TIP of the suspected person accused No.9 Ashwath by following the very same procedures in the presence of the witnesses Anand Erappa, Dattatreya, Mahabaleshwar, Vikas Kalburgi, Vinayaka Basavaraj and also the TIP of suspected accused Sunil was carried out along with the TIP of the suspect Nazeer Ahmed separately. Thereafter it is deposed by him that on 13.03.2020, the TIP of the suspected accused Shahanawaz was carried out in the presence of the witness Ananda Erappa, who had identified him and accordingly the proceedings were drawn as per Ex.P89. He has further deposed of carrying out the TIP thereafter of the suspected persons Shahanawaz, Nutan and again on 19.03.2020 he had once again received the request from CBI to conduct the TIP of the suspected person by name Harshith in the presence of the witness Mohan Mulmuttal, Lakshmi Benkatti and Vinayaka

Binjiyavar. He has deposed of carrying out the TIP immediately after the Covid-19 Lockdown by following the necessary protocol and procedures. He has deposed of conducting the TIP of the suspected Harshith, Dinesh.M, Ashwath. PW.30 Lakshmi Benakatti had identified accused No.9 Ashwath in all three rounds and he had specifically asked her that how she was identifying him, for which she has deposed that the suspect whom she had seen on the fateful day was a tall person having dark complexion and hence she had identified him. The witness has also deposed of conducting the TIP of the suspect Sunil K.S., Shahanawaz and others in the presence of the additional witnesses mentioned above. During the course of the cross-examination, it is suggested to him and enquired whether he had obtained any permission from the Court in this regard. That apart, it is repeatedly contended by the learned Counsel for accused that the TIP conducted was not proper. It is

also elucidated from the evidence that the witness PW.79 had not mentioned the height or weight of the persons who had matched with the suspected person. However, the witness had volunteered that similarly placed persons were made to stand and he has specifically deposed that he had not mentioned the colour of the person who was made to stand with the suspected person. I have carefully appreciated the same and in short and to summarize the identification process of the accused, it could be summarized as follows;

(a) PW.30 Lakshmi Benakatti had identified accused No.9 Ashwath as per Ex.P33 and also during the during the identification in the dock and also she had identified accused No.12 Shahanawaz as per Ex.P51.

(b) PW.32 Anand Irappa Uddannanavar had idneitifed accused No.12 Shahanawaz as per Ex.P89, but has resiled from his identification at the time of trial.

(c) PW.33 Vinayak Binjiyavar had identified accused No.14 Harshith as per Ex.P46, accused No.9 Ashwath as

per Ex.P48 and accused No.11 Nazeer as per Ex.P51.

(d) PW.34 Mohan Echarappa Mulmuttal has identified accused No.8 Dinesh as per Ex.P70, accused No.9 Ashwath as per Ex.P71, accused No.10 Sunil as per Ex.P72, accused No.13 Nutan as per Ex.P73.

133. It is also relevant to note that the aforesaid witnesses were specifically enquired by the SDM i.e., PW.79 Mohammed Zubair that how they were identifying the witnesses. It is also relevant to note that in the proceedings he has explained the reasons provided by the witnesses to identify them. In this regard, the law has been laid down by the Hon'ble Apex Court with respect to the resailing of evidence. The judgment rendered in **(2019)17 SCC 523 (Hemudan Nanbha Gadhvi Vs. State of Gujarat)**, wherein it has been held as follows;

7. The appellant was apprehended on suspicion along with another. The TIP was held without delay on 22-2-2004. Ext. P-38, the TIP report bears the thumb impression of PW 2 who was accompanied

by her mother. The TIP report has been duly proved by PW 11. The appellant was identified by PW 2. There appears no substantive challenge to the TIP identification in the dock, generally speaking, is to be given primacy over identification in TIP, as the latter is considered to be corroborative evidence. But it cannot be generalised as a universal rule, that identification in TIP cannot be looked into, in case of failure in dock identification. Much will depend on the facts of a case. If other corroborative evidence is available, identification in TIP will assume relevance and will have to be considered cumulatively.

9. The family of the prosecutrix was poor. She was one of the five siblings. The assault upon her took place while she had taken the buffalos for grazing. Her deposition was recorded nearly six months after the occurrence. We find no infirmity in the reasoning of the High Court that it was sufficient time and opportunity for the accused to win over the prosecutrix and PW 1 by a settlement through coercion, intimidation, persuasion and undue influence. The mere fact that PW 2 may have turned hostile, is not relevant and does not efface the evidence with regard to the sexual assault upon her and the

identification of the appellant as the perpetrator. The observations with regard to hostile witnesses and the duty of the court in State v. Sanjeev Nanda [State v. Sanjeev Nanda, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3 SCC (Cri) 899] are also considered relevant in the present context : (SCC p. 487, para 101)

"101. ... If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked."

11. It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available. In Iqbal v. State of U.P. [Iqbal v. State of U.P., (2015) 6 SCC 623 : (2015) 3 SCC (Cri) 301] , it was observed as follows : (SCC p. 630, para 15)

"15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the

identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject-matter of dacoity and the alleged weapons used in the commission of the offence."

134. By looking into the aforesaid aspects, it could be held that though the TIP cannot be construed as a substantive piece of evidence, the identification of accused in the dock during the course of trial is considered as substantive piece of evidence. It is also relevant to note that majority of the assailants were identified by the eye-witnesses at the earliest point of time. However, during the course of trial, except that of PW.30 Lakshmi Benakatti, the other eye witnesses have turned hostile. Under the circumstances, the cross-examination assumes importance and even the witnesses have deposed categorically identifying the accused persons.

CHAPTER: XIV

TAMPERING OF THE EVIDENCE BY THE POLICE OFFICER IN CONNIVANCE WITH THE CONSPIRACY ENTERED BETWEEN THE ACCUSED PERSONS

"Quis custodiet ipsos custodes?"
(Who will guard the guards?)

135. In the instant case, a strange situation has arisen wherein it is submitted that the investigation which was carried out by the Dharwad Sub-Urban Police were not in consonance with law and in fact they were making every effort to help the real assailants at the behest of accused No.15 Vinay Kulkarni. During the course of the evidence of PW.10 Basavaraja Muttagi, the approver, it is deposed by him that prior to the incident a meeting was conveyed in the Dairy of Vinay Kulkarni which was attended by the then Commissioner Mr. P.H.Rane, accused No.19 Channakeshava Tingrikar, accused No.20 Vasudev Rama Nilekani. It is also been deposed by him that after the incident he had met Vinay Kulkarni on the intervening night of 15/16.06.2016 near Sanky Tank, Bengaluru,

wherein it was narrated to him to contact the Police Commissioner who would arrange for his surrender. It would also be appropriate to look into the case of the prosecution and also the manner in which the investigation was conducted by the Dharwad Sub-Urban Police. PW.89 Sangamesh Mallappa Madivalara, it has been elucidated that the CCTV footage was recovered under the mahazar at Ex.P167 and also the CCTV footage was later on displayed by the Investigating Officer to the then accused No.1 and the present approver Basavaraja Muttagi. If for a moment, the aforesaid aspect is to be accepted, then the question which requires to be answered is why the Investigating Officer accused No.19 Chennakeshava Tingarikar had kept quite when none of the accused i.e., accused No.1 to 6 were not seen in the vicinity when the murder of Yogesh Goudar had taken place. The genuineness of CCTV footage is not at all in dispute and the same was sent for scientific examination to the State FSL

wherein PW.93 Dr. Kumudha Rani had given her opinion. PW.93 was examined as PW.54 before the learned 4th Additional District and Sessions Judge Court at Dharwad, wherein she has deposed in the similar manner as she has deposed before this Court. During the course of cross-examination, apart from denial nothing was suggested to her by the learned counsel for accused No.1 to 6. Though PW.10 deposes in his evidence that after the incident he had moved in front of the Gym in his black coloured Chevrolet Car which he had purchased from PW.70 Chandrashekar Pujar, the IO had not bothered to investigate over the same. The aforesaid aspects would only lead to a situation that accused No.19 Chennakeshava Tingrikar was in a hurry to complete the investigation. I have also carefully appreciated the submissions made by the learned counsel for accused No.19 Sri. S.Balan, who has vehemently argued that why accused No.19 alone has been castigated in the above case and that too when he was

not the one who had completed the investigation and infact he had only conducted investigation for 22 days and later on it was handed over to his successors. Further it is argued that it was the duty of the successors to verify the same and file the final report. It is the submission of the learned counsel that only preliminary investigations were carried out by him and also it was monitored by his superior officers i.e., the Commissioner of Police Mr. P.H.Rane, the then Dy.SP Mr. Jinendra Kanagavi, the then ACP, accused No.20 Vasudev Rama Nilekani. It is his contention that accused No.19 had handed-over the further investigation to Mr. S.S. Hiremath, who in turn had handed-over investigation to PW.107 Motilal Pawar. By pointing out to the aforesaid aspects, it is contended by the learned Counsel that if at all a person is required to be held responsible, then it should be the higher Police authorities who had monitored the investigation and also permitted to file the final report. The submissions seem to be

very attractive at the first instance. However, when the same is analyzed in deep, it would clearly indicate the overt-act on the part of accused No.19 who was entrusted with the investigation of a heinous offence. The aforesaid situation will lead to a situation wherein the Latin phrase coined by Roman poet Juvenal can be quoted, which reads as;

"Quis custodiet ipsos custodes?"
(Who will guard the guards?)

136. In this regard, it would be trite to rely upon the often-quoted word of the celebrated justice Hon'ble Krishna Iyer who in his iconic style had quoted in one judgment as:

"Who will Police the Police"

137. The aforesaid judgment would clearly throw light in the manner in which the Constitutional rights guaranteed by the Constitution is required to be protected. In the judgment rendered in **(1981)1 SCC 639**

(Prem Chand (Paniwala) V Union of India) it has been held as follows:

> ***Who will police the police? Is freedom of movement unreasonably fettered if policemen are given power of externment for public peace? These twin problems of disturbing import, thrown up by this bizarre case, deserve serious examination. The former is as important as the latter, especially when we view it in the strange police setting painted by the petitioner. The constitutional question, which we will state presently and discuss briefly, has become largely otiose so far as the present petitioner is concerned because counsel for the State has assured the Court that they will drop police surveillance or any action by way of externment as proposed earlier. The police methodology, with sinister potential to human liberty described by the petitioner, if true, deserves strong disapproval and constitutional counteraction by this Court. But before committing ourselves to any course, we must set out the factual matrix from which the present case springs.***
>
> ***9. The provisions of the statute ostensibly have a benign purpose and in the context of escalation of crime, may be restrictions which, in normal times might appear unreasonable, may have to be clamped down on individuals. We are conscious of the difficulties of detection and proof and the strain on the police in tracking down***

criminals. But fundamental rights are fundamental and personal liberty cannot be put at the mercy of the police. Therefore, Sections 47 and 50 have to be read strictly. Any police apprehension is not enough. Some ground or other is not adequate. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in Delhi or any part thereof is hazardous to the community and its safety. We are clear that the easy possibility of abuse of this power to the detriment of the fundamental freedoms of the citizen persuades us to insist that a stringent test must be applied. We are further clear that natural justice must be fairly complied with and vague allegations and secret hearings are gross violations of Articles 14, 19 and 21 of the Constitution as expounded by this Court in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] . We do not go deep into this question for two reasons: There is another petition where the constitutionality of these identical provisions is in issue. Secondly, the counsel for the State has fairly conceded that no action will now be taken even by way of surveillance against the petitioner. In an age when electronic

surveillance and midnight rappings at the door of ordinary citizens remind us of despotic omens, we have to look at the problem as fraught with peril to constitutional values and not with lexical laxity or literal liberality.

138. The aforesaid judgment would clearly laid down the principles on which the necessary protection of fundamental rights and also the manner in which the investigation is required to be carried out. I have bestowed my anxious reading to the evidence of PW.51 Ramesh, who was the Assistant to the then Investigating Officer Tingarikar. It is relevant to note that he has deposed that on 17.06.2016 at about 09.00 Am in the morning he was directed by accused No.20 Vasudeva Nayak to go to new CR Office at Hubballi and as such he has visited the same. It is also deposed by him that Vasudeva Nayak was also present there and had shown 5 accused persons there and at the time of recording the statement PW.24 Shivananda Chalavadi along with his staff

Shankaragouda Patil, Basavaraj Kadakola had come to the said place and given them a wooden stick and koitha. He has also deposed about visiting Yerrikoppa and drawing the mahazar depicting it to be the recovery of weapons which was handed over by PW.24 Shivananda Chalavadi to the then accused No.1 to 6. Further he has deposed that Tingarikar had requested to collect the blood of Yogesh Goudar at the time of Autopsy which was later on collected through Mr. Thanaji. The other material which is deposed against accused No.19 Tingarikar and accused No.20 Vasudeva Nayak is that he had noticed a black coloured bag kept in the cupboard on 16.06.2016, for which the staff in the Police Station had answered that it was brought by Vasudva Nayak and it should not be touched by any other persons. I have bestowed my anxious reading to the cross-examination of PW.51. During the course of cross-examination, the witness has admitted that he was the one who had scribed the

mahazar as per the instructions of his higher officers. However, it is elucidated from him that it is the normal practice to obtain the signature of the higher officers if they are present. In the instant case, the signature of accused No.20 is not forthcoming in any of the mahazars nor he is seen in any of the photographs. It is also noticed from records that it is elucidated from him that accused No.19 has acted as IO only for a period of 22 days. Later on, the witness was recalled by accused No.19 and subjected to cross-examination. It was deposed at that point of time that till the weapon was sent to FSL for scientific examination, it was in the custody of Dharwad Sub-Urban Police. The aforesaid suggestion itself would indicate that the weapons allegedly recovered by Mr. Tingarikar were definitely in his custody. Further it is elucidated that the blood which was smeared on the weapon were reddish in colour and also it was liquid in nature. The learned counsel for accused No.19 has argued that

how the blood can be collected after the murder since the blood will be clotted immediately after coming out of the veins. Further he has submitted the color of the blood would change into brownish/black color and coagulation would take place. In order to appreciate the same, it would be appropriate to refer to Modi's Jurisprudence and Toxicology, wherein it is held as, post-mortem clots are soft, gelatinous and non-adherent to the vessel wall, often resembling 'currant jelly' or 'chicken fat', thereby clearly distinguishable from antemortem thrombi. As such, when it is categorically admitted by the Accused No.19 of collecting the blood samples since the Medical officer has deposed in this regard and as there is no cross examination to that extent and also for the reason that it was suggested to the other police officers that the entire materials were in the custody of the investigating officer, until it was sent to FSL, the aforesaid aspect requires to be considered that the

Accused No.19 had made a foul play in this regard. In order to better appreciate the same, I have considered the evidence of the Medical Officer who was examined as PW.94 Dr.Santhosh Kumar, who had conducted the Postmortem. During the course of his evidence, a Court question was posed that for how many hours the blood in the dead body will not be clotted and it can be collected. The witness has deposed that some amount of blood will be present in the dead body in the liquid form and some portion will be clotted. Further he has deposed that by using syringe from the collected areas of blood in the dead body, they had collected the same. He has also deposed of furnishing the collected blood to the Investigating Officer. Though it is submitted that the sample blood which was collected was for serological test, the admitted fact which remains is that the blood was collected and sent to the Police Station. At this juncture, the suggestion made by the learned counsel for accused No.19 also assumes

importance for the reason that he himself has suggested that the materials were in the custody of Dharwad Sub-Urban Police Station till the period it was sent for scientific examination. The aforesaid aspects would clearly vindicate the contention of CBI wherein it is stated that the sample blood which was collected was used to smear on the implanted weapons. Further during the course of cross-examination, he was questioned about the extent of blood which was smeared on the weapon, for which the witness has feigned his ignorance. In other words, the aforesaid question itself would indicate of categorical admissions by the accused. Further a question was also posed by the learned counsel for accused No.19 that how the blood was smeared on the weapon either by hands or otherwise. The answer tendered by the witness is that he does not remember that. In other words, once again the categorical admission fortifies the case of the present prosecution.

It is also suggested that he had intentionally not ascertained about the veracity of the blood belonging to Yogesh Goudar. If such a suggestion is made, then obviously the accused has to suggest the reason for posing the same. It is the case of the CBI that the weapons were not used for the commission of murder, but it was smeared on the same to falsely cast aspersions. If for a moment, the same is to be accepted, then the question is why the same was being smeared on the weapon. As such, indirectly the suggestion is explaining and fortifying the contention of the prosecution. Further he has deposed that he cannot say whether the blood which was present in the Police Station was drawn prior to death or after the death of Yogesh Goudar. The aforesaid aspect also fortifies the contention of the CBI that accused No.19 had conducted a botched-up investigation only to substantiate his faulty investigation. The indirect admission of the accused of presence of blood in the

Police Station and non-explaining about the same during the course of the statement being recorded under Sec.319 of Cr.P.C., by accused No.19 would cast a serious aspersion against him. Further the evidence of PW.10 would clearly corroborate with the aforesaid aspects and as such a serious doubt is raised with respect to the manner in which the investigation was being conducted.

139. I have also bestowed my anxious reading to the cross-examination and also the submissions made by the learned Counsel for accused No.19 in this regard. It has been argued that the subsequent Investigating Officer had not conducted any proper investigation, it is relevant to note that the case is based on circumstantial evidences and at times the entire case when rests on circumstantial evidence, the materials collected by the previous I.O will be taken forward. Even otherwise, it is relevant to note that prior to handing over the case files, the accused No.19

had already completed the majority of investigation and as noticed from the chief-examination of PW.7 Motilal Pawar, he was entrusted with only limited investigation since majority of the investigation were already completed by accused No.19 himself. As such, the contention of PW.51 seems believable.

140. I have also bestowed my anxious reading to the evidence of PW.91 Basavaraj, who was a recovery mahazar witness. During the course of his evidence, he has deposed that in the year 2016 he was summoned to the Dharwad Sub-Urban Police Station and there he had met accused No.19 Chennakeshava Tingarikar. Further he has deposed that after his visit to the Police Station he was requested to affix his signature to some mahazar and later on he was taken to a place near Harihara wherein photographs were taken and also after about 2 days he was called to the Police Station and was taken to Yerrikoppa village. He has deposed that when they had reached Yerrikoppa village, already

a vehicle was waiting for them and a person had got down from Tata Sumo vehicle by holding Talwar and necessary photographs were taken. During the course of cross-examination, nothing much was elucidated on behalf of accused No.19. Further he has denied the suggestion that when he had visited the Police Station, the accused persons were present and only after drawing the mahazar, the signatures were obtained. The denial of the aforesaid suggestion and also the unflinching material which is placed before the Court would fortify the case of prosecution than that of the defence counsel. I have also bestowed my anxious reading to the evidence of PW.97 Eshwarappa Madivalappa Kondikoppa. He has deposed that in the year 2016, he was requested by Dharwad Police to affix signature to some document and has further deposed that though he had affixed his signature to Ex.P.110 mahazar, no weapons were shown to him. The other mahazar witness PW.98 Hanumantha has

also deposed in similar manner. It is his evidence that he has requested to get down from the Jeep and the concerned Police had taken out one Koitha (in vernacular language) and had obtained his signature of some document which is none other than Ex. P98 and Ex. P106 mahazars. The other witness who deposes about the recovery of weapons is PW.99 Basavaraj Dayanand Thondikatti. He has also deposed in the similar manner.

141. The learned counsel for accused No.20 Sri. K.B.K.Swamy has vehemently argued that in none of the evidence no incriminating material is forthcoming against accused No.20. The aforesaid submission seems to be justifiable. It is relevant to note at this juncture that nowhere the presence of accused No.20 is forthcoming. However, at the same time, the materials on record would indicate the definite active role being played by accused No.19 Tingarikar. Though it is argued that accused No.19 did not had

any vested interest, it is noticed from records that he was actively involved in the commission of offence. That apart, the evidence of PW.51 Ramesh, who was the Assistant Investigating Officer would tilt the balance in favour of the investigation of the CBI. In normal circumstances, nothing much can be attributed if the mahazar witnesses turns hostile. However, in the present scenario, wherein a serious aspersion is casted against the Investigating Officer himself, the Court will have to scrutinize each and every aspect. The act of the Investigating Officer in not verifying the CCTV footage and also though he had collected the CDRs from the concerned higher authorities, he had not taken any pain to verify whether accused No.1 to 6 were very much present near the scene of incident.

142. I have also considered the evidence of PW.56 Mushtaq Ahmed, who is the owner of the scrap shop. The aforesaid witness was considered as hostile

witness and has feigned his ignorance about his acquaintance with the Police Constable by name Rajisab Gunjal. During the course of his cross-examination, he has denied of handing over a Macchu to Rajisab Gunjal. Thereafter it would be appropriate to consider the evidence of PW.58 Rajisab Gunjal himself, wherein he had feigned his ignorance and denied of handing over any weapon. During the course of his cross-examination, nothing much was elucidated from him. On perusal of the aforesaid evidence along with the evidence of PW.10 Basavaraja Muttagi, it would indicate that accused No.19 Chennakeshava Tingarikar had conducted the investigation to suit his needs and not in accordance with law. I have also carefully appreciated the evidence of PW.50 Mallavva Goudar. In her evidence, she has deposed of lodging the complaint as per Ex. P1. However, she has not uttered anything with respect to Ex. P7 threat letter, which her late husband had received prior to his

murder. She was also examined as PW.1 before the Sessions Court at Dharwad initially. In her chief-examination she has deposed that they had received threat letter and identified it, which was marked as Ex. P3 (the very same document is marked as Ex. P7 before this Court). With this evidence, the deposition of PW.1 Dr. Dattatreya Gudaganti is required to be considered. In his chief-examination he has deposed of helping PW.50 Mallavva Goudar to draft the complaint and he has specifically deposed that after lodging the complaint he was taken to a Guest House near the Police Station for the purpose of enquiry and he was kept in the Guest House for about 3 days by the concerned Police till 17.06.2016. The aforesaid aspect assumes importance in the above case when the same is considered from the point of view of the cross-examination made by the learned counsel for accused No.15. During the course of his cross-examination, he has admitted that Smt Mallavva Goudar had shown

him the anonymous letter which she had received. Further he has deposed that in the said letter did not contain the name of Sri. H.K.Patil or Sri. Vinay Kulkarni. Further he has deposed that if their names were forthcoming then he would have included in it and also, he has deposed that the letter which Smt. Mallavva had given to him did not have the name of the accused person. If for a moment the aforesaid evidence is juxtaposed and compared with the evidence of PW.2 Gurunatha Goudar, it would indicate that on the fateful day he had visited the Police Station and PW.1 Dr. Dattatreya had drafted the complaint. Further he has deposed that when Smt. Mallavva had taken the name of Vinay Kulkarni as the person responsible for the murder, the accused No.19 had asked them not to take the name of Vinay Kulkarni and further he had directed them not to mention the name of Vinay Kulkarni and to assign the reason for murder was political reasons and had also collected

the letter stating that it was required to investigation. If for a moment, the evidence of PW.1 is compared, he deposes that Smt. Mallavva had not handed over any letter to the IO on that day but he deposes in a positive manner during the course of his cross-examination that Smt.Mallavva had shown him the threat letter addressed to Yogesh Goudar. When Yogesh Goudar or Smt.Mallavva were not his family friends nor their relative, then how Smt. Mallavva was able to show the letter to Dr.Dattatreya, who positively asserts before the Court that name of Vinay Kulkarni was not forthcoming in the letter.

143. When the evidence of PW.2 Gurunatha Goudar is looked into, he deposes that on the next day he had visited the Police Station and again he had handed-over the anonymous letter which was recovered in the presence of PW.111 Yogappa Gujjannanavar. I have appreciated the evidence of PW.111 who has deposed that on 16.06.2016 he had

received the call from the Police Station and immediately he had contacted Gurunatha Goudar and Mahanthesh and thereafter they had visited the Police Station. He has deposed that at that time a photograph was obtained depicting it as a recovery mahazar wherein a letter was being handed over. He has identified the letter at Ex. P7 and also the mahazar at Ex. P8. During the course of cross-examination, nothing much was elucidated from him nor anything was suggested to him with respect to Ex. P7 letter. The aforesaid aspect once again cast aspersions against the investigation carried out by accused No.19 Chennakeshava Tingarikar.

144. Now coming to the other aspect of attracting the provisions of Prevention of Corruption Act against accused No.19 Chennakeshava Tingarikar and accused No.20 Vasudeva Nayak. It is the case of the prosecution that accused No.20 had demanded bribe in the above case. In order to ascertain the same, at

the first instance it would be appropriate to consider the evidence of PW.6 Nagaraj Todkar. PW.6 Nagaraj Todkar has specifically deposed that he had never met Vasudev Nilekani at any point of time. At the cost of repetition, it is to be noticed from records that as per the say of accused No.15 Vinay Kulkarni had directed Basavaraja Muttagi to enter into Agreement to Sale with PW.6 Nagaraj Todkar so as to portray the commission of murder as the one that had taken place for the reason of planned dispute. It is also noticed from records that the negotiation had taken place at the house of Mr. Ravi Patil and the aforesaid aspect has been admitted by PW.6, PW.7 Veeresh Byahatti, PW.8 Nataraj Makkigoudar and also PW.23 Ashok Patil. It is curious to note that Ravi Patil was not examined by CBI. At this juncture it would be appropriate to consider the authority which is relied upon by the learned Senior Public Prosecutor which is

reported in (1998) Supp SCC 686 (State of U.P. V Anil Singh) wherein it is held as:

> ***15. Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In Bankim Bihari Maiti v. Matangini Dasi [AIR 1919 PC 157 : 24 Cal WN 626] the Privy Council had this to say (at p. 628):***

> ***"That in Indian litigation it is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue. There is, on some occasions, a tendency amongst litigants ....to back up a good case by false or exaggerated evidence."***

145. Though in the aforesaid authority it is held that mere non examination of a particular witness cannot be a reason to drawn adverse inference, still it is held by the Hon'ble Apex Court that if there are other witness who speaks about it, the same can be considered. However, in the instant case, the main person who was supposed to speak about handing over of money is not examined by the prosecution. Which in my humble opinion would go to the root of the case. Further it is submitted that accused No.20 Vasudev Nilekani had demanded bribe of Rs.25 lakhs from Ravi Patil and as such he was dull. When the evidence of PW.23 Ashok Patil is looked into, it indicates that he was requested to hand-over a sum of

Rs.5 lakhs which was allegedly handed over through PW.24 Shivananda Chalavadi. If for a moment, the evidence of PW.23 is appreciated, it does indicate that he admits that none of the Dharwad Police had pressurized him to pay the amount and he has volunteered that his brother Ravi Patil was pressurized to make the payment. If for a moment the same is considered, then the best person to depose about the same was Ravi Patil, however he was not examined. Thereafter, the evidence of PW.24 Shivananda Chalavadi is required to be considered. He was considered as a hostile witness and apart from mere suggestion that he had given a voluntary statement on 11.08.2020 that a sum of Rs.5 lakhs was handed over to accused No.20, nothing much was elucidated from him. As such, the submissions made by the learned Counsel for accused No.20 Sri. K.B.K.Swamy seems justified that the chain of incidence is broken. That apart, the evidence of PW.7 Veeresh Byahatti when

considered does not indicate that the name of Shivananda Chalavadi nor Nataraj Makigoudar was taken up with respect to collecting the bribe amount. In order to attract the provisions of Sec.7 of Prevention of Corruption Act 1988 and also the provision of Sec.13(1)(d) and Sec.13(2) of the aforesaid Act, the demand and payment of bribe is required to be established beyond reasonable doubt. Even otherwise, there are no materials to indicate that accused No.20 was involved in the investigation process and apart from the statement of PW.10 Basavaraja Muttagi that he had contacted the ACP prior to his surrender and the statement of PW.51 Ramesh that accused No.20 had directed him to reach new CR Office along with necessary staff to conduct the mahazar, no materials are pointing out against them. I have also noticed the submissions made by the learned counsel for accused No.20 with respect to recording of the statement. The statement of PW.6 Nagaraj Todkar was recorded on

06.03.2020 and in that statement no incriminating material was found against accused No.20. The delay of disclosure by the witness would again cast a serious doubt with respect to the veracity. Likewise, when the evidence of PW.41 Mahesh Shetty is considered, it indicates that he has deposed that Basavaraja Muttagi during the course of his custodial interrogation has telephonically called him and requested him to hand over a sum of Rs.2 lakhs to Vasudeva Nilekani which he had accordingly paid after 2 days at his Police Station, Dharwad. During the course of his cross-examination, apart from denial nothing much was elucidated from him. However, at the same time the evidence of PW.10 Basavaraja Muttagi is to be appreciated. He has deposed that an amount of Rs.5 lakhs was handed over to Basavaraj Matapathi who in turn handed it to Babu Katagi and it was stated that out of that Rs.4 lakhs was to be given to Vasudeva Nayak and remaining Rs.1 lakh was to be given to

Chennakeshava Tingarikar. Further he has deposed that Rs.75,000/- was additionally given to Shankaragouda Patil. As such, the allegations of bribe against accused No.19 is demanding and accepting Rs.1 lakh through Basavaraja Matapathi and another Rs.75,000/- through Shankaragouda Patil. PW.64 Basavaraja Matapathi had turned hostile and had not supported the case of the prosecution. He was treated as hostile and he has deposed that a sum of Rs.8 lakhs was given by Basavaraja Muttagi in the year 2016 for constructing Poultry Farm which was not materialized. However, he has denied the suggestion that out of the said amount he had handed over Rs.4 lakhs to one Babu Katagi. Even otherwise, the evidence of PW.54 Shankaragouda Patil also does not indicate of any support to the prosecution. However, with respect to the defective investigation he has categorically admitted that Basavaraja Kadakola was the Driver of Shivananda Chalavadi in the year 2016

and if for the sake of arguments, the evidence of PW.10 is recalled, he has deposed that when they were kept in CAR Office, Shivananda Chalavadi along with his Driver had visited the same and had handed over the implanted weapons. The aforesaid aspect is also forthcoming in the evidence of PW.51 Ramesh. It is curious to note that the very same witness who is also a Police Officer had given his statement under oath in particularly under Sec.164 of Cr.P.C., by describing about the aforesaid aspects. He has deposed that he had tendered evidence before the Court in several cases but he had not tendered false evidence before any Court. It is also elucidated from him that during the course of recording their statement through VC, the CBI officials were standing next to him. However, the aforesaid aspect is falsified by the evidence of PW.69 Anil Kumar, who worked as a System Assistant, is considered, it indicates that the Video Conferencing was conducted by the concerned Court as per the

procedure and he has deposed that no persons were present at the time of recording the evidence through VC and only witnesses and coordinators were permitted at remote point of the witness. He was not at all subjected to cross-examination. All the aforesaid aspects would clearly indicate that PW.54 Shankaragouda Patil has deposed falsely before the Court.

146. Once again, it is disheartening to note that the concerned Police Officers have taken the Court and judicial system for granted and have deposed in a reckless manner wherein, they have deposed casually in this Court also that they had tendered false evidence under oath before the learned Magistrate.

147. When the entire facts of the case are considered, it does indicate that the prosecution has failed to establish the demand of bribe being made by accused No.19 and 20. However, with respect to the

other aspects, it is crystal clear that the allegations leveled against accused No.19 with respect to implanting of the weapons and conducting a faulty investigation as a part of larger conspiracy which he had entertained with accused No.15 is clearly established by the prosecution. With respect to faulty investigation being conducted by the Accused No.19 in connivance with Accused No.15 Vinay Kulkarni, the court is required to consider whether it is a fit case to initiate necessary action in this regard. In this regard the court has relied upon the judgment of the Hon'ble Apex court reported in (2012)8 SCC 263 (***Dayal Singh v. State of Uttaranchal***) wherein it is held as follows:

> ***25. Similarly, the investigating officer has also failed in performing his duty in accordance with law. Firstly, for not recording the reasons given by Dr C.N. Tewari for non-mentioning of injuries on the post-mortem report, Ext. Ka-4, which had appeared satisfactory to him. Secondly, for not sending to the FSL the viscera and other samples collected from the body of the deceased by Dr C.N. Tewari, who allegedly handed over the***

same to the police, and their disappearance. There is clear callousness and irresponsibility on their part and deliberate attempt to misdirect the investigation to favour the accused.

26. This results in shifting of avoidable burden and exercise of higher degree of caution and care on the courts. Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. This Court in State of Punjab v. Ram Singh [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] stated that the ambit of these expressions had to be construed with reference to the subject-matter and the context where the term occurs, regard being given to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires maintenance of strict discipline. The consequences of these defaults should normally be attributable to negligence. Police officers and doctors, by their profession, are required to maintain duty decorum of high standards. The standards of investigation and the prestige of the profession are dependent upon the action

of such specialised persons. The Police Manual and even the provisions of CrPC require the investigation to be conducted in a particular manner and method which, in our opinion, stands clearly violated in the present case. Dr C.N. Tewari, not only breached the requirement of adherence to professional standards but also became instrumental in preparing a document which, ex facie, was incorrect and stood falsified by the unimpeachable evidence of the eyewitnesses placed by the prosecution on record. Also, in the same case, the Court, while referring to the decision in Awadh Bihari Yadav v. State of Bihar [(1995) 6 SCC 31] noticed that if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice.

27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of

Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)

"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104 : AIR 1999 SC 644] enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are

the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

"42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play."

(emphasis supplied)

30. With the passage of time, the law also developed and the dictum of the Court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in NHRC v. State of Gujarat [(2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44] held as under: (SCC pp. 777-78, para 6)

"6. ... '35. ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in

relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators.' (Zahira Habibullah case [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , SCC p. 395, para 35)"

35. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab [(2003) 12 SCC 155 : 2004 SCC (Cri) Supp 343 : 2004 Cri LJ 28] , the Court, while dealing with the discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)

> ***"8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."***

148. The aforesaid judgment would clearly show the way ahead wherein the witness has turned hostile and also the situation wherein the investigating officer conducts lopsided investigation. Further in this regard with respect to initiating proceeds will be dealt by me in the later part of the judgment. Since the materials on record are not positively indicating of active role by accused No.19, a benefit of doubt is required to be given to him. Accordingly, point No.9 is answered in the **negative**.

149. Now coming to the other aspect of the involvement of accused No.21 Somashekar Nyamagoudar in the above case. It is submitted that accused No.21 had played an active role in the course

of entering into conspiracy by accused No.15 Vinay Kulkarni with the then accused No.1 Basavaraja Muttagi. It is relevant to note that during the course of chief-examination of PW.10 Basavaraja Muttagi, he has deposed that on 13.06.2016 when he had visited Vinay Dairy, he had met his brother Natraj Desai and conveyed him that it would be better to stop the plan to commit the murder. However, accused No.15 had not agreed to the same and had conveyed through accused No.21 that the plan could not be stopped and was to be continued which was conveyed to Nataraj Desai. The other evidence which is forthcoming against accused No.21 is with respect to PW.48 Nagaraj, who has deposed that on 16.06.2016 Muttagi had requested him to drop him to Dharwad and when he had reached Nice Road at about 12.00 PM, he came in a Taxi after about 5 to 10 minutes. It is submitted that PW.10 had collected money on 16.06.2016 near Sanky Tank from accused No.21 Somashekar Nyamagouda.

However, when the evidence of PW.46 Gowda Prakash Devendra is carefully appreciated, he has deposed that on the fateful day he had picked up Basavaraja Muttagi from Dollars Colony and had reached Sanky Tank at about 09.00 AM and he was requested to stop the car for about 10 minutes and thereafter Basavaraja Muttagi had returned and had asked him to drive towards Chitradurga. However, he had got down near Nice Road Junction itself. Nowhere the witness deposes of noticing the presence of any other person at least to indicate the presence of accused No.21 Somashekar Nyamagouda. That apart, the evidence of PW.48 Nagaraj, wherein it is stated that Basavaraj Muttagi had called upon Vinay Kulkarni and also his Personal Secretary Somashekar Nyamagouda and intimated regarding the surrender before the concerned Police amounts to hearsay evidence. Even otherwise, I have bestowed my anxious reading to the evidence of PW.67 Umapathi. Even though the name of

Somashekar Nyamagoudar is taken up in his evidence, it amounts to hearsay evidence. As such, the only aspect which is required to be considered is whether accused No.21 Somashekar Nyamagoudar was present on the fateful day i.e., on the intervening night of 15/16.06.2016 at about 01.30 AM near Sank Tank, Sadashivanagar. As already discussed above, the Car driver with whom Basavaraja Muttagi had travelled has clearly identified accused No.16 Chandrashekar Indi as the one who was present at that point of time which would clearly corroborate with the evidence of PW.10 Basavaraj Muttagi. That apart, the presence of accused No.21 is not forthcoming either through the evidence of any other persons or through the digital evidence. No doubt the basic principles of conspiracy does indicate that the physical presence is not required, but still there are no materials to indicate that Accused No.21 Somashekar Nyamagoudar had entertained such intention.

150. The aforesaid aspect would lead to a situation wherein it is required to consider the presence of accused No.21 on the fateful day. The learned Counsel Sri. Nithin Ramesh has deciphered the CDR records which were marked before the Court as exhibit and through that the location of Basavaraja Muttagi is tried to be pointed out. As per the same, i.e., Ex.P.219, accused No.21 on 16.06.2016 from morning 06.00 AM to 10.48 AM was found in the vicinity of Raj Bhavan. The call detail extracts would clearly indicate of his tower location and if for a moment the very same tower location of Basavaraja Muttagi is juxtaposed and seen, the same reflects some other place. Under the circumstances, the meeting of accused No.21 on 16.06.2016 near Sanky Tank itself is not clearly established by the prosecution. As such, benefit of doubt is required to be given to him.

CHAPTER : XV
ALIBI

151. The other allegations which are leveled against accused No.21 is creating of false tour programs for accused No.15 Vinay Kulkarni to visit Delhi. It is submitted that in order to create alibi, the accused No.15 had created false tour program on 12.06.2016 and to return back on 13.06.2016. However, the evidence of PW.61 Ananth Kaskar, who was examined before the Court. Prior to that, the concept of alibi is required to be considered. The word alibi means "elsewhere" wherein an accused takes recourse to a defence line that when the occurrence took place, he was far away from the place of occurrence which would extremely make improbable of his participation in the crime. The prosecution has relied upon the judgment of the Hon'ble Apex Court reported in **(1997)1 SCC 283 (Binay Kumar Singh Vs. State of Bihar),** wherein it has been held as follows;

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene

> ***when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Nath Pandey v. State of U.P. [(1981) 2 SCC 166 : 1981 SCC (Cri) 379]; State of Maharashtra v. Narsingrao Gangaram Pimple [(1984) 1 SCC*** 446 : 1984 SCC (Cri) 109 : AIR 1984 SC 63].

152. There cannot be any qualms with respect to the ratio laid down in the said authority. However, at the same time, the court is required to consider whether an alibi was really created by accused No.21. If for a moment, the evidence of PW.61 Ananth Kaskar is looked into who is none other than the Secretary at DPAR, Bengaluru, it would indicate that during the period 01.06.2016 to 17.06.2016 totally four tour programs of Vinay Kulkarni was furnished and he has also explained the procedures about submitted the

tour program. Further he has deposed about the tour program pertaining to 12.06.2016 and 13.06.2016. I have also considered the evidence of PW.74 Sanjeev Kumar, who had worked as Personal Assistant to Vinay Kulkarni during the period 2015-16. He has also deposed that as per Ex. P125 tour program, the same was signed by Somashekar Nyamagoudar. However, mere preparing the tour program will not be suffice to hold that an alibi was created by accused No.21. Further the prosecution had also examined PW.105 Prachi Khade to prove their case in this regard. PW.105 Prachi Gajendra Khade had worked as Manager Operations, SIMM-SAMM Airways Pvt. Ltd., during the period 2018 to 2022 and she has deposed that based on the records of their office they had provided details of the person who had availed Chartered Airplane VTSSF pertaining to the date 13.06.2016 and 14.06.2016 as per Ex. P210. I have carefully considered the aforesaid document which is

placed before the court. However, the records do not indicate of any bookings being made by accused No.15 in this regard. As such, the contention of the prosecution with respect to creating alibi accused No.21 is also not established. Under the circumstances, the benefit of doubt is required to be given to accused No.21 with respect to his presence and participating in the commission of murder in the above case.

CHAPTER: XVI
RECOVERY OF PISTOLS AND ALLEGATION OF COMMISSION OF OFFENCE UNDER INDIAN ARMS ACT

153. The prosecution has contended that during the course of hatching the conspiracy it was decided by accused No.15 Vinay Kulkarni that it was not so easy to commit the murder of Yogesh Goudar as he was a well-built person. As such, he had requested Basavaraja Muttagi to take the assistance of accused No.16 Chandrashekar Indi in this regard. The main

witnesses who have deposed in this regard with respect to the presence of accused No.16 at the time of meeting PW.10 Basavaraja Muttagi near Sanky Tank is already discussed by this Court. At the same time, now it would be appropriate to consider the evidence of PW.85 Harish Shetty. PW.85 Harish Shetty has deposed that accused No.16 had stayed in their Hotel Central Park during the period 01.07.2017 to 09.06.2019. It is noticed from the records that as per Ex. P163 and also as per Ex. P163(a) to 163(j), he had continuously stayed in their hotel. It is contended by the prosecution that the stay was nothing but to monitor the on-going trial at Dharwad Court. He was subjected to cross-examination by the learned Senior Counsel appearing for the accused. Apart from denial, nothing much was elucidated from him. The evidence of PW.86 Santhosh R. Jadhav is also required to be considered in this regard. The aforesaid witness had worked as Receptionist at Ankitha Residency, Belgaum

Road, Dharwad. He has also identified the relevant entry at Ex. P164, 165, 165(a) and (b). All the aforesaid aspects coupled with his oral testimony that accused No.16 Chandrashekar Indi was regularly availing their Hotel would indicate that he was part of larger conspiracy. As already discussed supra, a serious effort was being made by accused No.15 Vinay Kulkarni to tamper with the evidence which were collected and also to scuttle the trial which was being conducted before the Sessions Court at Dharwad and also it is relevant to note that during the course of trial before this court, an allegation was leveled against him and also against Accused No.16 Chandrashekar Indi of interfering with the course of trial and it is noticed from records that the Hon'ble Apex Court had to intervene and to cancel the bail of Accused No.15 Vinay Kulkarni and he was only admitted to conditional bail by the Hon'ble Apex court only after completion of trial. Though the cancellation of the bail

by the Hon'ble Apex Court cannot be considered on merits at this juncture but the same is required to be appreciated to notice the conduct of the accused before this court during the course of trail. In furtherance of the same, the materials on record indicates that the eye-witnesses to the incident PW.1 Dr. Dattatreya, PW.31 to PW.36 were sent to Goa just prior to tendering their evidence and later on they were kept at M/s Rashi Farms and Resorts and Dharwad and in all the aforesaid aspects the presence of accused No.16 and his support is forthcoming. If at all, accused No.16 had no role to play in the entire incident, the fact of his continuous presence at Dharwad and staying back in the Hotel at the time of the evidence being recorded before the 4th Addl. Sessions Judge Court at Dharwad would only fortify the case of prosecution. The other aspect which is required to be considered is procurement of illegal weapons in the form of Pistols, which was handed over to PW.10 Basavaraja Muttagi.

In the above case, the prosecution has examined PW.26 Suresh Jagadev Hulle. It is contended by the prosecution that he was the Assistant of Nagappa Mallikarjun Bhairagunde and also, he knew Shivananda Shrishaila Biradar. Further he has denied of having acquaintance with noted gangster Dharmaraj Chadachana. It is deposed by him that he had not handed over any country made Pistols to Chandrashekar Indi. He was considered as hostile witness and though he had admitted of tendering his statement under oath i.e., under Sec.164 of Cr.P.C., of handing over the Pistols to Chandrashekar Indi in a bag and also giving a confession statement as per Ex. P27, he has not supported the case of prosecution. In ordinary circumstances, the aforesaid aspect could have led to discarding the evidence of PW.26. However, in the instant case, a statement of accused No.17 Shivananda Shrishaila Biradar is placed before the court. It is curious to note that Shivananda Shrishaila

Biradar had filed an application before this Court seeking for pardon. However, his application was rejected by this court and later on he had challenged the same before the Hon'ble High Court of Karnataka. The aforesaid accused was granted with pardon by imposing condition by the Hon'ble High Court to depose truly about the facts which were within his knowledge. In the instant case, he had turned hostile when he was examined as PW.9 before this Court. With respect to the veracity and the manner in which he had turned hostile, the same would be dealt in the later part of my judgment. As such, the records indicates that the three country made Pistols were handed over to Chandrashekar Indi, who in turn had handed it to PW.10 Basavaraja Muttagi. Though the aforesaid witness has turned hostile, in the wake of accepting the evidence of the approver, it would be appropriate to consider the other materials which are produced before the Court in this regard. The approver

has deposed that he was advised by accused No.15 Vinay Kulkarni to get the country made Pistols serviced at the hand of PW.21 Manikantan Acharya. Pw.21 Manikantan Acharya who is running a Arms and Ammunition Shop has deposed that he knew Basavaraja Muttagi and had helped him to obtain licensed weapon from M/s Srinivasa Armory of Bellary. The learned Senior Counsel appearing for accused No.15 has vehemently argued that if at all PW.10 Basavaraja Muttagi was possessing a licensed weapon, then there was no necessity for him to procure an unlicensed weapon. Though the said submission is correct, the court cannot decipher the intention which is running in the mind of a person to commit an offence. At the same time, I have also considered the evidence of recovery mahazars to the aforesaid country made Pistols. They were examined as PW.88 Fairoz Khan Jagirdar and PW.71 Prabhu Shankar. During the course of evidence of PW.71 Prabhu Shankar, it is

deposed by him that on 08.11.2020 he was summoned by his higher authorities and he was requested to accompany them for a recovery mahazar wherein they had visited the Farm House of Basavaraja Muttagi and had recovered MO.12 to 14 Country made Pistols by drawing the proceedings under Ex.P116. During the course of cross-examination, nothing much was elucidated from him. Likewise, it would be appropriate to consider the evidence of PW.88 Firoz Khan who has also deposed in a similar manner. The aforesaid fact finds corroboration with the evidence of PW.10 Basavaraja Muttagi and when compared with the evidence of PW.87 Dr. M.Kiran Kumar, it would indicate that the country made Pistols were sent for scientific examination and the Report would indicate that the firearm was not used by any of the accused persons. Under the circumstances, the procurement of country made Pistols quite contrary to the provision of law is established by the prosecution. The aforesaid

aspect would lead to a situation wherein the firearms were procured knowing fully well that the same was not having any valid license and it was illegally handed over to PW.10 Basavaraja Muttagi. However, at the same time, it would be appropriate to note that as per the provisions of Sec.39 of the Arms Act, it is very much necessary to obtain previous sanction from the District Magistrate. As per the said provision, without obtaining necessary sanction from the District Magistrate, prosecution cannot be launched any person. I have bestowed my anxious reading to Ex.P170, which is the sanction order issued by the District Magistrate and Deputy Commissoner, Dharwad District. The aforesaid order is extracted which reads as follows;

ORDER

On the basis of the details mentioned in the preamble and the proposal given by the Superintendent of Police and Head of the Branch, CBI, ACB, Bangalore, I, Nitesh K Patil, IAS,

Deputy Commissioner and District Magistrate, Dharwad District, Dharwad, exercising the powers enacted under Sec.39 of Indian Arms Act, 1959, permitted to Superintendent of Police and Head of the Branch, CBI, ACB, Bangalore for the prosecution against Mr. Basavaraj Muttagi in RC 17(S)/2019

Dt. 24.09.2019

Sd/-

154. Accordingly, it is noticed that there was no sanction against accused No.15 or accused No.16 in this regard. Initially at the time of framing of charge, accused No.1 Basavaraj Muttagi was still contesting the case and later on during the course of trial, he had given the approver status. Under the circumstances, it is clear that the prosecution cannot launched against accused No.15 or 16, who are still in the arraign of accused. Hence, points for consideration with respect to Arms Act is answered in the **negative**.

CHAPTER : XVII
THE CONSEQUENCES OF TENDERING FALSE STATEMENT UNDER OATH AT THE TIME OF

RECORDING THE STATEMENT UNDER SEC.164(5) OF CR.PC.

155. In the instant case as noticed from the records, the Investigating Agencies at the time of recording the statement of the witnesses under Sec.161 of Cr.P.C., had also proceeded to record the statement of the witnesses under oath. It is relevant to note that PW.1 Dr. Dattatreya Gudaganti, PW.32 Anand Erappa Uddannanavar, PW.33 Vinayaka Binjiyavar, PW.34 Mohan Yecharappa Mulmuttal, PW.35 Vivekananda Dalawai had specifically tendered their statement under Sec.164 of Cr.P.C., before the learned Magistrate under oath and they had narrated about the incident of murder. It is relevant to note that they have turned hostile and they have also deposed before the court that they were pressurized by CBI to tender the evidence in their manner to suit their needs. The similarity can be seen in the evidence of PW.24 Shivananda Chalavadi who was holding an

important post under the Police Department and also a Police Inspector at Dharwad Town Police Station. In his evidence itself he has deposed that he was afraid of CBI and hence he had deposed falsely under oath before the learned Magistrate. The very same manner is noticed in the evidence or PW.44 Babu Katagi, PW.54 Shankaragouda Patil, PW.20 Nataraj Sarj Desai and PW.53 Vijay Kulkarni. The aforesaid evidence indicates of tendering false evidence before the Court. Either false evidence must have been tendered before this Court or before the learned Magistrate. The act of the Police Officers who are considered as the guardians of law enforcement machinery and turning hostile by opening deposing that they had tendered evidence falsely under oath before the Court of Law is nothing but making an attempt to sully the image and faith which the public has reposed in the judicial system. A person may be pardoned of any act being committed by him, but albeit he cannot be pardoned

when he openly deposes of tendering false evidence before the Court. As already discussed above, it is noticed from the evidence of PW.69 Anil Kumar, it is noticed that sufficient care was taken by the Court at the time of recording the evidence. The witnesses have deposed that the CBI Officers were standing behind them or just outside the Court and had pressurized them to depose in a manner to suit their needs. However, the evidence of PW.69 Anil Kumar, who is the System Assistant clearly falsifies their contention. That apart, I have also looked into the manner in which the witnesses have tried to disrupt the faith which the public are having in the judicial process. Admittedly, none of the witnesses who were all educated and well positioned in the society had uttered single word till the time of tendering their evidence before the Court. For instance, PW.24 during the course of his evidence has deposed that he was discharging his duty at present as ACP at Bengaluru. Inspite of lapse of 5

years, either PW.24 Shivananda Chalavadi or PW.44 Babu Katagi or for that matter any of the Police Officers had thought it fit to complain to their higher authorities or at least even to the Court of Law about the alleged threat given by CBI. It is to be kept in mind that though the investigation was entrusted to Central Bureau of Investigation, they cannot be considered above the provisions of law. Ultimately, it is the Court which is considered as the guardian of justice and public are reposing faith in judicial system. In the instant case, apart from the high rank Police Officials, the witnesses who have turned hostile are all educated persons and it is disheartening to note that PW.1 Dr. Dattatreya Gudagunti, who is a Doctor by profession has deposed in a cavalier manner that though he is a Ayurvedic Doctor by profession, he advises his patient with Allopathic medicine which in other words would indicate that he is having scant respect for the prevailing law of the land. It is also relevant to note

that Natraj Sarj Desai is the relative of accused No.15 Vinay Kulkarni and PW.53 Vijay Kulkarni is the own brother of accused No.15 Vinay Kulkarni. Though it is deposed by him that he was threatened by CBI that he will also be roped in as accused person, the silence on his part for such a long period of time is quite astonishing and that too he being member of a political family and also, he deposing of having close nexus with higher Police authorities. All the aforesaid aspects would cast a serious aspersion against the manner in which they have turned hostile.

156. The aforesaid aspect would lead to a situation that whether the evidence of the Magistrate is required to be considered in order to appreciate the tendering of false evidence by the witnesses. In this regard, the Court has relied upon the judgment of the Hon'ble Apex Court reported in **(1971)3 SCC 432 (Babu Rao Baji Rao Patil Vs. State of Maharashtra)**, wherein it has been held as follows:

5. The principles laid down in these decisions are unexceptionable. The question is whether the judgment of the High Court has violated any of these principles. As already noticed, the High Court had, after narrating the circumstances, come to the conclusion that there was no reasonable doubt of the appellant's guilt as a person who was a member of the conspiracy and had participated in the same. The acquaintance of Kalyan with the appellant and the interest taken by the latter in the former and the appellant's contacts with the police officers and other government officials were undoubtedly not considered by themselves sufficiently strong incriminating circumstances but they were held to render the prosecution story plausible and probable against him. After expressing this opinion, the High Court observed that in addition to the circumstances which were of sufficient importance and of necessary incriminating nature and tendency there were other circumstances relied upon by the prosecution. Those circumstances were, however, considered by the Court not to be indicative by themselves of anything more than that the appellant had contacts and association with PSI Patil, Dy. SP Thorat and P.S.I. Shinde on certain occasions and they did not show that this association was linked with the conspiracy or its execution. The purchase by the appellant of gold worth Rs 3000

sometime about December 27, 1961 and payment of Rs 13,000 to one Anna Gund, owner of a grocery shop on or about February 27, 1962, when the appellant was indebted to some other persons was also held not to be of much significance because the appellant was not considered to be a man of no substance. He had landed property and he also owned houses. He had further given monetary help to Viswasrao Phate in the elections in 1957. But in spite of these circumstances which were not considered to be conclusively connecting the appellant with the offence, as we have already observed, the High Court had come to the conclusion on the other evidence which does not suffer from any infirmity that there was no reasonable doubt about the appellant's guilt. After having so held the confessional statements of the co-accused, in our opinion, could legitimately be taken into account by the Court to receive assurance to its conclusions. In regard to the appellant's presence at Angar on the morning of December 7, 1961 and in regard to the request by Rangya, Shankar and Kalyan to the appellant to help and protect them, the confessional statements of the co-accused could also be appropriately taken into consideration as provided by Section 30 of the Indian Evidence Act. In a case of conspiracy in which only circumstantial evidence is forthcoming, when the broad features are proved by trustworthy evidence

connecting all the links of a complete chain, then on isolated events the confessional statements of the co-accused lending assurance to the conclusions of the Court can be considered as relevant material and the principle laid down in the case of Hari Charan Kurmi [AIR 1964 SC 1184 : (1964) 6 SCR 623 : (1964) 2 SCJ 454 : 1964 SCD 956] would not vitiate the proceedings. The fact that some of the prosecution witnesses had been examined earlier under Section 164 CrPC is only a circumstance to be taken into account in appraising the value of their testimony and the Court has to scrutinise such evidence a little more closely and see if the other circumstances lend support to it. The decision of this Court in Rai Bahadur v. State of U.P. [Cr.A. No. 121 of 1967, decided on August 4, 1969] does not seem to us to be of much help to the appellant. On a consideration of the arguments addressed at the Bar we do not think there is any ground for interference with the order of the High Court under Article 136 of the Constitution. The appeal thus fails and is dismissed. The appellant will surrender to his bail bond to serve out the remaining sentence.

157. In another judgment of the Hon'ble Apex Court reported in (1981)2 SCC 224 (Madi Ganga Vs. State of Orissa), wherein it has been held as follows:

5. We desire to express no opinion on the question whether the extra-judicial confession made to PWs 2 to 5 is barred under Section 24 of the Evidence Act. It is unnecessary for us to say anything on this question, since we are satisfied that the learned Sessions Judge was wholly wrong in excluding and the High Court was certainly right in acting upon the confessional statement made to the Magistrate. The learned Magistrate has put to the accused all the necessary questions to satisfy himself that the confession was voluntary. He has also appended the necessary certificate. We do not accept Shri Jain's submission that the learned Magistrate should have been examined as a witness. Section 80 of the Evidence Act makes the examination of the Magistrate unnecessary. It authorises the court to presume that the document is genuine, that any statements as to the circumstances under which it was taken are true and that such confession was truly taken in accordance with law. Shri Jain submitted that if the Magistrate had been examined as a witness, the accused might have been in a position to show, by cross-examination that the confession recorded by the Magistrate was not voluntary. The Magistrate has appended a certificate that he was satisfied that the confession was voluntary. No circumstance has been brought out in the evidence justifying the calling of the Magistrate as a witness. We do not think that the circumstances of the case justify

any comment on the alleged failure of the prosecution to examine the Magistrate as a witness.

6. The final submission of the learned counsel was that even if the confession to the Magistrate was accepted as voluntary it had not been sufficiently corroborated to justify the conviction of the accused. It is now well settled that in order to sustain a conviction on the basis of a confessional statement it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is sufficient—vide Subramania Goundan v. State of Madras [AIR 1958 SC 66 : 1958 SCR 428 : 1958 Cri LJ 238] . In the present case the confessional statement refers to the motive for the occurrence. This part of the confession is corroborated by the evidence of PW 1. The confessional statement refers to the accused having thrown a big stone on the head of the deceased. This part of the statement is corroborated by the medical evidence. We think that there was sufficient general corroboration to justify the High Court acting upon it. The appeal is, therefore, dismissed.

158. Further in a recent judgment, the Hon'ble Apex Court has examined the similar situation wherein it is submitted that the Investigating Agency had

threatened the witness to depose in a particular manner which had led them to tender false evidence under oath. The judgment of the Hon'ble Apex Court reported in **2024 SCC Online SC 3510 (Vijaya Singh Vs. State of Uttarkhand)**, wherein it has been held as follows:

> ***7.It is further submitted that the statements of PW-3 and PW-4 recorded under Section 164 CrPC are liable to be rejected as the said statements were recorded in the presence of the Investigating Officer under threat, and could not be considered as voluntary statements. It is further submitted that the said statements could not be termed as substantive evidence and could only be used to corroborate or contradict the testimony of a witness in the Court. It is further submitted that the primary witness of the prosecution is PW-7/doctor and his testimony is fundamentally flawed. It is submitted that the concerned doctor initially deposed that he could not definitively state whether the death of the deceased was homicidal or suicidal, however, the witness later opined that 100% percent burn injuries were uncommon in suicide cases. It is submitted that in case of suicide, the act of burning is a voluntary act and therefore, 100% burn injuries are***

completely possible. To buttress, it is contended that the evidence of an expert is not the evidence of fact and is only advisory in nature. It is added that medical jurisprudence is not an exact science and in the expert testimony cannot be considered as a conclusive proof of the fact.

30. PW-3 and PW-4 have deposed that they were under threat from the concerned Investigating Officer who was present along with them before the Magistrate. The concerned Investigating Officer has been examined as PW-8 in the present case and during his examination, there is not even a suggestion from the appellants to the effect that he was present along with PW-3 and PW-4 at the time of recording their statement under Section 164 or to the effect that he had threatened them to give incriminating statements against the appellants. Furthermore, the concerned Magistrate could have been examined as a witness in the present matter to clear the controversy on this aspect and for unexplained reasons, he was never called for examination especially when a completely hostile version was being provided by the witnesses qua the proceedings which were conducted before him. The appellants failed to place any material on record to justify the allegation of threat and as discussed above, the statements of PW-3 and PW-4 recorded under Section 164 CrPC

reflected the correct version of the events that transpired on the fateful day.

31. Having said so, we deem it fit to observe that a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.

158. The aforesaid situation would lead to unerring inferences to be drawn that the statement which is rendered under Sec.164 of Cr.PC., can be acted upon and no leniency can be shown for turning hostile or tendering false evidence under oath. Now the

aforesaid aspect will lead to a situation wherein it is required to consider the confession statement of accused who have contended that they were forced to give such a statement. It is relevant to note that generally corroboration is required and what is required to be ascertained at this juncture is whether such a statement can be looked into in the absence of Magistrate being not examined.

159. The learned Counsel for the accused persons have vehemently argued that though certain confession statements are available on record which were marked subject to its admissibility, in the absence of proving the same in accordance with law cannot be construed as legally obtained confession statement. The learned Senior Counsel in order to buttress his submission has relied upon the judgment of the Hon'ble Apex Court reported in **2026 SCC Online SC 116 (Bernard Lyngdoh Phawa Vs. State of Meghalaya)**, wherein it has been held as follows;

24. The reliance placed by the State on Mohammed Ajmal Mohammad Amir Kasab[3] to urge the acceptability of the confessions in this case may not be appropriate. Therein, the confession was argued to be not voluntary, but a tutored statement to suit the prosecution's case. It was argued that the language, tone and tenor of the confession coupled with its inordinate length and also the unnecessary details contained therein made it highly suspect. This Court on an examination of the facts leading to the confession found it to be a voluntary statement. Though, some of the statements made were vague that was found to be no reason to eschew the confession altogether. It was categorically found from the statements that it was not made under any influence or under duress and that the tone and tenor indicated that it was truthful and voluntary, especially since the statement indicated that the confession was not made out of a feeling of weakness or a sense of resignation or out of remorse but on the other hand made, more out of pride and to project himself to be a role model. The Court also noticed that in the course of the trial, after 58 prosecution witnesses were examined, the accused requested to make a statement, which though not so detailed had

almost similar contents as in the confessional statement.

25. Examined, in the light of the above findings, we find the confessional statements as seen from the records, juxtaposed with the deposition of PW 32, the Magistrate who recorded the confession under Section 164 of the Cr. P.C., to be highly suspect. The confession of A1 as deposed before the Court was recorded on 07.03.2006. Insofar as A2 is concerned, in the testimony before the Court, PW32 deposed that the confessional statement of A2 was recorded on 09.03.2006. The confessional statement, however, does not record any date nor is the signature of the Magistrate accompanied by a date. The signature of A2 is accompanied with a date; i.e. 08.03.2006. The recorded statement of A2 in the handwriting of the Magistrate, in the loose sheets affixed to the printed form, the signature of the Magistrate is accompanied with the date 09.03.2006. The said discrepancy was specifically put to the Magistrate in cross-examination. There was no satisfactory answer to the question, regarding discrepancy of the accused having signed on 08.03.2006 but the Magistrate having signed the recorded confession on 09.03.2006. The printed portion of the confessional statement also indicates the statements having

been recorded of A1 in English while that of A2 is stated to be in Khasi. This is contrary to the testimony of PW32 before Court and both the recorded statements are completely in English as seen from the records.

26. One other compelling circumstance is the fact that the accused, when produced before the Magistrate for the purpose of recording the confession, they were never asked as to whether they required the assistance of a lawyer. In Mohammed Ajmal Mohammad Amir Kasab[3], a similar contention raised was negated by the Court finding that the accused had initially refused representation by an Indian lawyer and had been seeking the services of a Pakistani lawyer. Examining the question of legal assistance at the pre-trial stage on a conspectus of Article 22(1) of the Constitution of India and Section 304 of the Cr. P.C. read with Article 39A of the Constitution of India, it was held so in paragraphs 474 and 475:

"474. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a Magistrate. We, accordingly, hold that it is

the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.

475. It needs to be clarified here that the right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he

intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the charge-sheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial. It is thus to be seen that the right to access to a lawyer in this country is not based on the Miranda [(1966) 16 L Ed 2d 694: 384 US 436] principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice."

[underlining by us for emphasis]

27. We do not find PW32 having offered any such legal assistance to the accused at the time of production before her before recording the confession under Section 164.

160. I have bestowed my anxious reading to the same and in the judgment reported by (1978)3 SCC 435

(Shankariya Vs. State of Rajasthan) clarifies the same wherein it is held as follows:

> ***23. This confession was retracted by the appellant when he was examined al the trial under Section 311 CrPC on June 14, 1975. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt. Therefore, when in a capital case the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 CrPC, the court must apply a double test:***
>
> ***(1) Whether the confession was perfectly voluntary?***
>
> ***(2) If so, whether it is true and trustworthy?***
>
> ***Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the court to have been caused by any inducement, threat or promise such as is mentioned in Section 24 of the Evidence Act, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the court must, before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be***

useful in most cases for evaluating a confession may be indicated. The court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.

161. The Hon'ble Apex Court in another judgment reported in (1954)1 SCC 465 (Hem Raj Vs. State of Ajmair), wherein it has been held as follows:

9. The Magistrate who recorded the confession has been examined, and he states that he told the prisoner that he was a Magistrate and that he complied with all the requirements of law in recording the confession. The memorandum made by him shows that the following questions were put to Hem Raj:"Do you wish to make a confession?", to which Hem Raj replied "Yes". "Are you making it of your own free will and without the compulsion of anybody?"; the answer was "Yes". The third question was "You are not bound to make a confession. Do you understand this?" The answer was "Yes". The fourth question was:"If you make a confession it may be used in

evidence against you. Do you realise this?" The answer was "Yes". The last question was "Shall I record your confession?" The answer was "Yes". It was after these queries that a confession covering about 21 pages and full of details which are precise and cannot be described as vague was recorded. The police could not even dream of these details or make an effort to tutor such a detailed confession to the prisoner and it is absolutely unthinkable that such a tutored confession could be narrated by Hem Raj to the Magistrate after 36 hours of any possible attempt made to tutor him. As a matter of fact, some of the facts contained in the confession and indicated later were not even known to the police then. The confession contained the usual endorsement that the confession was voluntary and all the necessary matters had been explained to the prisoner before he made the confession. It is significant that the confession was not retracted till Hem Raj took legal advice and even then it was not stated who supplied all the details contained in the confession to Hem Raj. The allegations made by the prisoner have been denied by the police officers examined and we are not inclined to accept those allegations as true. The circumstances relied upon by Dr Tek Chand regarding the conduct of the police before Hem Raj was lodged in jail do not, in our opinion, affect the voluntary character of the confession. The contention that the Magistrate did

not tell the prisoner that he was a Magistrate is also belied by the Magistrate's evidence. No doubt the confession was recorded in jail though ordinarily it should have been recorded in the courthouse, but that irregularity seems to have been made because nobody seems to have realised that that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession.

10. Dr Tek Chand drew our attention to a quotation from Taylor's Evidence, 11th Edn., p. 588, Para 872, and to the decision
in R. v. Thompson [R. v. Thompson, (1893) 2 QB 12] , in which it had been emphasised that : (QB p. 12)
"In order that evidence of a confession by a prisoner may be admissible, it must be affirmatively proved that such confession was free and voluntary, that is, was not preceded by any inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed."
The principle laid down in that case is well settled, but we do not think that Dr Tek Chand is right in contending that that principle has not been borne in mind by the courts below. The mere bald assertion by the prisoner that he was threatened, tutored or that inducement was offered to him, cannot be accepted as true without more. There is no material

whatsoever to hold that the prisoner was threatened or beaten. As a fact it has been found by the courts below that that assertion was untrue. The story of tutoring, on the face of it, is incredible. It was not possible for the police or anyone to teach the prisoner all that is contained in the confession. As regards inducement, again, there is no material whatsoever and the circumstances relied upon are not such which raise a suspicion that the confession was extorted by inducement. Even if some suspicion of this character could be raised in this case, it has to be held that the confession was made after the inducement had clearly been removed.

162. By looking into the aforesaid provision of law, it is crystal clear that though the accused had given the confession statement before the learned Magistrate, have taken a U turn before this court and have deposed that they were pressurized by the Investigating Agency.

163. I have also bestowed my anxious reading to Ex.P286 which was the confession statement of accused Kirthi Kumar and marked before the Court subject to its admissibility and also of another accused

Mahabaleshwar at Ex.P287. In the beginning itself a detailed Report has been furnished by the learned Magistrate indicating of the procedure he had adopted. He has also specifically narrated that the accused was explained that from that point he was not in Police custody. Further he had explained to him that there was no compulsion on him to make confessional statement and even otherwise he would not be handed-over to the Police. Thereafter, it is recorded that the accused had volunteered to give statement and also he had narrated that there was no inducement or threat given by the Police and after that a retraction period of 48 hours was granted by the Magistrate prior to recording of the statement, only after that he was produced before the Magistrate on 18.12.2020 again and he was also granted another 48 hours time and thereafter it indicates that the accused Basavaraja had appeared on 22.12.2020. Once again it is observed by the Magistrate that the accused No.3

had submitted that he had not come in contact with the Police nor there was any inducement or threat given to him. After that the Magistrate had recording his findings of his preliminary enquiry holding that the answers given by the accused would satisfy him that no threat or inducement was given by anybody and the accused had come voluntarily to the Court. Even the confession statement of Mahabaleshwara Hongal also indicates of the same wherein initially he was enquired on 18.12.2020 thereafter on 23.12.2020 and necessary Certificate has been issued by the learned Magistrate under Sec.164 of Cr.P.C. All the aforesaid aspects would only indicate of following the due process of law by the learned Magistrate. Accordingly, at this juncture the accused cannot take-up a contention that the Magistrate has not followed the procedure or the statement was recorded under compulsion. Even otherwise, the said aspect was not explained by the accused at the time of recording their statement under

Sec.313 of Cr.P.C., which was the appropriate stage for them to explain the circumstances.

164. I have bestowed my anxious reading to the authoritative dictum laid down by the Hon'ble Apex Court when compared with the facts of the case, would clearly indicate that sufficient precautions was taken by the concerned Magistrate at the time of recording the confession statement of accused No.3 Kirthi Kumar Kurahatti and accused No.6 Mahabaleshwar Hongal. Under the circumstances, the contention of the accused in this regard cannot be accepted. Accordingly, point No.3 to 8 are answered in the affirmative. However, it is made clear that the role of accused No.20 Vasudev Rama Nilekani and accused No.21 Somashekar Nyamagoudar is not established by the prosecution. With respect to the approver turning hostile, the same is considered in the next part of the judgment.

CHAPTER : XVIII
APPROVER TURNING HOSTILE

165. In the instant case, accused No.17 Shivananda Shrishaila Biradar had initially filed necessary application under Sec.306 and Sec.307 of Cr.P.C., seeking to grant pardon. However, the same came to be rejected by my predecessor in office. The said order was challenged before the Hon'ble High Court of Karnataka by imposing condition that he shall tender true and correct facts which are within his knowledge. During the course of the evidence, he was examined as PW.9. In his evidence, he has turned hostile and has admitted that he had appeared before the learned Magistrate in pursuance of the kind orders passed by the Hon'ble High Court. He has also admitted that the learned Magistrate has put him preliminary questions to ascertain his voluntariness and he had specifically deposed of tendering evidence voluntarily. It is also been submitted by him that he

had not filed application seeking pardon before this Court or before the Hon'ble High Court but it was at the instance of the Investigating Officer, he had filed so. By looking into the same, it does indicate that the aforesaid accused person who was initially arraigned as accused No.17 is taking the proceedings of the Court in a casual manner so as to bring disrupt to the proceedings.

166. Now with respect to considering the act of accused No.17, who had turned hostile after granting of pardon the provision of Sec.308 of Cr.P.C., is required to be considered. For the sake of benefit, the same is extracted which reads as follows;

> ***308. Trial of person not complying with conditions of pardon.***
>
> ***(1)Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was***

made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence :Provided that such person shall not be tried jointly with any of the other accused :Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Section 195 or Section 340 shall apply to that offence.

(2)Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under Section 164 or by a Court under sub-section (4) of Section 306 may be given in evidence against him at such trial.

(3)At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4)At such trial, the Court shall –

(a)if it is a Court of Session, before the charge is read out and explained to the accused;

(b)if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken;ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

> ***(5)If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.***

167. On considering the aforesaid provision of law a necessary Certificate is required to be issued by the Public Prosecutor in this regard. In the instant case, the learned Senior Public Prosecutor of CBI has issued the Certificate that the aforesaid witness PW.9 Shivananda Shrishaila Biradar, who was granted pardon and examined as PW.9 before this Court had turned hostile. This Court had issued him a notice in this regard to appear and explain the circumstances. However, inspite of due service of notice he had not appeared before the Court which in other words would indicate that he does not have anything to say in this regard.

168. On considering the provisions, it would indicate that in order to institute perjury proceedings as per Sec.308 of Cr.P.C. against the person who had turned hostile, the provisos indicate that he cannot be jointly tried with any other accused and further the said person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Sec.195 or Sec.340 would apply to that offence. Hence, the provision indicates that necessary sanction is required from the Hon'ble High Court to try such a person. Even otherwise, in the instant case, the present accused No.17 Shivananda Shrishaila Biradar was granted pardon by the kind orders of the Hon'ble High Court of Karnataka. Under the circumstances, it would be appropriate to grant necessary liberty to the prosecution to move before the Hon'ble High Court of Karnataka and obtain necessary sanction to prosecute him.

CHAPTER : XIX
CONTENTIONS URGED AGAINST THE INVESTIGATING OFFICER OF CBI

169. It has been argued at length with respect to the manner in which the investigation has been carried out by the Investigating Officer PW.113 Rakesh Ranjan. The learned Senior Counsel has taken this Court through the evidence of PW.113 Rakesh Ranjan recorded in the above case. It is his contention that a faulty and biased investigation has been carried out by the CBI to satisfy their political masters. In order to substantiate his contention, the learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court reported in **2025 SCC Online SC 1439 (Kattavellai @ Devakar Vs. State of Tamilnadu)** wherein it has been held as follows;

> ***42. A common thread that can be seen to be running through the entire process that has culminated by way of this judgment, is that of faulty investigation. Since we have***

already discussed the evidence on record in detail, we may only point out various instances:

A) The identity of the accused could not be sufficiently protected leading to its disclosure well before the T.I.P. was conducted;

B) Although there is no straight-jacket formula as to when T.I.P. can be/cannot be conducted, the delay in doing so has to be examined in the facts and circumstances of the case. The nine-day delay herein is entirely unexplained;

C) Lack of coordination between investigating agencies. Bhagyalakshmi has not been arrayed as a witness, despite examination by PW-56 who is the person concerned at the CBCID. The other investigating officer did not examine her despite a clear link to the deceased persons and the star witness of the prosecution;

D) Requisite care regarding the sensitive evidence (DNA etc.) was not taken in the slightest. There are large gaps in the chain of custody which are unexplained;

E) Surprisingly and shockingly, we may say that the postmortem of the deceased persons was conducted at the spot of the crime without due regard to the

possibility of contamination, effect of such examination being conducted in the open, etc. None of the Courts below have found this to be objectionable;

F) Possibility of ruling out the involvement of third party in the crime.

170. Further it is argued by the learned Senior Counsel that the entire investigation process is full of flaws and also he has argued that the Investigating Officer has made categorical admissions that certain aspects were not entered into the CD files. Further it is also argued that intentionally accused No.15 Vinay Kulkarni has been roped into the above case in order to satisfy the political vendetta. In order to substantiate the aforesaid aspect, it is argued that the manner in which the investigation came to be entrusted to CBI is required to be looked into. He has argued that immediately with the change of guard of the State Government in the year 2019, the investigation was entrusted to CBI. He has argued

that just prior to the same, in a political rally the prominent leader of a political party had specifically contended that in the event of his party coming to power, the investigation would be entrusted to CBI. By pointing out to the same and also the manner in which the alleged investigation has taken place, the learned Senior Counsel has argued that the entire investigation is nothing but a farce with respect to the settled principles of law. He has argued that at each and every step, the investigation process has lapsed. The said submission is also adopted by the learned Counsels appearing for accused No.2 to 6 Sri. C.Parameshwarappa and also by Sri. S.Shankarappa. The learned Counsel has argued that at the time of conducting the TIP, the procedures were not followed and even prior to that the identity of the accused were disclosed. That apart, it is submitted that no permission was obtained from the Court to arraign additional accused in the above case. It is also argued

that even during the course of trial, a method of cherry picking was adopted by the prosecution wherein some witnesses were examined.

171. The learned SPP has refuted to the aforesaid contention and has submitted that mere non-mentioning of certain aspects in the CD files cannot be construed as the one which would vitiate the entire investigation. In order to substantiate the same, he has relied upon the judgment of the Hon'ble Apex Court reported in (2015)9 SCC 588 (V.K.Mishra Vs. State of Uttarkhand), wherein it has been held as follows;

> ***34. Refuting the contention of the appellants on the lapses in the investigation and contending that any lapse in the investigation does not affect the core of the prosecution case, the respondents have placed reliance upon the judgment of this Court in State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61] , wherein this Court held as under: (SCC p. 720, para 19)***

> ***"19. ... It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."***

172. When the aforesaid authority is compared with the judgment which has been relied upon by the learned Senior Counsel, the main aspect which can be looked into is whether certain deviations can be considered as vitiating the trial. Admittedly in the

above case, the Court is looking into the entire materials which has been placed before it and also the manner in which the investigation has taken-place. Initially, the investigation was entrusted to State Police and thereafter a series of allegations were leveled against the State Investigating Agency. Though it is argued at length that the entrustment of investigation to CBI itself is illegal and a connection is being given with respect to an address made by the prominent leader of a political party of entrusting investigation to CBI as the one indicating of biased investigation, in my humble opinion such aspects will not be sufficient to cast aspersions against an Investigating Officer. It is pertinent to note that during the course of cross-examination it was elucidated by the defence counsels themselves that there are two prominent political parties at Dharwad which were at logger heads with each other. Further it is also relevant to note that as already discussed above, the wife of deceased Smt.

Mallavva Goudar had initially contested elections on the ticket of a political party immediately after the murder of her husband. It was also elucidated from her that after losing the elections, she was asked by the Member of Parliament to return back the money. However, during the course of cross-examination by the learned SPP it was elucidated from her that the money from selling the land was not given to the political leader and in fact a categorical admission was also obtained from her of receiving money from the supporters of accused No.15 Vinay Kulkarni. Even otherwise, as already discussed supra, the deceased's wife herself had given a public interview that the investigation being conducted by the State Police was not proper and was required to be entrusted to CBI. Though later on she had refuted the same and during the course of her evidence she has deposed that she was pressurized by PW.2 Gurunatha Goudar and also PW.11 Anjana Basavaraja Dollin to give such a

statement, it is rathe astonishing to note that a women who had intended to become a people's representative was perturbed and pressurized. In normal circumstances, if the said contention was raised, it would have been accepted. However, by noticing the fact that after tendering such interview she admits of joining the rival political party of which accused No.15 was a Minister and at the time of joining the party she even admits of meeting the Chief Minister of the State and also sharing dais with them. If a political personality deposes in such a manner, the question which remains is whether such contentions can be accepted. Even otherwise, as it is noticed in the society, every now and then a statement would be given by the opposition party against any scam or incident to hand-over the investigation to CBI. In my humble opinion, mere such statement in a political rally cannot be construed as a hidden agenda being entertained to settle the political scores. It is relevant

to note at this juncture that in the Court of law, the question of settling political scores does not arises and all that it matters is the evidence which is placed in the Court. Even otherwise, I have compared the investigation of the State Police and also the investigation conducted by the CBI. As already discussed in my earlier part of my discussions supra, it is noticed that several lapses were found in the investigating process of accused No.19 Chennakeshava Tingrikar. Under the circumstances, when the entire materials are looked into, the same cannot be construed as a ground to hold that the investigation conducted by PW.113 Rakesh Ranjan is a flawed one.

173. Now coming to the other limb of submission, that no permission was obtained for arraigning additional accused persons. In this regard, it would be fruitful to rely upon the judgment of the Hon'ble Apex Court reported in **(2014)3 SCC 92 (Hardeep Singh Vs. State of Punjab)**, wherein it has been held as follows;

42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word "inquiry" by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim a verbis legis non est recedendum which means, "from the words of law, there must be no departure" has to be kept in mind.

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance

> ***with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.***
>
> ***92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.***

174. The aforesaid judgment aptly describes the situation which would indicate of the situation where the Investigating Agency are having power to arraign additional accused persons. Hence, the contention of the defence in this regard is not accepted. Accordingly, the prosecution has established that

accused No.2 to 16, 18 and 19 had entered into a criminal conspiracy as contemplated under Sec.120-B of IPC and in furtherance of the same accused No.7 to 14 had formed an unlawful assembly armed with deadly weapons and had committed rioting in furtherance of the common object to commit the murder of Yogesh Goudar, thereby committing the offences punishable under Sec.143, 147, 148, 149 of IPC and in furtherance of the criminal conspiracy, they had committed the murder and thereby accused No.1 to 16 and 18 have committed the offence punishable under Sec.302 r/w Sec.120-B of IPC and further the accused No.1 to 16, 18 and 19 have committed an offence punishable under Sec.201 r/w Sec.120-B of IPC and the prosecution has also established that accused No.19 has committed an offence punishable under Sec.218 r/w Sec.120-B of IPC. Accordingly, points for considerations are answered accordingly. It is held that the prosecution have failed to establish the

allegations leveled against accused No.20 Vasudev Rama Nilekani and accused No.21 Somashekar Basappa Nyamagoudar and they are acquitted by granting the benefit of doubt.

SUMMATION

175. In the instant case it has been established by the prosecution that the accused No.15 Vinay Kulkarni had entertained a vengeance against Yogesh Goudar, who was a Zilla Panchayath Member and due to a quarrel that had taken place on 23.04.2016, the same was intensified due to which he had sought the assistance of the then accused No.1 Basavaraja Muttagi, to eliminate Yogesh Goudar and initially Basavaraja Muttagi had sought the assistance of accused No.2 to 6 who had refused to do so and thereafter it was conveyed to Vinay Kulkarni who had stated that since his intention to commit murder was now published to some other person, he has to go ahead with his plan. Accordingly, Basavaraja Muttagi

had sought the assistance of accused No.7 to 14, who had demanded Rs.20 lakhs for committing the murder with a condition that they should not be made to surrender nor made to face the trial. The prosecution has proved that in order to overcome the same, accused No.1 to 6 had stood in the place of the real assailants i.e., accused No.7 to 14 and in the commission of the offence, logistic support and other active support was provided by accused No.18. Further the prosecution proves the angle of conspiracy and the identity of the accused through the CCTV footage which was produced before the Court and also the evidence of the approver Basavaraja Muttagi has played as a chain of link to establish the circumstances in the above case. The prosecution has further proved that in furtherance of larger conspiracy which accused No.19 Chennakeshava Tingarikar had entertained being the Investigating Officer of Dharwad Sub-Urban Police Station with accused No.15 Vinay

Kulkarni had conducted sloppy investigation to support the case of accused No.15 than discharging his duty. Further the prosecution has established the fact that accused No.15 in order to project the murder due to a land dispute, had got the then accused No.1 Basavaraja Muttagi to enter into a Agreement of Sale with PW.6 Nagaraj Todkar and also the tampering of the witness and the inducement given to them to turn hostile before the Sessions Court at Dharwad is established.

176. **Point No.13:** In view of my findings on point No.1 to 12, I proceed to pass the following :

O R D E R

Acting under Sec.235(2) of Cr.P.C., the accused No.2 Vikram Bellary, accused No.3 Kirthi Kumar Basavaraj Kurahatti, accused No.4 Sandeep Saudatti, accused No.5 Vinayaka Katagi, accused No.6 Mahabaleshwar Hongal @ Muduka, accused No.7 Santhosh Saudatti, accused No.8 Dinesh.M, accused No.9 Ashwath, accused

No.10 Sunil, accused No.11 Nazeer Ahmed, accused No.12 Shahanawaz, accused No.13 Nuthan, accused No.14 Harshith, accused No.16 Chandrashekar Indi, accused No.18 Vikas Kalburgi, accused No.19 Channakeshava B. Tingarikar and accused No.15 Vinay Kulkarni are hereby convicted for having entered into a criminal conspiracy to commit the murder of Yogesh Goudar and thereby are convicted for the offence punishable under Sec.120(B) of IPC.

Further, accused No.2 to 14 and 18 are convicted for the offences punishable under Sec.143, 147, 148 r/w Sec.149 r/w Sec.120-B of IPC.

Further, accused No.2 to 16 and accused No.18 are hereby convicted for committing the offences punishable under Sec.302 r/w Sec.120-B of IPC.

Further, accused No.2 to 16, accused No.18 and 19 are convicted for committing the offences punishable under Sec.201 r/w Sec.120-B r/w Sec.149 of IPC.

Further, accused No.19 is hereby convicted for committing the offence

punishable under Sec.218 r/w Sec.120-B and Sec.149 of IPC.

Further, the accused No.15 Vinay Kulkarni and accused No.16 Chandrashekar Indi are hereby acquitted for the offences punishable under Sec.3, 5, 8 punishable under Sec.25 and Sec.29 of Arms Act, 1959, since prosecution sanction was not obtained against them.

The accused No.20 Vasudeva Rama Nilekani and accused No.21 Somashekar Basappa Nyamagouda are hereby acquitted from the above case by giving benefit of doubt.

The prosecution is hereby granted liberty to file necessary application seeking sanction to prosecute the approver turned witness PW.9 Shivanand Shrishaila Biradar, who had turned hostile before this Court.

Further it is hereby directed to the Registrar, City Civil Court, to register case of perjury acting under Sec.340 of Cr.PC., against the witnesses who were the Police Officers i.e., PW.24 Shivananda Chalavadi, PW.44 Babu Katagi, PW.54 Shankaragouda Basanagouda Patil and other independent

witnesses i.e., PW.1 Dr.Dattatreya Gudaganti, PW.32 Anand Irappa Uddannavar, PW.33 Vinayaka Binjiyavar, PW.34 Mohan Echarappa Mulmuttal, PW.35 Vivekananda Dalawai and PW.20 Natraj Sarj Desai and PW.53 Vijay Kulkarni.

For hearing on quantum of sentence.

*(Dictated to the Stenographer Grade-I, typed by her directly on Computer, revised and corrected by me and then pronounced in the Open Court on this the **15th day of April, 2026**)*

(Santhosh Gajanan Bhat)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)

EPILOGUE

159. In the present case, the trial spanned an uninterrupted period of over three months, marking a prolonged and intricate legal process. It is crucial to recognize the indefatigable efforts of the distinguished Senior Public Prosecutors—Smt.Hema K.S., Sri. Shivananda Perla, and Sri. Gangadhara Shetty—along with the diligent team from the CBI, including the Pairavi Officers, who tirelessly ensured the appearance of witnesses and played an instrumental role in facilitating the swift progression and resolution of the trial.

160. Equally deserving of commendation is the exemplary cooperation extended by the learned defense counsels, led by Sri. C.V. Nagesh, learned Senior Counsel, alongside his esteemed colleagues, Sri. M.S. Shyam Sundar, learned Senior Counsel, Sri. S. Shankarappa, Sri.Sunil Kumar, Sri. C.

Parameshwarappa, Sri. S. Balakrishnan, Sri. K.B.K. Swamy, Sri. Nithin Ramesh, and their entire team. Their professional approach and unwavering support ensured the smooth and efficient handling of an exceptionally voluminous case, marked by an extensive array of legal documentation.

161. In conclusion, the Court extends its appreciation to both the prosecution and defence teams. Their collaborative spirit and tireless efforts were pivotal in bringing this protracted trial to a fair and timely conclusion, demonstrating the highest standards of legal professionalism and integrity.

ORDER REGARDING QUANTUM OF SENTENCE

162. Heard the Learned Additional Solicitor General of India and Special Public Prosecutors Sri. S.V.Raju and also the learned Senior Counsel Sri.M.S.Shyamsundar and also the Learned Counsel for accused persons.

163. The Learned Additional Solicitor General of India/Special Public Prosecutor has vehemently argued that in the instant case the Court is required to appreciate special facts and circumstances and should weigh the aggravating and mitigating circumstances. It is his submission that the aggravating and mitigating facts are required to be considered in the offences which are punishable with death sentence, the Court is also required to balance the equities and ensure that just sentence would be awarded. Further it is submitted that the Court is also required to take into consideration of the manner in which the incident had taken-place. It is the submission of the learned ASG that the manner of commission of murder in the broad day light which was a pre-planned cold blooded murder of Yogesh Goudar was executed by accused No.7 to 14 due to the conspiracy being hatched and at the instance of accused No.15 Vinay R. Kulkarni due to political rivalry. It is contended that though accused

No.2 to 6 were not the assailants, their role of taking active part and standing in the place of real assailants to thwart the administration of justice have to be taken into account. Further he has argued that the implanted weapons and the tampering of record to shield the real assailants by the concerned Investigating Officer himself is required to be considered. It is his submission that though in the written synopsis they have sought for maximum capital punishment, he has fairly submitted that the above case cannot be brought into the bracket of rarest of rare cases and hence the same cannot be a case for awarding the capital punishment. However, considering the might of the accused persons and also the manner in which the commission of murder had taken place and also the manner in which tampering of witness had also been noticed during the course of trial would definitely indicate that the above case is required to be considered as a special case wherein all

efforts were made to disrupt the administration of justice. Hence, he has sought for life imprisonment without remission to the accused persons. In order to buttress his submission, the learned ASG has relied upon the judgment of the Hon'ble Apex Court reported in (1980)2 SCC 684 (Bachan Singh Vs. State of Punjab), wherein it has been held as follows;

> ***164. Attuned to the legislative policy delineated in Sections 354(3) and 235(2), propositions (iv)(a) and (v)(b) in Jagmohan [(1973) 1 SCC 20 : 1973 SCC (Cri) 169 : (1973) 2 SCR 541] shall have to be recast and may be stated as below:***
>
> ***"(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.***
>
> ***(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that***

the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence."

165. The soundness or application of the other propositions in Jagmohan [(1973) 1 SCC 20 : 1973 SCC (Cri) 169 : (1973) 2 SCR 541] , and the premises on which they rest, are not affected in any way by the legislative changes since effected. On the contrary, these changes reinforce the reasons given in Jagmohan [(1973) 1 SCC 20 : 1973 SCC (Cri) 169 : (1973) 2 SCR 541] , for holding that the impugned provisions of the Penal Code and the Criminal Procedure Code do not offend Articles 14 and 21 of the Constitution. Now, Parliament has in Section 354 (3) given a broad and clear guide-line which is to serve the purpose of lodestar to the court in the exercise of its sentencing discretion. Parliament has advisedly not restricted this sentencing discretion further, as, in its legislative judgment, it is neither possible nor desirable to do so. Parliament could not but be aware that since the Amending Act 26 of 1955, death penalty has been imposed by courts on an extremely small percentage of persons convicted of murder — a fact which demonstrates that courts have generally exercised their discretion in inflicting this

> ***extreme penalty with great circumspection, caution and restraint. Cognizant of the past experience of the administration of death penalty in India, Parliament, in its wisdom, thought it best and safe to leave the imposition of this gravest punishment in gravest cases of murder, to the judicial discretion of the courts which are manned by persons of reason, experience and standing in the profession. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It is exercised judicially in accordance with well recognised principles crystallised by judicial decisions, directed along the broad contours of legislative policy towards the signposts enacted in Section 354(3).***

164. Further he has also relied upon the judgment of the Hon'ble Apex Court wherein guidelines has been laid down with respect to imposition of death penalty. The judgment reported in (1983)3 SCC 470 (Machhi Singh and others Vs. State of Punjab), wherein it has been held as follows;

> ***33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly***

manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For

instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the

murder is committed for political or similar reasons other than personal reasons.

38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

"(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and

circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

Accordingly, he has sought for imposing maximum punishment i.e., life imprisonment without remission to the accused persons.

165. I have heard the learned counsels appearing for the accused persons in seriatim. Sri. C.Parameshwarappa, the learned Counsel for accused No.2 to 6 and also on behalf of accused No.18 has vehemently argued that they are the sole bread earners in their family. Further it is submitted that they do not have any criminal antecedents. Hence, he has sought for taking a lenient view.

166. Sri.S.Shankarappa, the learned counsel for accused No.8 to 14 has vehemently argued that the Court has to balance the equities and has to take into account about the manner in which the case has traversed. It is his submission that the entire case of the prosecution is based upon circumstantial evidence and further there are no aggravating factors to indicate that the prosecution is entitled to seek for maximum punishment. That apart, it is submitted that the sentence which is awarded should be a balanced one and also the age of the accused, their family conditions and their responsibility to take care of their aged parents is also a factor to determine the quantum of punishment. Accordingly, he has sought for imposing minimum sentence as contemplated under law.

167. The learned Counsel Sri.Sunil Kumar K.S., has vehemently argued that the request of the prosecution to impose life imprisonment without

remission is not justifiable. He has also argued that there are no criminal antecedents against accused No.7 and also he has to take care of his aged parents. Accordingly, he has sought for imposing minimum sentence.

168. The learned Senior Counsel Sri. M.S.Shyam Sundar, on behalf of the learned counsel for accused No.15 and 16 in his usual flamboyant manner has taken this court with respect to the allegations leveled and also the manner in which the prosecution had proved their case. He has argued that though the case of the prosecution is proved, that doesn't mean that maximum penalty is required to be imposed. It is his submission that when the entire case is looked through a magnifying lens, it would indicate that it is not a rarest of rare case. He has also argued at length about the intention of the legislature to impose just and appropriate punishment. He has argued that in

the present prevailing situation, we follow an adversarial system wherein reformative theory is preferred and the intention is to ensure that the person would be reformed. Further he has argued that it cannot be a case where retributive theory of imprisonment can be imposed. Further he has pointed out that the background of the person, his standing in the society, his contribution to the society and also his criminal antecedents is required to be looked into. He has argued that accused No.15 had led a exemplary life wherein he had an unblemished political career of 27 years and his entire family was depending upon him. He has also highlighted the philanthropic activity being carried out by the accused No.15. The learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court reported in **2025 SCC Online SC 2863 (Kiran Vs. State of Karnataka)** and also another judgment of the Hon'ble High Court of Karnataka reported in **Crl.Apl.No.69/2018 dated 23.01.2026**. By

pointing to the same, he has argued that the maximum punishment as sought by the prosecution is not justified and a lenient view is required to be imposed upon.

169. The learned counsel Sri. S.Balakrishnan, on behalf of accused No.19 has argued at length that there are no aggravating circumstances available against accused No.19 and further it is his submission that when aggravating and mitigating factors are weighed, the mitigating factors are more than that of the aggravating factors. By pointing out about the family condition of accused No.19 and also of the fact that he had put in a service of nearly 20 years wherein he was awarded with medal by the Government on various occasions, he has required the Court to pass minimum sentence as contemplated under law.

170. The Court had afforded an opportunity to all the accused persons to make their submissions on the

quantum of sentence individually. The submissions made by the accused are as hereunder;

- Accused No.2 Vikram Bellary has submitted that he is having a child of 5 months and he is running a laundry shop and he is the sole bread earner of his family.
- Accused No.3 Kirthi Kumar Kurahatti has submitted that he is the sole bread earner in his family and he has to take care of his child aged about 1 year and his entire family is depending on him.
- Accused No.4 Sandeep Saudatti has submitted that he had married about 3 days ago and has to take care of his family.
- Accused No.5 Vinayaka Katagi has submitted that he has got 3 children and his father is a heart patient and he is the sole bread earner in his family.
- Accused No.6 Mahabaleshwar Hongal @ Muduka has contended that he is the sole bread earner of his family who is having 2 children aged about 3 years and 1 year and also he is working as a agricultural labourer who is not having any definite source of income.

- Accused No.7 Santhosh Saudatti has submitted that he is working as an Auto Driver and he is suffering from spinal chord problem since 2012.
- Accused No.8 Dinesh has submitted that he is working as a Driver and he is having 2 daughters and he is the sole bread earner of his family.
- Accused No.9 Ashwath has submitted that he has got 2 young children and has to take care of his aged mother.
- Accused No.10 Sunil K.S., has submitted that he has got 8 years old child and he is the sole bread earner in his family.
- Accused No.11 Nazeer Ahmed has submitted that he is the sole bread earner in his family which consists of 4 children who are entirely depending on him.
- Accused No.12 Shahanawaz has submitted that he has got 2 daughters and he is tailor by profession.
- Accused No.13 Nuthan has submitted that he had underwent heart operation recently and has to take care of his 2 minor daughters and he is sole bread earner of his family.

- Accused No.14 Harshith has submitted that he works as a Driver and has to take care of his aged mother.

- Accused No.15 Vinay R Kulkarni has submitted that he was into politics for the last 27 years and he was 3 times MLA and was also a Minister in the Government of Karnataka and has stated that he had also acted as District In-charge Minister. It is his submission that he was looking after his livestock and is having more than 3500 calf and was also required to take care of the grievances of the general public. He has also submitted that he was known for philanthropic activities and at no point of time there were any allegations against him of having a criminal antecedent.

- Accused No.16 Chandrashekar Indi has submitted that he has lost his daughter and even his son was not taking care of him. It is also submitted by him that he and his wife were heart patients suffering from various ailments.

- Accused No.18 Vikas Kalburgi has submitted that he has got 2 children and aged parents to be taken care of and it has been submitted by him that he is the sole bread earner in his family.

- **Accused No.19 Chennakeshava Tingarikar has submitted that he has got 3 children and has put-in unblemished service of 20 years for which he has been awarded for good service throughout his service. It is also submitted by him that apart from the above case there are no other allegations against him and he has to take care of his aged parents. Accordingly, he has sought for imposing minimum sentence as contemplated under law.**

171. Time and again, it has been reiterated by the Hon'ble Apex Court that in the matters pertaining to awarding sentence, the court should be cautious and sift and weigh the factors which are relevant for arriving at a just conclusion. It is also the cardinal principle of law that the nature and gravity of the crime is important than the criminality. The court at the time of passing an order on quantum of sentence has to look into the materials in a different manner than that of the appreciating evidence for passing of judgment. ***The court is not against the criminal but***

against the criminal act and at the time of considering the quantum of sentence, the court is required to look into the manner in which the crime is committed. There is no specific legislation with respect to passing of quantum of sentence. However, the parameter which is required to be considered is based on the case laws which are required to be looked into. Apart from that the Hon'ble Apex Court has also held that at the time of passing of sentence, an exercise has to be made by the court by pointing the aggravating and mitigating factors and balance has to be secured in order to arrive at a conclusion to award appropriate sentence that could be imposed upon the parties. By keeping the same in mind, I have bestowed my anxious reading to the submissions made by the Learned Counsel for the accused, Learned Special Public Prosecutor and also the submissions of the accused person. What could be the criteria for imposing just and appropriate sentence is laid down by the Hon'ble Apex court in the

judgment rendered in (2022) 7 SCC 628 (Jaswinder Singh V Navjot Singh Sidhu) wherein it is held as:

> ***25. We would like to deliberate a little more in detail on the necessity of maintaining a reasonable proportion between the seriousness of the crime and the punishment. While a disproportionately severe sentence ought not to be passed, simultaneously it also does not clothe the law courts to award a sentence which would be manifestly inadequate, having due regard to the nature of the offence, since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society; while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large. [Jai Kumar v. State of M.P., (1999) 5 SCC 1 : 1999 SCC (Cri) 638]***
>
> ***26. An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society cannot long endure under serious threats and if the courts do not protect the injured, the injured would then***

resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. [Sumer Singh v. Surajbhan Singh, (2014) 7 SCC 323 : (2014) 3 SCC (Cri) 184] It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated. [Ravji v. State of Rajasthan, (1996) 2 SCC 175 : 1996 SCC (Cri) 225]

27. A three-Judge Bench of this Court in State of Karnataka v. Krishnappa [State of Karnataka v. Krishnappa, (2000) 4 SCC 75 : 2000 SCC (Cri) 755] while discussing the purpose of imposition of adequate sentence opined in para 18 that : (SCC p. 83)

"18. ... Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence."

28. The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric.

[Shyam Narain v. State (NCT of Delhi), (2013) 7 SCC 77 : (2013) 3 SCC (Cri) 1] While opportunity to reform has to be kept in mind, the principle of proportionality also has to be equally kept in mind.

29. Criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context and, thus, victim's rights have to be equally protected [Rattiram v. State of M.P., (2012) 4 SCC 516: (2012) 2 SCC (Cri) 481] . It would be useful to rely on the observations of this Court in Gopal Singh v. State of Uttarakhand [Gopal Singh v. State of Uttarakhand, (2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608] that just punishment is the collective cry of the society and while collective cry has to be kept uppermost in mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. Thus, the principle of just punishment is the bedrock of sentencing in respect of a criminal offence. No doubt there cannot be a straitjacket formula nor a solvable theory in mathematical exactitude. An offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. Similarly, in Alister Anthony Pareira v. State of

Maharashtra [Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953 : AIR 2012 SC 3802] , the twin objective of the sentencing policy to be kept in mind was emphasised as deterrence and correction and, thus, principle of proportionality in sentencing a convict were held to be well entrenched in the criminal jurisprudence.

30. We may also take note of the recent judgment of this Court decided by a three-Judge Bench on 18-4-2022 in Jagjeet Singh v. Ashish Mishra [Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321 : 2022 SCC OnLine SC 453] albeit, on the issue of bail. It emphasised the victim's right to be heard. What is relevant for us to note is that the victim being the de facto sufferer of a crime had no participation in the adjudicatory process. The current ethos of criminal justice dispensation to prevent and punish crime had surreptitiously turned its back on the victim. No doubt in the present case at every stage the victim has been heard and the present application is also by the victim. The near and dear ones whether as guardians or legal heirs are required to be treated as victims. It was, thus, observed in SCC para 22 as under:

"22. It cannot be gainsaid that the right of a victim under the

amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of "State" in the proceedings, therefore, does not tantamount to according a hearing to a "victim" of the crime."

31. In the similar vein in Criminal Appeal No. 579 of 2022 titled State of Rajasthan v. Banwari Lal [State of Rajasthan v. Banwari Lal, (2022) 12 SCC 166 : 2022 SCC OnLine SC 428] , this Court has again frowned upon the tendency of courts to reduce the sentence to the period already undergone. An earlier judgment of this Court in Soman v. State of Kerala [Soman v. State of Kerala, (2013) 11 SCC 382 : (2012) 4 SCC (Cri) 1] was referred to, more specifically para 27, which reads as under : (Soman case [Soman v. State of Kerala, (2013) 11 SCC 382 : (2012) 4 SCC (Cri) 1] , SCC p. 393)

"27.1. Courts ought to base sentencing decisions on various different rationales — most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."

37. In a nutshell, the aspects of sentencing and victimology are reflected in the following ancient wisdom:

"यथावयो यथाकालं यथा प्राणं च ब्राह्मणे ।
प्रायश्चितं प्रदातव्यं ब्राह्मणैर्धर्म पाठकैः ।
येन शुध्दिमवाप्नोति न च प्राणैर्वियुज्यते ।
आर्तिं वा महतीं यति न चैतद् व्रतमा दिशेत ।।"

It means : The person dispensing justice as per Dharmashastra should prescribe a penance appropriate to the age, the time and strength of the sinner, the penance being such that he may not lose his life and yet he may be purified. A penance causing distress should not be prescribed.

172. The court has also taken into account of the submissions made by the learned Senior Counsel for accused that the accused person is required to take care of his family members and also his aged parents and they are sole bread earners in their family. In this regard, the judgment of the Hon'ble Apex Court reported in (2003) 8 SCC 13 (State of M.P. Vs. Ghanshyam Singh) wherein it is held as follows:

10. The crucial question which needs to be decided is the proper sentence and merely because of lapse of time, whether the accused is to be waived from undergoing it. It is to be noted that the sentences prescribed for offences relatable to Section 304

Part I are imprisonment for life or up to a period of 10 years. It is true that no minimum sentence has been prescribed. The sentences can be compared with prescription of similar sentences and other provisions like Section 326 IPC and Section 307 IPC when hurt is caused. Section 304 Part I is a species of homicidal death. It is statutorily described as culpable homicide though not amounting to murder as defined under IPC. Taking note of the purpose for which a sentence is imposed, it cannot be laid down as a rule of universal application that a long passage of time in all cases would justify minimal sentence. Long pendency of a matter by itself could not justify lesser sentence.

11. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find an answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate

sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be — as it should be — a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process has to be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murder of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. [(1987) 3 SCC 80 : 1987 SCC (Cri) 379 : (1987) 2 SCR 710] this Court while refusing to reduce the death sentence observed thus : (SCC p. 82, para 6)

It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.

12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463]

13. ***Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the***

special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has

some very undesirable practical consequences.

173. In the aforesaid judgment the Hon'ble Apex Court has clearly held that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society do not endure such threats. Once again at the cost of repetition, it is to be recalled that the above case was a classic case wherein blatant violation of law and procedures were made by mighty and powerful people. The question of showing leniency on the ground that the accused has to take care of their family members and their aged parents, in my humble opinion does not augurs well. At the same time, the duty of the Court is to balance the equities urged. I am also fortified in this regard by the judgment rendered by the Hon'ble Apex Court in **(2006) 10 SCC 673 (Siddarama and others Vs. State of Karnataka)** wherein it is held as follows:-

9. Law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be — as it should be— a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which would enter into the area of consideration.

10. Undue sympathy to impose inadequate sentence would do more harm to the justice system, to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court

to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463]

12. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

13. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the

aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US 183 : 28 L Ed 2d 711 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of the gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

14. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

> ***15. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.***

174. By considering the aforesaid judgments, the points which are required to be appreciated by this Court pertains to the following;

a) Is there something uncommon about the crime which renders sentence for imprisonment for life inadequate and calls for a death sentence?

b) Are the circumstances of crime such that there is no alternative but to impose death sentence even after according maximum weight-age to the mitigating circumstances which speak in favour of the offender?

175. In order to appreciate the same, it would be appropriate to consider the imprisonment and sentences prescribed for the offences for which the accused are convicted. The aforesaid aspect is extracted and they are as follows;

Sl. No.	Section	Maximum Punishment	Minimum Punishment	Fine
1.	143 of IPC	imprisonment of either description for a term which may extend to 6 months	--	With fine or with both
2.	147 of IPC	imprisonment of either description for a term which may extend to 2 years	--	With fine or with both
3.	148 of IPC	imprisonment of either description for a term which may extend to 3 years	--	With fine or with both

4.	120-B of IPC (Same as Sec.302 IPC)	Death	Life Imprisonment	Shall impose fine
5.	302 of IPC	Death	Life Imprisonment	Shall impose fine
6.	201 of IPC	imprisonment of either description for a term which may extend to 7 years	--	Shall impose fine
7.	218 of IPC	imprisonment of either description for a term which may extend to 3 years	--	With fine or with both

176. After looking into the aforesaid aspect and also the judgment rendered by the Hon'ble Apex Court wherein all the postulates of law has been settled with respect to rendering maximum sentence by the Hon'ble Apex Court in Machhi Singh Vs. State of Punjab, which is discussed supra and also in Bachan Singh's case. The Hon'ble Apex Court has observed that the Judges should not be blood thirsty. Further a real and abiding concern for the dignity of human life postulates resistance to take him life through laws

instrumentality. Further in the case of Machi Singh, the Hon'ble Apex Court has laid down the two tests which are to be considered by the Court. It is in this background the factual aspects is required to be considered.

177. By relying upon the aforesaid authorities, the Court is required to prepare a chart consisting of aggravating and mitigating circumstances. The following aggravating factors can be noticed in the instant case.

Aggravating Factors:

1. ***The accused No.15 being the Member of Legislative Assembly and also District In-charge Minister has entertained a grudge against his political opponent and had committed the horrendous act which cannot be ignored.***

2. ***The accused No.15 being the Member of Legislative Assembly and also District In-charge Minister was from a affluent family had committed the offence which is nothing but showing disgrace to the society who had reposed faith in him by getting him elected.***

3. ***The accused No.15 being the Member of Legislative Assembly and also District In-charge Minister had entered into a criminal conspiracy and the murder was committed in a pre-determined cold blooded manner which cannot be easily brushed aside.***

4. ***The act of the accused persons in committing the murder in a broad day light in a brutal manner shakes the conscience of the society.***

5. ***The act of accused person is not a common criminal incident which had taken place accidentally but it is an act which had taken place in a cold blooded manner for which able support was provided by the law enforcement agency and also implanting and screening of evidence had taken place.***

6. ***The conduct of the accused No.15 in committing such an offence being a people's representative will send a wrong message to the society that the persons in power can do anything.***

7. ***The act of accused persons erodes the faith and belief of general public in the social fabric of the society.***

8. ***If any lenient view is to be taken, the act would further erode the faith and may lead to draw an inference that such kind of horrendous offences affecting the society would be dealt liberally.***

Mitigating Factors:

1. ***The accused persons are not habitual offenders.***

2. ***The accused persons are not having any criminal antecedents.***

3. ***The accused persons have to take care of their family members.***

4. ***The accused persons are having deep roots in the society and had enjoyed good reputation in the society.***

5. ***The accused No.15 being in politics can help several people.***

178. By looking into the aforesaid aggravating and mitigating factors and also on consideration of the materials which has been produced before the Court, it indicates that the act of accused persons could be construed as an offence which is committed towards the society at large.

179. Now the question which falls for consideration is whether it falls under the category of rarest of rare case. In order to better appreciate the same, the aforesaid aspect is required to be considered by relying upon the judgment of the Hon'ble Apex Court reported in Machi Singh case. The first aspect which is to be determined is, is there something

uncommon about the crime which renders the imprisonment of life as inadequate. It is pertinent to note that the aforesaid incident is proved to have taken-place due to political rivalry and as such committing of murder for political reasons cannot be called as rarest of rare case. As such, the facts and circumstances of the case does not fall within the category of rarest of rare case. The second aspect which is to be determined is whether there are no other alternative available than to impose death sentence even after according maximum weight-age to the mitigating circumstances. It is relevant to note that in the above case it cannot be held that there is no other alternative than to impose death sentence.

180. I have also considered the submission of the learned ASG that the accused are required to be imposed with maximum life imprisonment which is without remission for their life. In my humble opinion,

the said kind of imprisonment cannot be imposed by this Court, since this Court is not having power to impose maximum sentence of life imprisonment without remission as per the judgment of the Hon'ble Apex Court reported in 2025 SCC Online SC 2863 and as per the judgment rendered in Crl.Apl.No.69/2018 delivered by the Hon'ble High Court of Karnataka.

181. Further, the maxim "***Nullum crimen sine lege***" which means, the principle of legality in the rule of construing criminal statute is to be in favour of citizens and also the approach towards the social welfare. The important aspect of offences committed against the society is to be emphasized with the gravity of the harm caused to the society and also the nature of the offences themselves. In many instances, the gravity of the offence cannot be easily deciphered and same requires to be considered in a manner which would indicate the mode of execution in secrecy by

shrewd and snollygoster persons with sophisticated means. Time and again, it has been held by the Hon'ble Apex Court that the cry of the victim is also to be appreciated at the time of imposing punishment. In the instant case, the society at large is to be considered as the main victim due to the act committed by the accused persons.

182. In my humble opinion, committing of murder by showing disdain towards them is a grave offence which cannot be brushed aside lightly and such kind of a conduct cannot be accepted as a normal one. It is to be kept in mind of the apt quote of Lord Denning wherein it is stated as "***Be ye never so high, the law is above you".***

183. In the instant case it is noticed that the allegations against the accused No.15 which is leveled was when he was enjoying power. The question of commission of an offence by a Legislator is a serious

aspect which is to be taken note of. In fact, the society looks at legislature with a fond hope of transforming the society. They are the supreme Authority of making laws towards the welfare of the citizenry. The concept of supremacy of law [Dharma] was laid down in Brihadaranyaka Upanishad, wherein it is held as;

तदेतत्–क्षत्रस्य क्षत्रं यद्धर्मः।
तस्माद्धर्मात्परं नास्ति।
अथो अबलीयान् बलीयांसमाशंसते घर्मेण।
यथा राज्ञा एवम्।।

Which means the law (Dharma) is the king of kings. No one is superior to the law (Dharma); the law (Dharma) aided by the power of the king enables the weak to prevail over the strong. Further murder is a crime which is an anathema in a civilized society which would totally deprive the family members of the deceased. Further law after all is an instrument which aims at social order and aberrant elements would inherently destroy the social fabric of the society.

184. That apart, the Court has also taken note of the financial condition of the children of the deceased. During the course of trial, PW.50 Smt.Mallavva had filed an application with a prayer to consider her as the victim and also with necessary authorisation to submit her case. However, by looking into the records her prayer came to be rejected. It is also relevant to note that in the instant case PW.2 Gurunatha Goudar who is the brother of deceased had fought valiantly throughout the case for the purpose of justice. At the same time the children of the deceased cannot be disregarded as victims in the above case. They have lost the love and affection of their father which was essentially required for their upbringing in the society. Hence, the children of Yogesh Goudar and PW.2 Gurunatha Goudar are considered as victims in the above case.

185. In this regard, I have also looked into various dictum of the Hon'ble Apex Court, wherein it is specifically directed that the Court is required to pass suitable order towards compensating the victim as per Sec.357-A of Cr.P.C. In this regard, it is noticed that awarding of compensation shall not be shouldered upon the State for the reason that the accused are quite capable and economically stable. What would be the just compensation that can be awarded is a question which requires being determined. I have also considered the Authority of the Hon'ble Apex Court reported in **(2013)6 SCC 770 (Ankush Shivaji Gayakwad Vs. State of Mahabharata)**, wherein a duty has been casted upon the Court to mandatorily award just and appropriate compensation which is noticed as below:

> ***61. Section 357 CrPC confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case. In Maya Devi v. Raj Kumari Batra [Maya Devi v. Raj Kumari Batra, (2010) 9 SCC***

486 : (2010) 3 SCC (Civ) 842] this Court held that the disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed : (SCC p. 495, paras 28-30)

"28. ... There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.

29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon

it to examine and determine the question on its own."

(emphasis supplied)

66. To sum up : while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

186. Last but not the least, it is rather unfortunate and disheartening to note that the protector of law i.e., the Police Department in the State

of Karnataka, which is recognized as highly competent and efficient in the entire nation has been made to bear the heat of the act caused by some of its Officers. The Police officials of whom mention has been made in the judgment have blatantly and in a cavalier manner have deposed before the Court that they had tendered false evidence under oath. The Police Department in Karnataka is known for braveness and courage and for their unflinching dedication towards their duty. But, strangely some of its officers have openly admitted of tendering false evidence before the Court which cannot be tolerated. As such, the administration of justice and the proceedings before the Court cannot be taken lightly since it is the basic edifice in the realm of justice to be delivered to the society. As such, some punitive action is required to be initiated to prevent people committing such blunders of deposing falsely before the Court which would erode the faith of general public in the administration of justice.

187. Before parting it would be appropriate to quote the apt words extracted from Raja Dharma with lessons on Raja Neeti by Justice Dr.M.Rama Jois, which is extracted;

धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः।
तस्माद्धर्मो न हन्तव्यो मा नो धर्मो हतोऽवधीत्।।

Which means Dharma protects those who protect it, those who destroy Dharma get destroyed. Therefore, Dharma should not be destroyed so that we may not be destroyed as a consequence thereof. As such, it would not be appropriate to accept the version of the accused persons to show leniency. Ergo, I proceed to pass the following;

ORDER

Acting under Sec.235(2) of Cr.P.C., accused No.2 Vikram Bellary, accused No.3 Kirthi Kumar Basavaraj Kurahatti, accused No.4 Sandeep Saudatti, accused No.5 Vinayaka Katagi, accused No.6 Mahabaleshwar Hongal @ Muduka, accused No.7 Santhosh Saudatti,

accused No.8 Dinesh.M, accused No.9 Ashwath, accused No.10 Sunil, accused No.11 Nazeer Ahmed, accused No.12 Shahanawaz, accused No.13 Nuthan, accused No.14 Harshith, accused No.16 Chandrashekar Indi, accused No.18 Vikas Kalburgi, accused No.19 Channakeshava B. Tingarikar and accused No.15 Vinay Kulkarni are hereby convicted for the offences mentioned below and sentenced to undergo punishment as follows;

For the offence punishable under Sec.302 r/w Sec.120-B of IPC, accused No.2 to 16 and 18 are hereby sentenced to undergo **life imprisonment and to pay a fine of Rs.30,000/- each and in default of payment of fine, they shall undergo imprisonment for 3 months**.

For the offence punishable under Sec.143 r/w Sec.120-B of IPC, accused No.2 to 14 and 18 are hereby sentenced to undergo **simple imprisonment for period of 6 months with fine of Rs.2,000/- each and in default of payment of fine, they shall undergo imprisonment for 1 month.**

For the offence punishable under Sec.147 r/w Sec.120-B of IPC, accused No.2 to 14 and

18 are hereby sentenced to undergo **rigorous imprisonment for period of 1 year with fine of Rs.2,000/- each and in default of payment of fine, they shall undergo imprisonment for 1 month.**

For the offence punishable under Sec.148 r/w Sec.120-B of IPC, accused No.2 to 14 and 18 are hereby sentenced to undergo **rigorous imprisonment for period of 1 year with fine of Rs.2,000/- each and in default of payment of fine, they shall undergo imprisonment for 1 month.**

For the offence punishable under Sec.120-B, accused No.2 to 16 and 18 are hereby sentenced to undergo **life imprisonment and to pay a fine of Rs.30,000/- each and in default of payment of fine, they shall undergo imprisonment for 3 months. For the offence punishable under Sec.120-B r/w Sec.201 and 218 of IPC with respect to accused No.19, he is sentenced to undergo rigorous imprisonment for a period of 7 years and fine of Rs.30,000/- and in default to undergo imprisonment for 3 months.**

For the offence punishable under Sec.201 r/w Sec.120-B of IPC, the accused No.2 to 16, 18 and 19 are hereby sentenced to **undergo rigorous imprisonment for a period of 7 years with a fine of Rs.30,000/- and in default to undergo simple imprisonment for a period of 3 months.**

For the offence punishable under Sec.218 r/w Sec.120-B of IPC, accused No.19 Chennakeshava Tingarikar is hereby sentenced to undergo **rigorous imprisonment for 3 years with fine of Rs.20,000/- and in default of payment of fine, shall undergo imprisonment for 1 month.**

Acting under Sec.235(1) of Cr.P.C., the accused No.15 Vinay Kulkarni and accused No.16 Chandrashekar Indi are acquitted for the offences punishable under **Sec.25 r/w Sec.3, 5, 8 and Sec.29 of Arms Act, 1959.**

Acting under Sec.235(1) of Cr.P.C., accused No.20 Vasudeva Rama Nilekani, is hereby acquitted for the offences punishable under **Sec.201 r/w Sec.120-B of IPC, Sec.218 r/w Sec.120-B of IPC.**

Acting under Sec.235(1) of Cr.P.C., accused No.19 Chennakeshava Tingarikar and accused No.20 Vasudeva Rama Nilekani, are hereby acquitted for the offences punishable under **Sec.7, 13(1)(d) r/w Sec.13(2) of the Prevention of Corruption Act, 1988.**

Acting under Sec.235(1) of Cr.P.C., accused No.21 Somashekar Basappa Nyamagoudar, is hereby acquitted for the offences punishable under **Sec.120-B of IPC and Sec.302 r/w Sec.120-B of IPC.**

The pardon granted to the approver Basavaraja Muttagi is made final.

The prosecution are granted with liberty to file necessary application seeking sanction to prosecute the approver PW.9 Shivananda Shrishaila Biradar, for turning hostile before this Court.

Acting under Sec. 340 of Cr.P.C., the Registrar of City Civil Court is hereby directed to register case of perjury against the Police Officers PW.24 Shivananda Chalavadi, PW.44 Babu Katagi, PW.54 Shankaragouda Basanagouda Patil and other independent

witnesses i.e., PW.1 Dr.Dattatreya Gudaganti, PW.32 Anand Irappa Uddannavar, PW.33 Vinayaka Binjiyavar, PW.34 Mohan Echarappa Mulmuttal, PW.35 Vivekananda Dalawai and PW.20 Natraj Sarj Desai and PW.53 Vijay Kulkarni, for tendering false evidence before the Court in relation to the aforesaid proceeding.

MO.1 to 4, 6 to 11, 23, 27, 30 and 31 being worthless, are ordered to be destroyed on completion of the appeal period and in the event of preferring the appeal the same shall be destroyed only on the disposal of the appeal.

MO.5, MO.12 to 22, MO.24 to 26, 28, 29, 32 and 33 are hereby ordered to be confiscated to the State.

It is hereby made clear that even if the accused persons undergoes the default sentence, they will not be absolved of their liability to pay fine amount in view of the provisos to Sub-Section (1) of Sec.421 of Cr.P.C. The substantive sentences of imprisonment shall run concurrently.

The accused are entitled for set-off for the period of detention which they have undergone in the above case as under trial prisoners.

Out of the fine amount, the children of deceased Yogesh Goudar and Gurunath Goudar are entitled for compensation of Rs.16,00,000/- and the remaining amount shall be forfeited to the State.

Send the copy of this Judgment and sentence to the District Magistrate concerned as per Sec.365 of Cr.P.C.

Office is hereby directed to furnish the copy of the Judgment to the accused persons forthwith.

*(Dictated to Stenographer Grade-I, typed by her directly on computer, revised and corrected by me and then pronounced in open court on **17th day of April, 2026**)*

(SANTHOSH GAJANAN BHAT)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to former and elected MPs/ MLAs in the State of Karnataka)

ANNEXURES

1. Witnesses examined by the prosecution:-

PW1	CW1	Dattatreya Hanumantha Gudagunti
PW2	CW21	Gurunath Goudar
PW3	CW85	Siddalingana Gouda
PW4	CW42	Shivananda Basappa Salagatti
PW5	CW43	Gangappa Shivappa Kallagaudthi
PW6	CW6	Nagaraj Thodkar
PW7	CW7	Veeresh Amrutheshwar Byhatti
PW8	CW8	Nataraj Makki Goudar
PW9	Pardon A17	Shivanand Shrishail Biradar
PW10	Pardon A1	Basavaraj Muttagi
PW11	CW127	Anjana Basavaraj Dollin
PW12	CW129	Suma Subhash Goudar
PW13	CW13	Pramod Narahari Rao Deshpande
PW14	CW14	Anand Kumar.H
PW15	CW48	Thimmnna Ningappa Bahur
PW16	CW50	Mahesh Totad
PW17	CW51	P.Roopendra Rao
PW18	CW52	Yogesh Kumar
PW19	CW53	Srivatsa Dattatreya Patil
PW20	CW54	Nataraj Saraj Desai
PW21	CW58	Manikantan Acharya
PW22	CW59	Syed Hasham
PW23	CW103	Ashok Veeranna Gouda Patil

PW24	CW152	Shivanand H. Chalavadi
PW25	CW56	Nagappa Mallikarjun Byragonde
PW26	CW57	Suresh Jagadev Hulle
PW27	CW9	Bharath Kalsur
PW28	CW10	Anup Churi
PW29	CW11	Girish Pathri
PW30	CW5	Lakshmi Benakatti
PW31	CW111	Shashank Jain
PW32	CW1	Anand Irappa Uddannavar
PW33	CW4	Vinayak Binjiyavar
PW34	CW3	Mohan Yethrappa Mulmuttal
PW35	CW135	Vivkenanda Shivashankar Dalawai
PW36	CW118	Smt. Shwetha Kulkarni
PW37	CW143	Thyagaraja N.
PW38	CW146	Balu.M
PW39	CW147	Kushal A. Master
PW40	CW102	Logendra.C
PW41	CW105	Mahesh Shetty
PW42	CW65	Shivanand Bhimappa Janmatti
PW43	CW73	Shivakumar Nijaguni Bendigeri
PW44	CW109	Babu Ningappa Katagi
PW45	CW33	Suresh Ramegowda
PW46	CW34	Gowda Prakash Devendra
PW47	Addl. Witness	Bhavin Kumar Jeram Sathwara

PW48	CW36	Nagaraj
PW49	CW37	Raghavendra
PW50	CW20	Mallavva Yogesh Gouda Goudar
PW51	PW90	Ramesh Mudukanagouda
PW52	CW12	N.Bhoosa Reddy
PW53	CW55	Vijay Kulkarni
PW54	CW.95	Shankaragouda Basanagouda Patil
PW.55	CW.94	Chandrashear Thippanna
PW.56	CW.97	Musthaq Ahmed
PW.57	CW.60	Mahesh
PW.58	CW.98	Rajesab S. Gunjal
PW.59	CW.134	Mallikarjun Chikkamatt
PW.60	CW.61	Mahindra Kumar
PW.61	CW.71	Ananth Kaskar
PW.62	CW.62	Anand Gouda F Badiyavar
PW.63	CW.130	Vishal Ballari
PW.64	CW.151	Holabasavaya G. Mattapati
PW.65	CW.22	Lakshman Thimmanna Karekal
PW.66	CW.24	Mahendra Nilekani
PW.67	CW.35	Umapathy
PW.68	CW.25	Sanjeeva.K
PW.69	CW.82	Anil Kumar B.S.
PW.70	CW.15	Chandrashekar Pujar
PW.71	CW.80	Prabhu Shankar
PW.72	CW.84	G.Shyama Holla

PW.73	CW.88	Jamuna P. Balraj
PW.74	CW.100	Sanjeev Kumar
PW.75	CW.87	Ramesh.C
PW.76	CW.17	Mohammed Sadiq
PW.77	CW.18	Sathish Narayan Taleker
PW.78	CW.110	Akshay Katagi
PW.79	CW.27	Mohammed Zubair.N
PW.80	CW.128	Gadigeyapa Balloli @ Praveen
PW.81	CW.117	G.Suresh
PW.82	CW.116	Sathish Somashekar Saudatti
PW.83	CW.144	Rajesh S. Sulikeri
PW.84	CW.142	Pramod Balagouda Panade
PW.85	CW.75	Harish Shetty
PW.86	CW.76	Santhosh R. Jadhav
PW.87	CW.77	Dr.M.Kiran Kumar
PW.88	CW.79	Fairoz Khan Jhangirdhar
PW.89	Addl. Witness	Sangamesh Mallappa Madivalara
PW.90	- Do -	Ravi Morey
PW.91	- Do -	Basavaraj Mallappa
PW.92	- Do -	Basavaraj Bheemappa Maykar
PW.93	CW.153	Dr. Kumuda Rani.M
PW.94	Addl. Witness	Dr. Santhosh Kumar.P
PW.95	CW.136	Ravi Noronha
PW.96	Addl. Witness	Leaster Albuquerque

PW.97	- Do -	Eshwarappa Madivalappa Kondikoppa
PW.98	- Do -	Hanumantha Jakkannavar
PW.99	- Do -	Basavaraj Dayanand Thondikatt
PW.100	CW.28	Yousuff Shariff
PW.101	CW.78	Vijay Dutt
PW.102	CW.141	Kishor Kumar Maloth
PW.103	CW.47	Jagadeesh Burlabaddi
PW.104	CW.45	R.Sridharan
PW.105	CW.138	Prachi Gajendra Khade
PW.106	CW.46	Prakash.G
PW.107	CW.124	Motilal Pawar
PW.108	CW.30	P.S.Gopalakrishna
PW.109	CW.44	Johnson Tom
PW.110	CW.121	Vijay Kumar.M
PW.111	Addl. Witness	Yogappa Gujjananavar
PW.112	CW.106	Kempegouda Rudragouda Patil
PW.113	CW.32	Rakesh Ranjan

2. Witnesses examined by the defence/accused:- Nil

3. Documents exhibited by the prosecution:

Ex.P1	Complaint
Ex.P1(a)	Signature of PW.1
Ex.P2	Note Book
Ex.P2(a)	Signature of PW.3

Ex.P3	Production Memo
Ex.P3(a)	Signature of PW.3
Ex.P4	161 statement of PW.3
Ex.P5	161 statement of PW.3
Ex.P6	Postal cover
Ex.P7	Letter inside the postal cover
Ex.P8	Document consists of PW2's signature (Ex.P4 in SC No.50/2017)
Ex.P8(a)	Signature of PW.2
Ex.P8(b)	Signature of PW.111
Ex.P9	Production Memo
Ex.P9(a)	Signature of PW.2
Ex.P10	Agreement of Sale (Ex.P69 in SC No.50/2017)
Ex.P10(a)	Signature of PW.10
Ex.P11	6 RTC's
Ex.P12	Portion of 161 statement of PW.8
Ex.P13	Register at Hotel Amita Residency
Ex.P13(a)	Signature of PW.10
Ex.P14	Specimen writings (45 sheets)
Ex.P15	Specimen writings (12 sheets)
Ex.P15(a)	Signature of PW.100
Ex.P16	Search List
Ex.P16(a)	Signature of PW.10
Ex.P16(b)	Signature of PW.10
Ex.P16(c)	Signature of PW.10
Ex.P16(d)	Signature of PW.71
Ex.P17	Production Memo/Receipt Memo

Ex.P17(a)	Signature of PW.15
Ex.P18	Certified copy of Sale Deed
Ex.P19	Portion of statement of PW.16
Ex.P20	Portion of statement of PW.17
Ex.P21	Portion of statement of PW.18
Ex.P22	Portion of statement of PW.19
Ex.P23	Portion of statement of PW.20
Ex.P24	Portion of statement of PW.21
Ex.P25	Portion of statement of PW.24
Ex.P26	Portion of statement of PW.25
Ex.P27	Portion of statement of PW.26
Ex.P28	Portion of statement of PW.27
Ex.P29	Portion of statement of PW.27
Ex.P30	Portion of statement of PW.27
Ex.P31	Hotel Register Book
Ex.P31(a)	Page No.198, Room No.109
Ex.P31(b)	Signature of PW.28
Ex.P32	Hotel Register Book
Ex.P32(a)	Relevant entry
Ex.P32(b)	Signature of PW.29
Ex.P33	Test Identification Parade of accused No.9 dated 05.05.2020
Ex.P33(a)	Signature of PW.30
Ex.P33(b) to (d)	Signature of PW.79
Ex.P34	Test Identification Parade dated 05.05.2020

Ex.P34(a)	Signature of PW.30
Ex.P34(b) to (d)	Signature of PW.79
Ex.P35	Test Identification Parade dated 05.05.2020
Ex.P35(a)	Signature of PW.30
Ex.P35(b) to (d)	Signature of PW.79
Ex.P36	Test Identification Parade dated 06.05.2020
Ex.P36(a)	Signature of PW.30
Ex.P36(b) to (d)	Signature of PW.79
Ex.P37	Test Identification Parade dated 06.05.2020
Ex.P37(a)	Signature of PW.30
Ex.P37(b) to (d)	Signature of PW.79
Ex.P38	Test Identification Parade dated 06.05.2020
Ex.P38(a)	Signature of PW.30
Ex.P38(b) to (d)	Signature of PW.79
Ex.P39	Test Identification Parade dated 06.05.2020
Ex.P39(a)	Signature of PW.30
Ex.P39(b) to (d)	Signature of PW.79
Ex.P40	Test Identification Parade dated 11.03.2020
Ex.P40(a)	Signature of PW.1

Ex.P40(b) to (d)	Signature of PW.78
Ex.P41	Test Identification Parade dated 12.03.2020
Ex.P41(a)	Signature of PW.1
Ex.P41(b) to (d)	Signature of PW.78
Ex.P42	Test Identification Parade dated 12.03.2020
Ex.P42(a)	Signature of PW.1
Ex.P42(b) to (d)	Signature of PW.78
Ex.P43	Test Identification Parade dated 12.03.2020
Ex.P43(a)	Signature of PW.1
Ex.P43(b) to (d)	Signature of PW.78
Ex.P44	Test Identification Parade dated 13.03.2020
Ex.P44(a)	Signature of PW.1
Ex.P44(b) to (d)	Signature of PW.79
Ex.P45	Test Identification Parade dated 13.03.2020
Ex.P45(a)	Signature of PW.1
Ex.P45(b) to (d)	Signature of PW.79
Ex.P46	Test Identification Parade dated 05.05.2020
Ex.P46(a)	Signature of PW.33

Ex.P46(b) to (d)	Signature of PW.79
Ex.P47	Test Identification Parade dated 05.05.2020
Ex.P47(a)	Signature of PW.33
Ex.P47(b) to (d)	Signature of PW.79
Ex.P48	Test Identification Parade dated 05.05.2020
Ex.P48(a)	Signature of PW.33
Ex.P48(b) to (d)	Signature of PW.79
Ex.P49	Test Identification Parade dated 06.05.2020
Ex.P49(a)	Signature of PW.33
Ex.P49(b) to (d)	Signature of PW.79
Ex.P50	Test Identification Parade dated 06.05.2020
Ex.P50(a)	Signature of PW.33
Ex.P51	Test Identification Parade dated 06.05.2020
Ex.P51(a)	Signature of PW.33
Ex.P51(b) to (d)	Signature of PW.79
Ex.P52	Test Identification Parade dated 06.05.2020
Ex.P52(a)	Signature of PW.33
Ex.P52(b) to (d)	Signature of PW.79
Ex.P53	Rent Agreement

Ex.P53(a)	Signature of PW.35
Ex.P54	Extract of Julie Jolly Resort at Goa
Ex.P54(a)	Signature of PW.35
Ex.P54(b)	Signature of PW.40
Ex.P54(c)	Signature of PW.32
Ex.P54(d)	Signature of PW.96
Ex.P55	FSL Test Report
Ex.P55(a)	Signature of PW.37
Ex.P56	Sample Seal
Ex.P57	Hard Disc
Ex.P57(a)	Signature of PW.37
Ex.P58	DVD
Ex.P58(a)	Signature of PW.37
Ex.P59	Sec.65(B) Certificate
Ex.P60	Letter dated 03.02.2021
Ex.P60(a)	Signature of PW37
Ex.P60(b)	Sample Seal
Ex.P61	Letter dated 15.06.2016 (Call details requisition Form)
Ex.P61(a)	Signature of PW37
Ex.P62	CDR Report
Ex.P62(a)	Signature of PW37
Ex.P63	Sec.65(B)(4)(c) Certificate
Ex.P63(a)	Signature of PW37
Ex.P64	Certificate of examination by FSL dated 20.08.2020
Ex.P64(a)	Signature of PW38
Ex.P64(b)	Sample Seal

Ex.P65	Pendrive
Ex.P66	Sealed cover containing Pendrive
Ex.P67	Sec.65(B)(4)(c) Certificate
Ex.P67(a)	Signature of PW.8
Ex.P68	Portion of 161 Statement of PW.34
Ex.P69	Portion of 161 Statement of PW.34
Ex.P70	Test Identification Parade dated PW.34 dated 05.05.2020
Ex.70(a)	Signature of PW.34
Ex.P70(b) to (d)	Signature of PW.79
Ex.P71	Another Test Identification Parade dated 05.05.2020
Ex.P71(a)	Signature of PW.34
Ex.P71(b) to (d)	Signature of PW.79
Ex.P72	Test Identification Parade dated 06.05.2020
Ex.P72(a)	Signature of PW.34
Ex.P72(b) to (d)	Signature of PW.79
Ex.P73	Test Identification Parade dated 06.05.2020
Ex.P73(a)	Signature of PW.34
Ex.P73(b) to (d)	Signature of PW.79
Ex.P74	System generated details containing the Drive, SI Number and hash value
Ex.P74(a)	Signature of PW38
Ex.P75	Sec.65(B)(4) Certificate

Ex.P75(a)	Signature of PW38
Ex.P76	Forwarding letter dated 16.07.2020
Ex.P77	FSL Report dated 15.07.2020 along with 65(B) Certificate of Photography Division and Annexure
Ex.P77(a)(b)	Signature of PW.39
Ex.P77(c)	Signature of PW.47
Ex.P77(d)	Signature of Addl. Witness PW.39
Ex.P78	Hard Disc
Ex.P79	Sealed cover which is opened in the Court
Ex.P80	HP USB Pen Drive 32 GB
Ex.P81	DVD
Ex.P82	Register Book of Rashi Farms
Ex.P82(a)	Signature of PW33
Ex.P83	Portion of 161 statement
Ex.P84	Portion of 161 statement
Ex.P85	Portion of 161 statement
Ex.P85(a)	Portion of 161 statement
Ex.P85(b)	Portion of 161 statement
Ex.P85(c)	Portion of 161 statement
Ex.P85(d)	Portion of 161 statement
Ex.P86	Pendrive
Ex.P87	161 Statement of PW.32
Ex.P87(a)	161 Statement portion of PW.32
Ex.P87(b)	161 Statement portion of PW.32
Ex.P87(c)	161 Statement portion of PW.32
Ex.P87(d)	161 Statement portion of PW.32
Ex.P87(e)	161 Statement portion of PW.32

Ex.P87(f)	161 Statement portion of PW.32
Ex.P87(g)	161 Statement portion of PW.32
Ex.P88	161 Statement of PW.36
Ex.P88(a)	161 Statement portion of PW.36
Ex.P88(b)	161 Statement portion of PW.36
Ex.P89	Test Identification Parade of Shanawaz
Ex.P89(a)	Signature of PW.32
Ex.P89(b) to (d)	Signature of PW.78
Ex.P90	Portion of Statement of PW.34
Ex.P90(a)	Portion of Statement of PW.34
Ex.P90(b)	Portion of Statement of PW.34
Ex.P90(c)	Portion of Statement of PW.34
Ex.P91, 92	Medicine prescription slip of Chirayu Clinic
Ex.P93	Portion of 161 statement of PW.1 Dr.Dattatreya
Ex.P93(a) to (i)	Portion of 161 statement of PW.1 Dr.Dattatreya
Ex.P94	Portion of 161 statement of PW.1 Dr.Dattatreya
Ex.P94(a)	Portion of 161 statement of PW.1 Dr.Dattatreya
Ex.P94(b)	Portion of 161 statement of PW.1 Dr.Dattatreya
Ex.P95	Bus Ticket booking to Dharwad on 16.11.2017
Ex.P96	Portion of 161 statement of PW.33
Ex.P96(a) to (e)	Portion of 161 statement of PW.33

Ex.P97	Portion of 161 statement of PW.33
Ex.P97(a)	Portion of 161 statement of PW.33
Ex.P97(b)	Portion of 161 statement of PW.33
Ex.P98	Recovery mahazar dated 17.06.2016
Ex.P98(a)	Signature of PW.10
Ex.P98(b)	Signature of PW.90
Ex.P98(c)	Signature of PW.98
Ex.P99	Photograph
Ex.P100	Letter dated 19.11.2016 of Smt. Mallavva to Police Commissioner, Hubli-Dharwad regarding re-investigate the case
Ex.P101	Letter dated 16.01.2017 of Smt. Mallavva to District SP
Ex.P102	Affidavit of Smt.Mallavva filed in High Court, Dharwad in Crl.Petition No.101434/2016 dated 30.01.2017
Ex.P103	Pendrive
Ex.P104	65B Certificate
Ex.P105	Statement of Mallavva Goudar under Sec.164 of Cr.P.C.
Ex.P105(a)	Portion of statement under Sec.164 Cr.PC
Ex.P106	Recovery mahazar
Ex.P106(a)	Signature of PW.51
Ex.P106(b)	Signature of Hanumanthappa Jakkannavar
Ex.P107	Recovery mahazar
Ex.P107(a)	Signature of PW.51
Ex.P107(b)	Signature of Basavaraj Thodikatti Singh
Ex.P108	Seizure photo of Rod
Ex.P109	Seizure photo of Koitha

Ex.P110	Seizure mahazar
Ex.P110(a)	Signature of PW.51
Ex.P110(b)	Signature of Ishwarappa Kodikappa
Ex.P111	Photograph
Ex.P112	Seizure mahazar
Ex.P112(a)	Signature of PW.51
Ex.P112(b)	Signature of Basavaraja Godeppanavar
Ex.P113	Portion of 161 Statement of PW.53
Ex.P113(a) to (d)	Portion of 161 Statement of PW.53
Ex.P114	Portion of 161 statement of PW.54
Ex.P114(a) & (b)	Portion of 161 statement of PW.54
Ex.P115	Portion of 161 statement of PW.55
Ex.P115(a)	Portion of 161 statement of PW.55
Ex.P116	Portion of 161 statement of PW.56
Ex.P116(a)	Portion of 161 statement of PW.56
Ex.P117	Production cum Receipt Memo dated 24.09.2019 and 09.10.2020
Ex.P117(a)	Signature of PW.57
Ex.P118	Travel Tickets
Ex.P119	Sec.65B Certificate of Mahesh.B related to print of tickets
Ex.P119(a)	Signature of PW.57
Ex.P120	Travel Tickets
Ex.P121	Sec.65B Certificate of Mahesh.B related to travel tickets
Ex.P121(a)	Signature of PW.57

Ex.P122	Portion of 161 statement of PW.58
Ex.P122(a) (b)	Portion of 161 statement of PW.58
Ex.P123	Covering letter dated 18.06.2020
Ex.P124	Covering letter dated 05.09.2020
Ex.P125	Covering letter dated 17.10.2020
Ex.P126	Production Memo dated 19.06.2020
Ex.P126(a)	Signature of PW.62
Ex.P127	Portion of 161 statement of PW.63
Ex.P127(a)	Portion of 161 statement of PW.63
Ex.P128	'B' Extract of Bike
Ex.P129	Portion of 161 statement of PW.64
Ex.P129(a)	Portion of 161 statement of PW.64
Ex.P130	Seizure proceedings dated 06.03.2020
Ex.P130(a)	Signature of PW.68
Ex.P130(b)	Signature of PW.76
Ex.P131	Proceedings drawn
Ex.P131(a)	Signature of PW.68
Ex.P131(b)	Signature of PW.113
Ex.P132	'B' Extract
Ex.P133	Seizure Memo
Ex.P133(a)	Signature of PW.70
Ex.P134	Portion of 161 statement of PW.70
Ex.P134(a) to (d)	Portion of 161 statement of PW.70
Ex.P135	Covering letter dated 13.01.2021
Ex.P135(a)	Signature of PW.72
Ex.P136	Covering letter dated 13.01.2021

Ex.P137	Production Memo dated 27.01.2021
Ex.P137(a)	Signature of PW.75
Ex.P138	Guest entry accommodation details at Maurya Hotel
Ex.P139	Mahazar dated 20.03.2020
Ex.P139(a)	Signature of PW.77
Ex.P140	Portion of 161 statement of PW.78
Ex.P141	Test of Identification Parade
Ex.P141(a) to (c)	Signature of PW.79
Ex.P142	Test of Identification Parade
Ex.P142(a) to (c)	Signature of PW.79
Ex.P143	Test of Identification Parade
Ex.P143(a) to (c)	Signature of PW.79
Ex.P144	Test of Identification Parade
Ex.P144(a) to (c)	Signature of PW.79
Ex.P145	Test of Identification Parade
Ex.P145(a) to (c)	Signature of PW.79
Ex.P146	Test of Identification Parade
Ex.P146(a) to (c)	Signature of PW.79
Ex.P147	Test of Identification Parade
Ex.P147(a) to (c)	Signature of PW.79
Ex.P148	Test of Identification Parade
Ex.P148(a)	Signature of PW.79

to (c)	
Ex.P149	Test of Identification Parade
Ex.P149(a) to (c)	Signature of PW.79
Ex.P150	CD
Ex.P150(a)	Signature of PW.79
Ex.P151	Test of Identification Parade
Ex.P151(a) to (c)	Signature of PW.79
Ex.P152	Covering letter dated 20.03.2020
Ex.P152(a)	Signature of PW.79
Ex.P153	Test of Identification Parade
Ex.P153(a) to (c)	Signature of PW.79
Ex.P154	Test of Identification Parade
Ex.P154(a) to (c)	Signature of PW.79
Ex.P155	Test of Identification Parade
Ex.P155(a) to (c)	Signature of PW.79
Ex.P156	Covering Letter dated 07.05.2020
Ex.P156(a)	Signature of PW.79
Ex.P157	Portion of 161 statement of PW.82
Ex.P158	Proceeding of the Government of Karnataka
Ex.P158(a)	Signature of PW.83
Ex.P159	Proceeding of the Government of Karnataka
Ex.P159(a)	Signature of PW.83
Ex.P160	Production cum Receipt Memo dated

	08.08.2020
Ex.P160(a)	Signature of PW.84
Ex.P161	Hotel Register of Praveen Deluxe
Ex.P162	Production cum Receipt Memo dated 15.06.2020
Ex.P162(a)	Signature of PW.85
Ex.P163	Hotel Register of Central Park
Ex.P163(a) to (s)	Signature of PW.85
Ex.P164	Production Memo dated 18.06.2020
Ex.P164(a)	Signature of PW.86
Ex.P165	Register of Ankitha Residency
Ex.P165(a)	Signature of PW.86
Ex.P165(b)	Signature of PW.86
Ex.P166	FSL Report
Ex.P166(a) to (g)	Signature of PW.87
Ex.P167	Mahazar
Ex.P167(a)	Signature of PW.89
Ex.P168	FSL Cover
Ex.P169	Production Memo dated 15.11.2020
Ex.P169(a)	Signature of PW.90
Ex.P170	Sanction under Arms Act, 1959 in RC 17(S) 2019
Ex.P171	Seizure mahazar dated 17.06.2016
Ex.P171(a)	Signature of PW.91
Ex.P172	Spot mahazar dated 18.06.2016
Ex.P172(a)	Signature of PW.91
Ex.P173	Mahazar dated 19.06.2016

Ex.P173(a)	Signature of PW.91
Ex.P174, 175	Photographs
Ex.P176	Inquest mahazar dated 15.06.2016
Ex.P176(a)	Signature of PW.91
Ex.P177	FSL Report
Ex.P177(a)	Signature of PW.93
Ex.P178	Reasons for FSL opinion
Ex.P178(a)	Signature of PW.93
Ex.P179	Specimen Handwriting/Signatures of Vikram Ballari
Ex.P180	Specimen Handwriting/Signatures of Kirti Kumar
Ex.P180(a)	Signature of PW.100
Ex.P181	Specimen Handwriting/Signatures of Sandeep Savadatti
Ex.P181(a)	Signature of PW.100
Ex.P182	Specimen Handwriting/Signatures of Vinayaka Katagi
Ex.P183	Specimen Handwriting/Signatures of Mahabaleshwar
Ex.P183(a)	Signature of PW.100
Ex.P184	Specimen Handwriting/Signatures of Santhosh Savadatti
Ex.P185	Specimen Handwriting/Signatures of Vikas Kalburgi
Ex.P185(a)	Signature of PW.100
Ex.P186	Specimen Handwriting of Vanashree B Shisanllimath/Signatures of PW.93

Ex.P186(a)	Signature of PW.100
Ex.P187	Certificate of FSL examination dated 17.02.2017
Ex.P187(a)	Signature of PW.93
Ex.P187(b)	Sample seal
Ex.P188	DVD
Ex.P189	DVD
Ex.P190	Certificate under Sec.65B of Evidence Act
Ex.P191	Postmortem Report
Ex.P191(a)	Signature of PW.94
Ex.P191(b)	Signature of PW.94
Ex.P192	Request letter to Medical Officer for conducting Inquest
Ex.P192(a)	Signature of PW.94
Ex.P193	Office Order dated 15.06.2016
Ex.P194	Form No.146(i) sent by Dharwad Sub-Urban Police Station
Ex.P195	Requisition dated 15.06.2016
Ex.P196	Final Report
Ex.P196(a)	Signature of PW.94
Ex.P197	Customer application Form of Sandeep Saudatti
Ex.P198	CDR
Ex.P199	CDR
Ex.P200	Certificate under Sec.65B of Evidence Act
Ex.P200(a)	Signature of PW.95
Ex.P201	Production Memo dated 24.09.2019
Ex.P201(a)	Signature of PW.96
Ex.P202	Certified copy of ID

Ex.P203	Proceedings dated 08.05.2020
Ex.P203(a)	Signature of PW.100
Ex.P203(b)	Specimen signature
Ex.P204	Registration Form along with documents
Ex.P205	Production Memo dated 24.09.2019
Ex.P205(a)	Signature of PW.103
Ex.P206	Vijayavani Newspaper
Ex.P206(a)	Relevant portion
Ex.P207	Covering letter dated 24.06.2020
Ex.P207(a)	Signature of PW.104
Ex.P208	Certificate under Sec.65B of Evidence Act
Ex.P209	CD
Ex.P210	Covering letter dated 07.07.2021
Ex.P210(a)	Certificate under Sec.65B of Evidence Act
Ex.P210(b)	Signature of PW.113
Ex.P211	CDR
Ex.P211(a)	Signature of PW.106
Ex.P212	Customer details e-mail dated 09.05.2020
Ex.P213	CDR 30 Pages
Ex.P214	CDR 8 Pages
Ex.P215	CDR 27 Pages
Ex.P216	CDR 21 Pages
Ex.P217	CDR 10 Pages
Ex.P218	CDR 65 Pages
Ex.P219	CDR 77 Pages
Ex.P220	CD

Ex.P221	Certificate under Sec.65B of Evidence Act
Ex.P222	FIR of Dharwad Sub-Urban Police Station
Ex.P223	Sketch of the place of incident
Ex.P223(a)	Covering letter dated 19.08.2016
Ex.P224	Photographs
Ex.P225	Inquest Panchanama
Ex.P226 & Ex.P227	Photographs
Ex.P228	Spot Mahazar dated 18.06.2016
Ex.P229	Spot Mahazar dated 20.06.2016
Ex.P230	Photograph
Ex.P231	Photograph
Ex.P232	Recovery Mahazar dated 01.07.2016
Ex.P233	Photograph
Ex.P233(a) to (e)	Photographs
Ex.P234	CDR and Analysis Report
Ex.P235	CDR and Analysis Report
Ex.P236	FSL Report
Ex.P237	Photographs recovering video footage
Ex.P238	Gazette Notification dated 28.03.2016
Ex.P239	B Extract of vehicle bearing Reg. No.KA-25-EV-2609
Ex.P240	FSL Acknowledgment
Ex.P241	E-mail correspondence
Ex.P242	Cell ID Chart Karnataka Vodafone
Ex.P243	Cell ID Chart Idea
Ex.P244	Cell ID Chart Airtel

Ex.P245	Pendrive
Ex.P246	Certificate under Sec.65B of Evidence Act
Ex.P246(a)	Signature of PW.108
Ex.P247	Analysis Chart
Ex.P247(a)	Signature of PW.113
Ex.P247(b)	Certificate under Sec.65B of Evidence Act
Ex.P247(c)	Signature of PW.113
Ex.P248	Call details
Ex.P248(a)	Certificate under Sec.65B of Evidence Act
Ex.P248(b)	Signature of PW.113
Ex.P249	Covering letter dated 11.08.2020
Ex.P250	Certificate under Sec.65B of Evidence Act
Ex.P251	Covering letter dated 31.03.2021
Ex.P251(a)	Signature of PW.108
Ex.P252 & Ex.P253	CD's
Ex.P254	Covering letter dated 20.05.2020 along with Certificate
Ex.P254(a)	Signature of PW.109
Ex.P255	Covering letter dated 16.10.2020
Ex.P256	CD
Ex.P257	Portion of 161 statement of PW.112
Ex.P257(a)	Portion of 161 statement of PW.112
Ex.P258	FIR of CBI
Ex.P259	Copy of complaint in Crime No.135/2016
Ex.P260	Recovery Mahazar dated 15.06.2016
Ex.P260(a)	Signature of PW.113
Ex.P261	Mahazar

Ex.P261(a)	Signature of PW.113
Ex.P262	Voluntary statement of accused No.8
Ex.P262(a)	Signature of PW.113
Ex.P263	Photograph
Ex.P264	Photograph
Ex.P265	Certificate under Sec.65B of Evidence Act
Ex.P266	Voluntary statement of accused No.8
Ex.P266(a)	Signature of accused
Ex.P266(b)	Signature of IO
Ex.P267	Proceedings dated 03.03.2020
Ex.P267(a)	Signature of PW.113
Ex.P268	Receipt Memo dated 04.03.2020
Ex.P268(a)	Signature of PW.113
Ex.P269	Receipt Memo
Ex.P269(a)	Signature of PW.113
Ex.P270	Photographs
Ex.P271	Certificate under Sec.65B of Evidence Act
Ex.P272	Photographs
Ex.P273	Certificate under Sec.65B of Evidence Act
Ex.P273(a)	Signature of PW.113
Ex.P274	Disclosure Statement
Ex.P274(a)	Signature of accused No.8
Ex.P274(b)	Signature of CBI Investigating Officer
Ex.P275	Certificate under Sec.65B of Evidence Act
Ex.P275(a)	Signature of PW.113
Ex.P276	Covering letter
Ex.P277	B Extract of vehicle No.KA-05-MD-696
Ex.P278	Receipt Memo

Ex.P278(a)	Signature of PW.113
Ex.P279	Covering letter dated 13.05.2020
Ex.P280	Production Memo dated 24.09.2020
Ex.P280(a)	Signature of PW.113
Ex.P281	Two Rent Agreements
Ex.P282	Letter dated 20.10.2020
Ex.P283	Certificate under Sec.65B of Evidence Act
Ex.P284	Letter dated 13.11.2020
Ex.P285	Letter dated 17.11.2020
Ex.P286	Statement of A-3 Keerthi Kumar
Ex.P286(a)	Sealed Cover
Ex.P287	Statement of A-6 Mahabaleshwar
Ex.P287(a)	Sealed Cover
Ex.P288	Statement of accused No.17
Ex.P289	Certified copy of Ex.P6 and Ex.P7
Ex.P290	Production Memo dated 15.06.2020
Ex.P290(a)	Signature of PW.113
Ex.P291	Acknowledgment of Registration
Ex.P292	Station House Diary

4. Documents exhibited by the Defence/Accused:-

Ex.D1	Portion of statement of PW6
Ex.D2	Meeting Notice
Ex.D3	Proceedings dated 23.04.2016
Ex.D3(a)	Portion of proceedings
Ex.D3(b)	Portion of proceedings

Ex.D4	Photographs
Ex.D5	Test Identification Parade Report dated 11.03.2020
Ex.D6	Test Identification Parade Report dated 12.03.2020
Ex.D7	Portion of statement under Sec.161 Cr.PC of PW.32
Ex.D8	Portion of statement under Sec.161 Cr.PC of PW.30
Ex.D9	Portion of statement under Sec.161 Cr.PC of PW.40
Ex.D9(a)	Portion of statement under Sec.161 Cr.PC of PW.40
Ex.D9(b)	Portion of statement under Sec.161 Cr.PC of PW.40
Ex.D10	Portion of statement under Sec.161 Cr.PC of PW.11
Ex.D11	Portion of statement under Sec.161 Cr.PC of PW.11
Ex.D12	Portion of statement under Sec.161 Cr.PC of PW.11
Ex.D13	Portion of statement under Sec.161 Cr.PC of PW.10
Ex.D13(A)	Portion of statement under Sec.161 Cr.PC of PW.10
Ex.D14	Crl.Petition No. 101434/2016
Ex.D15	Bail application in SC No.50/2017
Ex.D16	WP No.51012/2019 along with affidavit
Ex.D17	Application under Sec.306 of Cr.P.C.
Ex.D18	Application under Sec.306 of Cr.P.C.
Ex.D19	Application under Sec.306 of Cr.P.C.

Ex.D20	Objections to application under Sec.231 of Cr.P.C.
Ex.D21	WP No.18539/2024
Ex.D22	Request to tender pardon
Ex.D23	Enquiry Register of Vidhana Soudha dated 01.11.2016 to 30.06.2016
Ex.D24	Certified copy of affidavit in WP No.383/2025 along with affidavit
Ex.D25	Certified copy of affidavit in WP No.5102/2019
Ex.D26	Certified copy of charge-sheet in Cr.No.128/2011 of Dharwad Rural Police Station
Ex.D27	Certified copy of CC Register of the 4th Addl. District and Sessions Judge and JMFC-II, Dharwad in Crime No.238/2013
Ex.D28	Certified copy of FIR in Crime No.238/2013 of Dharwad Rural Police Station
Ex.D29	Certified copy of FIR, Title Sheet and charge sheet in Crime No.35/2017 of Dharwad Rural Police Station
Ex.D30	Certified copy of FIR and charge sheet in Crime No.1/2018 of Dharwad Rural Police Station
Ex.D31	Certified copy of FIR and charge sheet in Crime No.152/2018 of Dharwad Rural Police Station
Ex.D32	Charge sheet in Crime No.176/2019 of Dharwad Rural Police Station
Ex.D33	Copy of charge in SC No.72/1999 of 1st Addl. District and Sessions Judge, Dharwad

Ex.D34	Certified copy of charge-sheet in Crime No.107/2004 of Navalagunda Police Station
Ex.D35	RTI application of Sri. Prakash Bhavikatti, Advocate
Ex.D36	Portion of statement under Sec.161 Cr.PC of PW.2
Ex.D37	Portion of statement under Sec.161 of Cr.PC
Ex.D38	Indian Express Newspaper

5. List of Material Objects marked by the prosecution:-

MO.1	Coloured full arm shirt
MO.2	Mat Red in colour
MO.3	Black colour slippers
MO.4	Chilly powder
MO.5	Black and silver colour Mobile
MO.6	Plastic cover
MO.7	Sando Baniyan
MO.8	Towel
MO.9	Black colour half T-Shirt
MO.10	Blue colour Track Pant
MO.11	Red Thread
MO.12	Black colour Pistol
MO.13	Wood in the pistol handle

MO.14	Pistol black handle
MO.15	Hard Disc
MO.16	Samsung Duo C 3322 Mobile Phone
MO.17	One Gionee S6 Mobile Phone
MO.18	Samsung Galaxy Star Pro Mobile Phone
MO.19	HTC Desire 616 Dual Sim Mobile Phone
MO.20	Samsung Galaxy Mobile Phone
MO.21	Samsung Galaxy Grand Neo Mobile Phone
MO.22	RedMi Note 3 Mobile Phone
MO.23	Bamboo stick
MO.24	Koita (in vernacular language)
MO.25	Rod
MO.26	Long
MO.27	Iron Jambe
MO.28	Samsung Mobile Phone
MO.29	Cartridge box
MO.30	Cover along with signature
MO.31	Underwear
MO.32	Chevrolet Tavera Car bearing No. KA-25-D-0420
MO.33	Honda Splendor Motorbike bearing No. KA-25-EA-6230

6. List of Court Documents:

Ex.C1	Signature of PW.62 on Ex.P126
Ex.C2	Signature of PW.79 on Ex.D5
Ex.C2(a)(b)	Signature of PW.79 on Ex.D5
Ex.C3	Signature of PW.79 on Ex.D6
Ex.C3(a)(b)	Signature of PW.79 on Ex.D6
Ex.C4	FSL Cover

LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)

SANTHOSHGAJANANABHAT

Digitally signed by SANTHOSHGAJANANABHAT
Date: 2026.04.18 17:33:35 +0530