

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

R

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1310 OF 2018

BETWEEN:

THE STATE OF KARNATAKA
BY UDAYAGIRI POLICE STATION, MYSURU
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

...APPELLANT

(BY SRI. JAGADISH B.N., SPP)

AND:

ABDUL SHARIEF @ AMEER JAN
S/O LATE MOHAMMED MASOOD SAB
AGED ABOUT 55 YEARS
K.S.R.T.C. BUS DRIVER
BADGE NO.259
KUVEMPUNAGAR DIPPO
MYSURU

R/AT NO.635, SINDUVALLI VILLAGE
JAYAPURA HOBLI, MYSURU TALUK AND
PERMANENT RESIDENT OF
MARAMMA TEMPLE STREET
VAJAMANGALA, VARUNA HOBLI
MYSURU TALUK-570 001

...RESPONDENT

(BY SRI. UMESH P.B., ADVOCATE [AUTHORISED BY HCLSC])



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 28.04.2018 PASSED BY THE III ADDITIONAL SESSIONS JUDGE, MYSUREU, IN S.C.NO.258/2013 ACQUITTING THE RESPONDENT OF THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 307, 436 OF IPC AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

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

This appeal is filed by the State challenging the judgment and order of acquittal dated 28.04.2018 passed in S.C.No.258/2013 by the III Additional Sessions Judge, Mysuru for the offences punishable under Sections 302, 307 and 436 of IPC and prayed this Court to convict and impose appropriate sentence against the accused.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the prosecution is that the father of PW1- Mohammed Ameer Jan and other five victims were succumbed to the injuries as they suffered burn

injuries since there was a motive to commit the offence by the accused as the father of PW1 was giving medicines as doctor and accused picked up a quarrel with the doctor in connection with payment of money. It is also stated in the complaint at Ex.P15 that the accused, 3 days prior to the incident during night time threw some powder at the house of PW1 and in this regard, PW1 has informed to the police but police did not take any action in this regard. Ultimately, on the intervening night of 11.04.2013 and 12.04.2013, when 8 persons were sleeping in the house, at around 03.00 a.m., PW1 found strong smell of petrol. The occupants of the house also got up and switched on the light and saw the petrol seeping in under the door and at that time PW1 who was panic, peeped through the window and saw the accused lighting the match stick and threw it on her house and he ran away from the spot. By that time, the house of PW1 caught fire and occupants of the house also started screaming. Hearing the sound of screaming, neighbours also came to the spot and broke open the door and PW1, her mother and PW2 were managed to come outside from the house. But other 5 occupants including the father of PW1 have failed to escape from burning house and have sustained burn injuries and succumbed to the said injuries.

4. In connection with the said incident, a complaint was lodged in terms of Ex.P15, which was recorded in the presence of the doctor and PW14-IO having recorded the statement, registered the FIR as per Ex.P80 and started the investigation and conducted the inquest and subjected the dead bodies for post mortem and also conducted spot mahazar and seized the material objects at MO1 to MO26. PW14 apprehended the accused on the very same day and recovered the motorcycle at his instance in which he came to the incident place. Accused was sent to the hospital for his medical examination and the doctor-PW10 has examined him and issued the wound certificate in terms of Ex.P76. PW14 also collected the sample of burnt hair of accused, which is produced as MO23. The IO also seized the burnt clothes which were on the dead bodies and also the ornaments under various mahazars and sent the seized articles to the RFSL, Mysuru and some of the seized articles were also sent to the FSL, Bengaluru to detect the presence of petroleum and kerosene residue in the said properties. Thereafter, having collected MLC extract relating to the injured and having completed the investigation, pending receipt of FSL and RFSL report, charge sheet was filed. The accused was in custody and charges were

framed against him and the accused did not plead guilty and claims the trial.

5. The prosecution in order to prove the charges leveled against accused, examined PW1 to PW15 and marked the documents at Ex.P1 to P83 and also marked the material objects at MO1 to MO26. The Exhibits at 'D' series are also marked during the course of cross-examination of witnesses. After the conclusion of the prosecution evidence, the accused was subjected to 313 statement and he has denied the incriminating circumstances, but he has not given any explanation and also not led any defence evidence.

6. The Trial Court having considered both oral and documentary evidence placed on record disbelieved the evidence of PW1, PW2 and PW8, who are the star witnesses of the prosecution that is the eye witnesses and the Trial Court also disbelieved the evidence of PW3 and PW4, who are the neighbouring witnesses, so also the evidence of other witnesses and comes to the conclusion that prosecution has failed to prove that accused has set fire to the house of PW1 which resulted in the death of six persons and the injuries and acquitted the accused for the alleged offences.

7. Being aggrieved by the judgment of acquittal by the Trial Court, the State has filed the appeal before this Court.

8. The learned SPP Mr. Jagadish appearing for the State would vehemently contend that Trial Court has not at all appreciated the evidence available on record in a proper perspective which has resulted in miscarriage of justice. The Trial Court while acquitting the accused mainly held that prosecution has failed to prove that it was the accused who set fire to the house of PW1 which resulted in death of six persons and injuries to PW1. The Trial Court also comes to the conclusion that prosecution has failed to prove that fire is a deliberate act of arson or an accidental fire has not proved and recoveries, seizure and scientific evidence do not corroborate with the prosecution case and there is a serious lacuna in the investigation and extended the benefit of doubt in favour of the accused.

9. The counsel would vehemently contend that the Trial Court fails to consider the material witnesses i.e., PW1 and PW2 who are the inmates in the house and also who have survived in the incident with the injuries and both of them have categorically deposed that it was the accused who poured the

petrol through the window and lit the fire by using the matchstick. The counsel also contend that the Trial Court also failed to consider the evidence of circumstantial witness i.e., PW3, PW4 and PW8. The Trial Court also failed to appreciate the evidence of PW11, who is none other than the wife of the accused who has clearly deposed that at the night on the date of incident, accused was not in the house and he came back to the home in the early morning at 05.00 a.m. and she had witnessed that accused had sustained burn injuries over his body. The Trial Court also fails to take note of FSL report at Ex.P82 which clearly establishes that the residues of petrol were found from the seized articles and Trial Court also fails to consider the scientific evidence available on record. The counsel would contend that the prosecution has clearly proved that accused has involved in this act and has taken the life of 6 persons due to enmity against the father of PW1 in connection with treatment as well as financial transactions. It is admitted that the accused only gave the complaint against the deceased i.e., the father of PW1 and inspite of the said material available on record, the Trial Court committed an error in acquitting the accused and failed to take note of heinous nature of the offence and gravity of the offence but extended the benefit of doubt in

an unwarranted circumstances which have been discussed in the judgment.

10. The counsel appearing for the State-SPP in his arguments would vehemently contend that the very incident of setting fire on the house of PW1 and death of 6 persons is not in dispute. The evidence of PW1 and PW2 who have sustained the injuries and witnessed the accused was not properly appreciated by the Trial Court and so also the evidence of PW8 who is a circumstantial witness also witnessed the accused who ran away from the house of PW1 at the time of incident. The Trial Court failed to appreciate the evidence of PW11, who is none other than the wife of the accused and her evidence is very clear that the accused was not in the house in the night on the date of incident and he came back to house in the early morning at 05.00 a.m. and he had sustained burn injuries. But the Trial Court had given a flimsy reason in not accepting the evidence of PW11. The counsel also vehemently contend that with regard to the motive is concerned, the evidence of PW1, PW2, PW5 is very clear in this regard. But the Trial Court failed to discuss with regard to the petroleum residues which were found in the seized articles at the spot. The counsel would contend that Ex.P82-FSL report is very clear with regard to the

presence of petroleum residues but the Trial Court not discussed the same in the judgment and much importance was given to the unwanted things. The counsel also vehemently contend that the reasoning given by the Trial Court is nothing but perverse and fails to take note of gravity of the offence since the Trial Court not considered the nature of death of six persons and two have sustained the injuries.

11. The counsel also vehemently contend that when the accused had sustained the injuries that too a burn injuries and there was no any explanation in this regard on the part of the accused in 313 statement when specific question No.27 was put to him, either he did not deny the burn injuries sustained by him or given any explanation for the injuries sustained by him. There was no defence that death was due to burst of cylinder and no suggestion was made denying the very presence of the accused at the spot and nowhere in the cross-examination of prosecution witnesses denies his very presence. The very presence of PW1 and PW2 at the time of incident is also not disputed and they have also sustained injuries. The Trial Court also failed to consider the evidence of PW3 and PW4 who are the neighbours who came to the spot after hearing the sound of screaming and there was no effective cross examination of PW1

to PW4. The oral evidence of PW1 to PW6 corroborates with each other which indicates that there was an incident and the very incident is not disputed. The counsel contend that petrol was used in the said incident and residues of petrol were found at Ex.P82 and the same is not disputed. The evidence of doctor-PW10 is very clear that he had treated the accused and the evidence of PW14-IO is very clear that having arrested the accused, he was sent to the medical examination and accused has sustained injuries and wound certificate at Ex.P76 is very clear that accused has sustained burn injuries.

12. The counsel appearing for the State-SPP in support of his arguments, relied upon judgment of the Apex Court reported in **(2000)1 SCC 471** in the case of **STATE OF MAHARASHTRA vs SURESH** and brought to notice of this Court paragraph 27 wherein the Apex Court held that we have pointed out earlier the injuries which the doctor had noted on the person of the accused when he was examined. The significant impact of the said incriminating circumstance is that the accused could not give any explanation whatsoever for those injuries and therefore he had chosen to say that he did not sustain any such injury at all. We have no reason to disbelieve the testimony of the doctor. A false answer offered

by the accused when his attention was drawn to the aforesaid circumstance renders that circumstance capable of inculcating him. In a situation like this such a false answer can also be counted as providing 'a missing link' for completing the chain.

13. Per contra, the counsel appearing for the respondent in his arguments would vehemently contend that the incident was taken place in the midnight and accused was arrested on the same day evening but the doctor examined him on the next day. The counsel would contend that in Ex.P15-complaint, it is specifically stated that both front door and back door were locked. In the cross-examination of PW1 also it is stated that door was locked, but how she came out from the house is not explained properly and the same is taken note of by the Trial Court. The counsel also vehemently contend that even the evidence of circumstantial witnesses i.e., PW3 and PW4 also contradicts with the evidence of PW1. But their evidence is that after the arrival of the police only, the cylinder was burst. But the evidence of PW1 is otherwise. PW5 says that PW1 came and informed about the incident. The evidence of PW6 is also contrary to the evidence of PW1. Though, PW8 deposes that he is an eye witness, but his statement was not recorded since he is only a mahazar witness but deposes as eye

witness. These contradictions were taken note of by the Trial Court.

14. The counsel also brought to notice of this Court that LTM was put on Ex.P15 and in the document of Ex.P42, it was the leg thumb impression. The counsel also vehemently contend that though the case of the prosecution that petrol was purchased from the petrol bunk and statement of one Raju was recorded, he has not been cited as a witness and also he has not been examined before the Trial Court. The counsel would contend that even though there was CCTV in the petrol bunk, the same was not collected to show that accused has purchased the petrol from the said petrol bunk. The cloth of the accused was also not seized. The FSL report at Ex.82 is marked by consent. Thus, the case of the prosecution is doubtful. PW11 is the second wife who is also having a grudge against the accused and hence, she gave evidence against the accused. Hence, the Trial Court not believed the evidence of PW11. Thus, the Trial Court taken note of all these factors into consideration and rightly acquitted the accused.

15. In reply to this arguments, the learned SPP would vehemently contend that a mistake was occurred in not citing

the said Raju as witness who made the statement that accused came and purchased the petrol. But non-examination of this witness and not citing him as witness is not a material fact when the eye witnesses spoken about the very presence of the accused i.e., PW1 and PW2 and other witness PW8. The material on record clearly shows that there was a motive to commit the crime and eye witnesses evidence is available to the said incident including the other circumstantial evidence when the accused has sustained the burn injury and there is no explanation in this regard in his 313 statement and even the incident is not disputed. The loss of life of 6 persons is also not disputed and the very presence of the accused at the spot is also not disputed throughout the cross-examination of the prosecution witnesses. Hence, the Trial Court has committed an error in acquitting the accused.

16. Having heard the learned SPP appearing for the State and also the learned counsel appearing for the respondent/accused and considering the material on record and also the principles laid on the judgment referred supra, the point that would arise for the consideration of this appeal is:

1. Whether the Trial Court committed an error in acquitting the accused extending the benefit of doubt in his favour and whether the reasoning of the Trial Court amounts to perversity in not considering the evidence in a proper perspective and whether it is a fit case to convert the acquittal into conviction and sentence the accused and what sentence, accused deserved?
2. What order?

Point No.1:

17. Having considered the factual aspects of the case which has been narrated above, it is not in dispute that incident was taken place in the early morning on 12.04.2013. Also material discloses that based on the request made by PW12-Balakrishna, PSI, Devaraja Police Station, PW13-Dr. Mohan, at K.R. Hospital, Mysuru certified that PW1 is fit to give statement. Hence, statement of PW1 was recorded as per Ex.P15 in the hospital itself that too in the presence of the doctor. Based on the statement of victim-PW1 as per Ex.P15, FIR was registered in Crime No.54/2013. The FIR is marked as Ex.P80 for the offences under Sections 302, 307 and 436 of IPC. It is also important to note that PW1's statement was recorded in between 08.00 to 09.00 a.m. The incident was

taken place in the early morning at 03.00 a.m. on 12.04.2013. The doctor-PW9 has issued the MLC extracts as per Ex.P73 and P74. The Tahsildar has conducted the Inquest on 12.04.2013 in respect of all the six dead bodies in terms of Ex.P1 to P6. The Investigation Officer also requested the Tahsildar to record the statement of PW1 who was admitted to the hospital as she has sustained the burn injuries and her statement was recorded as per Ex.P42 at the hospital itself by the Tahsildar. The Court has to take note of statement made by PW1 as per Ex.P15 and also the statement as per Ex.P42. It is also important to note that the Investigating Officer also has conducted the spot mahazar as per Ex.P14 that too in the presence of PW6 and sketch of the spot also prepared as per Ex.P13. The doctor has conducted post mortem and gave the PM report as per Ex.P7 to P11. The other doctor also conducted the post mortem on the body of Afroz Begum and gave the report as per Ex.P12. It is also important to note that the accused was arrested on the very same day based on the statement made by PW1 and after his arrest, immediately, PW14 has conducted the recovery mahazar as per Ex.P64 that is motorcycle in the presence of PW8. It is also important to note that the doctor-PW10 has examined the accused and issued the would certificate as per

Ex.P76 indicating that there are burn injuries on the accused i.e., burn injury on the forehead as well as on the leg. The prosecution also mainly relies upon the evidence of PW11- Waheeda Banu who is none other than the wife of the accused in support of its case.

18. The prosecution mainly relies upon the evidence of PW1, PW2, PW3 to PW6, PW8 and PW11. The Investigating Officer also recovered the clothes belongs to PW1 and her mother as per Ex.P71 and so also the clothes belongs to all the deceased as per Ex.P72 and sent all these articles to the FSL. After examining the articles sent by the Investigating Officer i.e., the clothes which were recovered by the doctor at the time of post mortem, Forensic Science Laboratory issued a certificate in terms of Ex.P77 and so also subsequently, FSL report also received as per Ex.P82.

19. It is not in dispute that incident was taken place in the early morning on 12.04.2013 and throughout in the cross-examination of the prosecution witnesses, the same was not disputed. It is very clear that on account of pouring of petrol and setting of fire, total 6 persons have lost their life. The FSL report at Ex.P82 discloses the presence of petrol residues in the

seized articles. The prosecution relies upon the evidence of PW1 to PW6 and PW8, who speaks about the incident and accused also not disputes the incident. The prosecution mainly relies upon the evidence of PW1 and PW2 who are the eye witnesses to the incident as well as they have sustained the injuries in the said incident. The other witness relied upon by the prosecution is PW8 who saw the accused who ran away from the crime scene. No doubt, the Trial Court rightly comes to the conclusion that PW8 was cited as mahazar witness but his statement was not recorded. But he speaks about collection of burnt hair of the accused by drawing the mahazar in terms of Ex.P64 and also the burnt hair is also marked as MO23. If PW8 has not been accepted as an eye witness to the incident, there was an improvement during the course of the trial. But the fact that burnt hair of accused was collected by drawing the mahazar in terms of Ex.P64 and he also speaks about the injuries sustained by the accused and to that respect, his evidence can be accepted but not as eyewitness.

20. Whether the evidence of PW1 and PW2 inspires the confidence of the Court or not as they are the injured witnesses and they also witnessed the accused at the spot to be looked into.

21. Before appreciating their evidence, firstly, the Court has to take note that whether there was a motive to commit the crime. In this regard, the evidence of PW1, PW2, PW5 and PW6 shows about the motive. It is also not in dispute that motive placed by the prosecution is not disputed and the very cross examination itself discloses that this accused has given the complaint against the deceased i.e., father of PW1 that there was a financial transaction to the tune of Rs.3,00,000/-. Hence, it is clear that there was a prior ill-will between the father of PW1 and also the accused. But Trial Court taken note of the same in a different way with regard to the motive is concerned and comes to the conclusion that the accused himself has lodged the complaint against the deceased but the fact is that the father of PW1 not lodged the complaint and at the time of lodging complaint, he was no more. That means the same can be considered either way. Hence, it is clear that there was a ill-will between the accused and also the father of PW1. It is the case of PW1 that accused insisted her father to give slow poison to his first wife and he has refused. Hence, he was having hatredness against him. But the very admission on the part of the defence itself that the accused has given the complaint against the father of PW1 is not in dispute with

regard to financial transaction. It is also the evidence of PW1 that accused used to come and quarrel with her father and earlier also he was taking treatment from her father and he owes money in favour of her father for treatment. When her father demanded money for treatment, a clash was taken place between them. Hence, it is very clear that there was a motive for committing the crime. The learned counsel for the accused also not disputed the same as regards to earlier ill-Will. The first circumstances of motive is proved.

22. Now, coming to the evidence of PW1, PW2 and PW5, it is clear that all of them have sustained injuries and survived in the incident. The fact that presence of PW and PW2 in the house is also not disputed. PW3 and PW4 came to the spot immediately as they heard the screaming sound and also the evidence of PW1 is very clear that when all of them are shouted, PW3 and PW4 came and caused damage to the door and PW1, her mother and PW2 were able to come out from the house, but others could not. It is further the case of the prosecution that PW1 peeped through the window and saw the accused setting fire to the premises. Upon being noticed, the accused immediately fled from the spot and the same is also witnessed by PW2. But PW2 is a minor and appears to be

tutored to give an evidence like the evidence of PW1. But the fact that PW2 has also sustained the injuries in the incident and it is not in dispute that PW2 was also very much present at the place of incident.

23. No doubt, the counsel appearing for the accused also brought on notice of this Court that PW2 went and informed about the incident to PW5. But the same is subsequent to PW2 came out from the house and that cannot be a fatal to the case of the prosecution. But the fact is that PW1, PW2 and PW5 have sustained the injuries. It is also important to note that in the cross examination of prosecution witnesses, throughout it is not disputed the presence of accused and also not disputed about sustaining the burn injuries. It is also important to note that PW10 who had issued the wound certificate at Ex.P76 has categorically deposed that accused was brought to him for examination and he found the burn injuries and injuries mentioned in Ex.P76 is very clear that accused had sustained the burn injuries. In the cross-examination of PW1 and PW2, the accused counsel has not disputed the very presence of the accused and suffering burn injuries and other circumstances proved.

24. It is also important to note that when PW5 attempted to rescue the people in the house, during this attempt, he had also sustained the injuries. Even sustaining the injury by PW1, PW2 and PW5 have not been disputed. It is also the case of PW3 that the mother of PW1 states about the incident and has narrated the very involvement of the accused. There is no dispute about the capacity of PW1's mother i.e., Afroze Begum speaking about the same and it is not disputed that she was not able to make statement. PW3 categorically speaks about the very statement made by PW1's mother who later succumbed to the injuries. It is also important to note that the Court has to take note of the conduct of the accused. PW8 speaks about the injuries sustained by accused and collection of burnt hair of the accused as set out in Ex.P64 and PW8 is the witness to that.

25. It is important to note that prosecution mainly relies upon the evidence of PW11 who is the wife of the accused who deposes that accused had gone out in the night on the date of incident and he came back home only at 05.00 a.m. in the early morning. PW11 also speaks about the injuries sustained by the accused when he came back to the home. It is also important to note that PW10-doctor who treated the

accused also deposed about the injury sustained by the accused and gave wound certificate as per Ex.P76 and burnt hair of accused was also collected as per MO23. These are the evidences which clearly disclose the very presence of the accused at the time of incident and sustaining of injury in the said incident. But accused has not given any explanation in 313 Statement when specific question was put to him particularly, question No.27 as he has sustained injury and except his general denial, nothing has been explained about burning of his hair as well as sustaining of burn injuries. The counsel appearing for the State rightly relied upon the judgment of **State of Maharashtra** referred supra wherein Apex Court discussed with regard to the injuries which the doctor had noted on the person of the accused.

26. In the case on hand also, the doctor who examined the accused has specifically deposed before the Court that accused had sustained the burn injuries. When the question No.27 was put to accused in 313 statement, either he did not deny his injuries or has given any explanation and he has silent about the same. It is the bounden duty of the accused to explain the incriminating circumstances in his 313 statement or to lead evidence under Section 315 as defence evidence to give

explanation for the nature of injuries what he has sustained. The very injuries what accused has sustained are burn injuries and it shows that accused was very much present at the scene of occurrence and the same is witnessed by PW1 and PW2. PW1 specifically stated the very presence of accused in her oral evidence as well as the complaint at Ex.P15 i.e., without any delay, she specifically stated that there was no cordiality between her father and also this accused and accused ran away from the spot after setting fire. As a result, fire spread to the house of PW1 as he poured the petrol. Hence, there was no any delay and this statement was made immediately after the incident as incident was taken place at 03.00 a.m. and statement was recorded in between 08.00 a.m. to 09.00 a.m. in the presence of the doctor. Based on the said statement only, complaint was registered and law was set in motion. The evidence of PW1 is very specific that accused only poured the petrol and set the fire and ran away from the spot and no explanation is given by the accused in this regard.

27. The evidence of PW2 is also very clear that he also found the accused at the spot. No doubt, the answer elicited from the mouth of PW2 that he had gone to the office of aunty whom shown to him i.e., Public Prosecutor and instructed to

give evidence. That answer will not take away the case of prosecution since the evidence of PW2 is very clear that his grandmother's saree had become wet with petrol and that saree was slightly burnt and he categorically says that there was light to see accused. But he did not try to switch on light or did see anybody to do so as he was minor. But his evidence is very clear that on that day night, he first saw the accused through the window next to the main door. At that time, his aunt-Reshma Anjum's hand was not burnt and the house was not on fire when witnessed the accused. But accused was running towards the direction of the bedroom. Thus, the evidence of PW1 and PW2 is very clear with regard to the presence of accused at the spot at the time of incident. Apart from that the very nature of injuries sustained by the accused is not explained. But the Trial Court committed an error in disbelieving the evidence of PW1 and PW2. The only reason given by the Trial Court to disbelieve the evidence of PW1 and PW2 that although PW1 has stated many other things, but crux of the evidence of PW1 is accused poured the petrol and set fire and he ran away from the spot. The same cannot be accepted. But the fact remains is very clear that PW1 shouted at spot and PW2 was also present inside the house. But only an observation

is made by the Trial Court with regard to PW2 is concerned holding that PW2 could have seen the accused from behind and hence, it is difficult to accept his evidence that he was the accused whom PW2 saw on that day but the fact that PW2 witnessed is not disbelieved. These are the reasons given by the Trial Court in not accepting the evidence of PW1 and PW2.

28. It is also important to note that though PW3 and PW4 are not the eye witnesses to the said incident, an attempt is made by the prosecution to prove the incident by examining PW8 as eyewitness and mahazar witness. But this Court also will not accept the evidence of PW8 as eye witness because he was cited as mahazar witness. But the fact is that when accused was arrested, mahazar was drawn in the presence of PW8 as per Ex.P64. It is very clear that hair sample of accused was seized since his hair was also burnt and same was spoken by PW8. When the mahazar was drawn with regard to the seizure is concerned and petrol residues were found, the same is evident from document at Ex.P82, the same has not been discussed by the Trial Court in a proper perspective. In The description of Articles 1 to 3, 6 to 9, 18, 25, 26, 30, Article 2, 3, 18, 20, 21, 25, 26 and 30 have responded positive for the presence of petroleum residues. Hence, it is very clear that the

IO has recorded the statement of one Raju who sold the petrol to the accused. But this witness was not cited. If even not cited, the learned Public Prosecutor who conducted the case would have examined him, but not done the same. But the fault on the part of the Public Prosecutor cannot take away the case of the prosecution and the same not go to the very root of the case. Trial Court also would have noticed the same and directed to examine that Raju whose statement was recorded by the IO and the Trial Court cannot remain as a mute spectator when six persons have lost their lives in the present incident. The same will not take away the case of the prosecution. The FSL report is very clear that petroleum residues responded positive in Article 2, 3, 18, 20, 21, 25, 26 and 30. The IO has categorically stated that he has seized the articles and sent the same to the FSL by drawing the mahazar in terms of Ex.P71 and P72. As per Ex.P82–Forensic Science Laboratory examined the various articles seized at the scene of crime by the investigation and report is also positive. The same has not been discussed by the Trial Court and ignored the same and the same amounts to perversity and leads to miscarriage of justice .

29. The finding of the Trial Court is perverse for the reason that nothing is discussed with regard to 313 statement of the accused is concerned as he has denied the same and not given any explanation. Even Trial Court fails to touch upon the 313 statement of the accused when the accused was very much present at the spot and he had also sustained the injuries as per Ex.P76 wound certificate as well as Ex.P74 and P75 and accused ought to have explained the same before the Court and the Trial Court is very silent about the same in not discussing the same. It is also important to note that accused not disputed that vehicle was seized at his instance by drawing the mahazar as per Ex.P64 and the same is accepted by the Trial Court that his bike which was used to come to the spot was seized. The Trial Court also fails to take note of the fact that throughout in the cross-examination of prosecution witnesses, they are not disputed the very presence of the accused at the spot at the time of the incident and even not made any suggestion in this regard.

30. This Court would like to refer to the judgment of the Apex Court in the case of **MUNNA KUMAR UPADHYAY ALIAS MUNNA UPADHYAYA v. STATE OF ANDHRA PRADESH THROUGH PUBLIC PROSECUTOR** reported in **2012 (6) SCC**

174, wherein it is held that in order to prove his innocence, the accused ought to have given satisfactory explanation in his examination under Section 313 of Cr.P.C. The very purpose of examination of the accused under Section 313 of Cr.P.C. is to explain with regard to the incriminating circumstances appearing against him. Twin purpose of accused's examination is to give an opportunity to him to furnish explanation, and to draw adverse inference where accused denies established facts. Accused's silence or false explanation – such conduct, held, entitles Court to tilt in favour of prosecution case invoking Section 106 and Section 114(iii)(g) of the Evidence Act, 1872. The scope of Section 313 of Cr.P.C. is in detail discussed by the Apex Court in paragraph Nos.72, 73 and 74, referring the judgments of the Apex Court in the case of **ASRAF ALI v. STATE OF ASSAM** reported in **(2008) 16 SCC 328** and in the case of **MANU SAO v. STATE OF BIHAR** reported in **(2010) 12 SCC 310**. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance therewith the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence

coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime when there is incriminating evidence available against him.

31. This Court would also like to rely upon the judgment of the Apex Court in the case of **MUNISH MUBAR v. STATE OF HARYANA** reported in **(2012) 10 SCC 464**, wherein it is held that when the case depends upon the circumstantial evidence and also the material available on record showing incriminating circumstances against the accused, the accused must explain under Section 313 of Cr.P.C. It is obligatory on part of accused while being examined under Section 313 of Cr.P.C. to furnish some explanation with respect to incriminating circumstances associated with him. The Court must take note of such explanation, even in a case of circumstantial evidence, so as to decide whether or not, the chain of circumstances is complete when there is incriminating evidence available against him.

32. This Court also would like to rely upon the judgment of the Apex Court in the case of **SANJEEV v. STATE OF KERALA**, passed in **Criminal Appeal No. 1134/2011**

dated 09.11.2023. Paragraph No.41 of the said judgment reads as under:

"41. Notably, no less than 627 questions/ circumstances were put to A10 and A11 each under Section 313 of the Code of Criminal Procedure, 1973. This Court has clarified on numerous occasions that in law, the accused has a duty to furnish some explanation of an incriminating circumstance, with the prosecution crossing the threshold of proving its case beyond reasonable doubt. However, no explanation, much less, a plausible one, is put forth. In the event of complete denial or silence, the Court is entitled to draw an adverse inference against the accused. Applying this to the case at hand, in the statements under Section 313, the accused persons failed to justify the incriminating circumstances appearing against them."

33. This Court also would like to rely upon the judgment of the Apex Court in the case of **CHETAN v. STATE OF KARNATAKA** reported in **(2025) 9 SCC 31**. Paragraph Nos.143, 144, 145, 146 reads as under:

"143. In this regard, we may also refer to the decision in this Court rendered in Triumukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 where it was held that where the circumstantial evidence is the basis for any case, where no eyewitness account is available, and when the incriminating circumstances are put to the accused, if the accused does offer any explanation or offers the explanation that is found to be false, it provides

an additional link to the chain of circumstances as observed in para 21 of the aforesaid decision which is reproduced herein below: (SCC p. 694)

"21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]

144. We may not also lose sight of the significance of the provision of Section 313 Cr.P.C. in the case. As a trial comes to a conclusive phase and all the evidence are adduced by the prosecution, the veracity and credibility of which are tested with the tool of cross-examination and when a certain clear picture emerges based on the incriminating materials on evidence, as a procedural safeguard, the court draws the attention of the accused to these incriminating evidence to

enable the accused to explain these facts and circumstances which point to his guilt. While the accused is not obligated to answer the questions put to him and still can maintain his silence or deny the evidence, yet silence or evasive or wrong answers to the questions put by the court provides a perspective to the court in properly evaluating the incriminating materials which have been brought forth by the prosecution by drawing necessary inference including an adverse one. [See, Manu Sao v. State of Bihar, (2010) 12 SCC 310].

145. Examination of an accused under Section 313 Cr.P.C. is an important component of the process of judicial scrutiny of the evidence sought to be relied upon by the prosecution against an accused. At the time of indictment and framing of charges against an accused, the untested evidence marshalled by the investigating authority in the course of the investigation is laid bare before the accused, who would have an idea as to the nature of evidence and case being built up against him by the prosecution. This is to enable the accused to prepare and strategize his defence. He will have all the opportunities to discredit any prosecution witness or question any evidence through the tool of cross-examination. He will thereafter have the opportunity to lead his defence evidence if any. It is in this context that the answers given by an

accused assume great significance in assessing the evidence by the court.

146. In the present case, despite the incriminating evidence which has come up against him has been pointed out to him by the Court, he has not explained any of these but merely denied or feigned ignorance to which necessary inference can be drawn against him.

34. It is also important to note that when wife of accused was examined as PW11, her evidence is also very clear that the accused was not in the house whole night and he came in the early morning at 05.00 a.m. on 12.04.2013. When he removed his skull cap, there was injury on his forehead. She asked him about the said injury and he told her that when he asked the person who had to give him money, that person hit him and there was quarrel between them. But in the cross-examination, nowhere defence is elicited to disprove the evidence of PW11 for any animosity to depose against him. It is also the fact that both PW11 and the accused were staying together on the date of incident. Except the suggestion made to this witness in the cross-examination by the accused counsel that the police did not enquire her and not record her statement and police did not take any document from her to

prove that she was residing with accused at the time of the incident and she was living along with the accused, prior to date of incident. Apart from the fact that accused was working as driver and she says that she does not know anything about his affairs and the same will not take away the case of the prosecution since the very evidence given by PW11 is not disputed and material also discloses that her statement was recorded within 2 days of this incident. Though she says that police did not enquire her but her statement was recorded and the same is available on record. No dispute with regard to the fact that accused returned to the house at early morning at 05.00 a.m. and he had suffered the injuries. The same is not disputed in the cross examination. The medical evidence available before the Court is also very clear that on his arrest, he was taken to the hospital and doctor-PW10 treated him with requisition of police as per Ex.P75 and given the wound certificate stating that accused has sustained 3 injuries and out of that, 2 injuries are burn injuries over the forehead and root of nose with the largest one measuring 2x0.5 cm and superficial burn injuries of 3x2 cm over middle third of right leg as per Ex.P76. Hence, the evidence of the doctor-PW10 and also the wound certificate at Ex.P76 is very clear that accused

has sustained the injuries. It is important to note that in the cross examination of PW10, defence itself has suggested that the injuries what she saw on Abdul Sharief is simple in nature and injuries as per Ex.P76 can be caused by the flame of a matchstick and the learned Public Prosecutor also got elicited by re-examining the witness that even the second injury of Ex.P76 could be caused by the flame of a matchstick. Thus, the burn injuries which were found on the accused has not been explained by the accused. The reply given to his wife when she asked him about injury that he went to a person who owes money to him assaulted and the very defence suggestion is clear that accused gave complaint against father of PW1.

35. This Court would like to rely upon the judgment of the Apex Court reported in **(2022) 3 SCC 471** in the case of **RAJESH PRASAD vs STATE OF BIHAR AND ANOTHER** wherein the Apex Court discussed with regard to the power of Appellate Court in dealing with and principles are summarized in paragraph 26 referring the judgment of **Ajit Savant Majagvai vs. State of Karnataka (1997) 7 SCC 110** and the Apex Court set out the principles regulate and govern the hearings of appeal by the High Court against an order of acquittal and extracted paragraph 16 of **Ajit Savant**

Majagvai's case. So also, in paragraph 28, referring the judgment in the case of **Chandrappa vs State of Karnataka (2007) 4 SCC 415** highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. In paragraph 29, extracted paragraph 42 of **Chandrappa's** case and held that under what circumstances, the Court can exercise the appellate jurisdiction.

36. This Court also would like to rely upon the judgment of the Apex Court reported in **(2024) 8 SCC 149** in the case of **BABU SAHEBAGOUDA RUDRAGAUDAR AND OTHERS vs STATE OF KARNATAKA** wherein the Apex Court discussed with regard to the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the Trial Court in favour of the accused has to be exercised within the four corners of the principles i.e., (i) that the judgment of acquittal suffers from patent perversity; (ii) that the same is based on a misreading/omission to consider material evidence on record and (iii) that no two reasonable views are possible and only the view consistent with the guilt of

the accused is possible from the evidence available on record and the same is discussed in paragraph 41 of the judgment. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court and the same is discussed in paragraph 42 of the judgment. In paragraph 39, the Apex Court also discussed the judgment of **Chandrappa's** case as well as **Rajesh Prasad's** case referred supra and in paragraph 40, discussed the judgment of **H D Sundara vs State of Karnataka (2023)9 SCC 581** wherein discussed with regard to at what circumstances, the benefit goes in favour of accused, so also the principles.

37. In keeping view of the principles laid down in these two judgments, this Court would like to point out the perversity and misreading of the evidence by the Trial Court while considering the evidence of prosecution. The Trial Court has misread the evidence of PW1 while analysing the same even though it is held in paragraph 34 of the judgment that PW1 and PW2 are the star witnesses since they have sustained the burn injuries in the alleged incident in paragraph 34. In paragraph 35, taken note that there was a complaint with regard to the

financial dispute between the accused and father of PW1. But the Trial Court misread the same in a negative manner that there was a financial dispute between them and there was a quarrel to that effect and complaint was given by the accused in this regard. The same could be considered with regard to the motive is concerned for committing the murder. The motive is irrelevant in a case of direct evidence available before the Court. Since PW1 categorically deposes that the accused only lit the fire after pouring the petrol and this Court already considered the Ex.P82 which shows that there are petrol residues in the articles which was seized at the spot. This Court also taken note of the fact that accused also sustained the injury in setting the fire and the same has not been explained in 313 Statement.

38. The evidence of PW3 and PW4 is very clear that having heard the screaming sound, they came out and found that house of PW1 was burning. Since, the circumstantial evidence also supports the case of the prosecution and the same has not been considered by the Trial in a proper perspective. In paragraph 44, the Trial Court observed that there is no doubt that both of them have stated that on coming out from their respective houses, they saw the house of the

father of PW1 which was burning on fire and at that time, the doctor's wife was brought out and i.e. mother of PW1 she said that it was accused who set the fire to her house. Thus, it amounts to dying declaration since she subsequently passed away making such statement before PW3 and the evidence of PW3 making statement to him by mother of PW1 is not disputed during cross of PW3.

39. In paragraph 46, the Trial Court taken note that accused has admitted in his 313 statement that said motorcycle belongs to him. However, even if seizure of said motorbike as projected in Ex.P63 mahazar is accepted, it is of no significance. But the fact is that while drawing the mahazar in terms of Ex.P64, the sample hair of the accused was taken in front of PW8 in the police Station and PW8 was the mahazar witness to Ex.P64 and the same is taken note of by the Trial Court in paragraph 47 of the judgment. But comes to the conclusion that apart from speaking about it, he has spoken about the incident itself for the first time before the Court. But the fact is that the accused was apprehended and his hair sample was also seized by drawing the mahazar and the same has not been taken note of by the Trial Court in a proper perspective in appreciating the evidence of PW8.

40. As per the evidence of PW1 and PW2 it is clear that there was a blast which led to collapse of window and wall of the bedroom and that is how PW1 and PW2 escaped from the house. But Trial Court committed an error in taking note of the very blast of cylinder holding that the same is immaterial and the same is not the incriminating articles with regard to the incident is concerned and proceeded to discuss with regard to the unwarranted things leaving aside the incriminating materials which were before the Court. Though Trial Court discussed the evidence of PW9-doctor who examined PW1 and PW5 when they sustained the injuries and gave reports at Ex.P73 and P74 wherein also it is categorically stated in the MLC extract that history of the incident is given as burns caused using petrol at about 04.00 a.m. at the residence of PW1, the same is not considered in a proper perspective. Even though PW1 also has deposed that she saw the accused burning the house by letting the fire using match stick and her statement was also recorded in terms of Ex.P15 and at the earliest point of time, she pointed out that accused only lit the fire in her statement and doctor also endorsed in the beginning and also in the end that PW1 was fit to make statement, the same was not properly considered by the Trial Court.

41. The minor discrepancies are in the evidence of PW12 who stated that the endorsement made on Ex.P15 was only after the statement was recorded and the Trial Court magnified the same and the Trial Court cannot expect mathematical niceties which appreciating evidence. Thus, it is nothing but a perversity in searching the minor discrepancies since the Trial Court fails to take note of the gravity of the offence when six persons have lost their life. For the flimsy reasons, the accused was acquitted without believing the document of Ex.P15 and prosecution evidence of injured witnesses. Hence, the very approach of the Trial Court is erroneous in considering the material available on record when the accused did not give any explanation in 313 statement and totally denied but not denied the injuries sustained by him.

42. The Trial Court also committed an error in considering the evidence of PW11. In paragraph 52, an observation is made that of course if PW11's evidence is believed, it would show the absence of the accused in his house at the time of the incident and PW1 also has stated that accused has sustained the injuries and would certificate at Ex.P76 also reflects the same. But committed an error in coming to the conclusion that the evidence of PW11 which can

at best constitute circumstantial evidence regarding absence of accused from the house will not by itself prove the offence against the accused. The very approach of the Trial Court is erroneous and perverse when the accused did not explain regarding injuries found on him and the same is noticed by his wife-PW11 who deposed before the Court i.e., also one of the circumstances. The Trial Court erroneously comes to the conclusion that the accused was at the spot and another thing to say that the accused was away from his house and just because the accused was away from his house, the Court cannot jump into the conclusion that it was he who went to the spot and set fire to the house. When PW1 categorically deposed that it was the accused and also deposed with regard to the motive for committing the offence and the document of Ex.P76 is very clear that accused had sustained the injuries and there was no explanation in 313 statement, the Trial Court ought not to have given such finding. The same is also a link and inference could have been drawn. The Trial Court while considering the FSL report also committed an error holding that the crucial part of evidence of the Investigating Officer that at the time of apprehending accused, there were burn marks on his face and his hair was burnt. But in his cross-examination he

has stated that accused had not taken treatment for said burns prior to sending him for medical examination. That evidence will not take away the case of the prosecution. The fact is that he has not taken any treatment after the incident. But Trial Court committed an error holding that this evidence appears unnatural because, if accused had really sustained burns in the early morning of 12.04.2013 and he was apprehended at late night at about 11.15 p.m., it is unlikely that, during the interval accused did not take any treatment of burns. The very approach of the Trial Court is erroneous and accused has to explain whether he took treatment earlier to his arrest.

43. The Investigating Officer in his evidence categorically deposes that container in which petrol was purchased i.e., Can was found outside the house and the same was seized and marked as MO11 i.e., burnt plastic Can. Though it is stated that the same was not recovered from accused, but the Can was seized outside the house and it was marked before the Court and it is available on record. No doubt, the statement of one Raju was recorded by the IO. But he has not been examined. That is a mistake on the part of the learned Public Prosecutor and ought to have examined him. Even Trial Court should have summoned him and the Court should not in a mute

spectator while conducting the trial that too when six persons have lost their life. It is also the duty of the Trial Court to consider the material available on record and involve in conducting the trial.

44. This Court would like to rely upon the judgment of the Apex Court in the case of **STATE OF RAJASTHAN v. ANI ALIAS HANIF AND OTHERS** reported in **(1997) 6 SCC 162**.

Paragraph Nos.12 and 13 of the judgment reads as follows:

"12. Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a

witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.

13. In this context it is apposite to quote the observations of Chinnappa Reddy, J. in Ram Chander v. The State of Haryana (AIR 1981 SC 1036):

"The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. 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. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

We respectfully concur with the aforesaid observations. We find no wrong in the trial court interjecting during cross-examination of PW-3 with a view to ascertain the correct position."

45. This Court would also like to rely upon the judgment of the Apex Court in the case of **BABLU KUMAR AND OTHERS v. STATE OF BIHAR AND ANOTHER** reported in **(2015) 8 SCC 787**. Paragraph No.22 of the said judgment reads as follows:

"22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the Court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a "mock trial". It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The Court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The Court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the Court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the Court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the

trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

46. This Court would like to rely upon the judgment of the Apex Court in the case of **DINESH KUMAR v. STATE OF HARYANA** reported in **(2023) 20 SCC 49**. The Apex Court in this judgment referring Sections 165 and 45 of the Evidence Act, 1872, held that, it is the duty of trial Judge to ask pertinent questions. Paragraph Nos.22, 23, 24 and 25 of the said judgment reads as follows:

"22. We are afraid that by pointing out the weakness in the cross-examination of the defence the Presiding Judge indirectly admits to the weakness in the trial itself. We say this for the reasons that under Section 165 of the Act, a trial Judge has tremendous powers to "ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant". It is in fact the duty of the Trial Judge to do so if it is felt that some important and crucial question was left from being asked from a witness. The purpose of the trial is after all to reach to the truth of the matter.

23. Section 165 of the Act reads as under:

"165. Judge's power to put questions or order production.— The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

24. *The powers of a Presiding Judge in a criminal trial and his duty to get to the truth of the matter have been laid down in a seminal judgement of this Court authored by O. Chinnappa Reddy, J. which is Ram Chander v. State of Haryana. O. Chinnappa Reddy, J. in the said judgment refers to his earlier Judgment given by him as a Judge of the Andhra Pradesh High Court, where it was said : (Intha Ramana Reddy case, SCC Online AP para 2)*

"2.Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a Presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

25. *The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial "by evincing intelligent active*

interest by putting questions to witnesses in order to ascertain the truth.” While referring to a decision of Lord Denning in Jones v. National Coal Board (1957) 2 WLR 760 (CA) the learned Judge had said that it is the duty of the Judge to ask questions to the witnesses when it becomes necessary to clear up any point that has been overlooked or left obscure, then he goes on to say as under: (Ram Chander v. State of Haryana (1981) 3 SCC 191) Scc p.194, para 3)

"3.We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

47. The reasoning given by the Trial Court in paragraph 57 is also is nothing but a perverse finding in considering the FSL report since there is a clear FSL report before the Court that petroleum residue was found in the seized articles and tested positive. The same ought to have been considered by the Trial Court in a proper perspective and failed to consider the same. In paragraph 58, Trial Court comes to the conclusion that presence of petroleum residue on the articles i.e., burnt door mat pieces, burnt mattress and clothes of the deceased are concerned, no doubt it cannot be attributed to escape of gas from the gas cylinder since PW15 in her evidence categorically stated that LPG will not leave any residue. However, it is crucial to note that where as it is prosecution case as projected through PW1 that petrol was first put on the door and Article-1 burnt door wood pieces has tested negative for petroleum residue. In spite of FSL opinion is very clear that presence of petroleum residue in the various articles was found, but Trial Court committed an error in coming to the conclusion that the same was not found in the articles only referring Article-1. Hence, the very approach and consideration of the material available on record by the Trial Court is erroneous. The Trial Court wrongly proceeded with regard to

the explosion of the cylinder is concerned and it is not the case of the prosecution that cylinder is an incriminating article. The same was burst in the house on account of the fire and it was already fire in the house itself. Instead of considering the incriminating materials, the Trial Court proceeded in a wrong direction that whether the blast was happened immediately or later that has been magnified and there was no need to consider the same since whether it is earlier or subsequent and the same is not the issue in the case on hand and the same is immaterial. Hence, the Trial Court committed an error in considering the evidence available on record. It is nothing but an erroneous approach of the Trial Court proceeding in a wrong way and did not consider the material available on record in a proper perspective and the same was resulted in miscarriage of justice. The principles relied upon in the judgment referred above are aptly applicable to case on hand since all of them failed to consider the material on record. The PW1 has sustained 34% burn injures and survived, it attracts Sections 302, 307 and so also attract Section 436 of IPC as the house of PW1 also damaged and burnt consequent upon the act of the accused. Hence, it is a case for reversal as per the principles laid down in the judgments referred supra. Hence, answer the

point as affirmative holding that Trial Court committed an error in acquitting the accused and there is a miscarriage of justice and perversity in the finding of the Trial Court.

48. Having considered the factual aspects of the case that PW1, PW2 and PW5 have sustained the injuries and six persons have lost their life in the alleged incident and accused was aged about 50 years as on the date of incident in 2013 and now he is aged about 63 years, the question of imposing the sentence to be considered having considered the offences of Sections 302, 307 and 436 of IPC and ingredient of the said offence are established.

49. This Court would like to rely upon the judgment of the Apex Court in the case of **SURYAMOORTHY AND ANOTHER v. GOVINDASWAMY AND OTHERS** reported in **(1989) 3 SCC 24**, wherein the Apex Court discussed the very scope of Section 235(2) of Cr.P.C. The accused convicted under Section 392 of IPC for the first time reversing the judgment of the Trial Court and the High Court, hence accused entitled to an opportunity of being heard on the question of sentence in compliance with Section 235(2) of Cr.P.C. The same is discussed in paragraph No.14.

50. This Court also would like to rely upon the judgment of the Apex Court in the case of **ALLAUDDIN MIAN AND OTHERS, SHARIF MIAN AND ANOTHER v. STATE OF BIHAR** reported in **(1989) 3 SCC 5**. The relevant portion of paragraph No.10 of the said judgment reads as under:

"10. Even a casual glance at the provisions of the Penal Code will show that the punishments have been carefully graded corresponding with the gravity of offences; in grave wrongs the punishments prescribed are strict whereas for minor offences leniency is shown. Here again there is considerable room for manoeuvre because the choice of the punishment is left to the discretion of the Judge with only the outer limits stated. There are only a few cases where a minimum punishment is prescribed. The question then is what procedure does the Judge follow for determining the punishment to be imposed in each case to fit the crime? The choice has to be made after following the procedure set out in sub-section (2) of Section 235 of the Code. That sub-section reads as under:

"If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."

The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a

fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality....."

51. This Court would like to rely upon the recent judgment of the Apex Court in the case of **MUKESH KUMAR YADAV v. STATE (UT OF ANDAMAN AND NICOBAR**

ISLANDS) ETC. reported in **2026 SCC ONLINE SC 938.**

Paragraph No.11, 12, 13 and 16 of the said judgment reads as follows:

"11. One more judgment which requires mention in this context is Dagdu v. State of Maharashtra (1977) 3 SCC 68, wherein a question arose as to what if the convicting court sentences the accused without hearing him on the sentence. This Court held that the higher court can on confirming the conviction, remedy the breach by giving a hearing to the accused on the question of sentence. This Court held that the Court may, in appropriate cases, adjourn the matter in order to give to the accused sufficient time to produce necessary data and to make his contentions on the question of sentence. The Court went on to add that this procedure must inevitably happen where the conviction is recorded for the first time by a higher court. Para 79 reads as follows: -

*"79. But we are unable to read the judgment in Santa Singh as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question of sentence. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. **But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy***

the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court."
[Emphasis supplied]

12. Equally, situations may arise where the trial court acquits the accused. In an acquittal, the question of hearing on sentence will not arise. On appeal by the State or by the victim/informant, what should be the position if the higher court reverses the acquittal and for the first time convicts the accused. To appreciate this position, a reference needs to be made to Section 386, Cr.P.C. (equivalent to Section 427, BNSS). Section 386(a), Cr.P.C., which is relevant for our purpose reads as under:-

"386. Powers of the Appellate Court.— After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

....."

13. It can be seen from Section 386(a), Cr.P.C., that where in an appeal from an order of acquittal, the court hearing the appeal finds the accused guilty it is required to pass a sentence on him according to law.

16. The appellate court which will include the High Court, in a given scenario, while recording a conviction after reversing the acquittal, should adjourn the matter to a suitable date, hear the convicts, and impose an appropriate sentence itself."

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

ORDER

(i) The appeal is allowed.

- (ii) The impugned judgment and order of acquittal dated 28.04.2018 passed in S.C.No.258/2013 by the III Additional Sessions Judge, Mysuru is set aside.
- (iii) The accused is convicted for offences punishable under Sections 302, 307 and 436 of IPC.
- (iv) The High Court Legal Services Committee and its counsel and also the learned SPP are directed to intimate the Investigating Officer to keep the accused present before the Court on 03.09.2026 to hear regarding sentence.

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

**Sd/-
(B.PRAMOD)
JUDGE**

SN