

IN THE HIGH COURT OF KARNATAKA, BENGALURU  
DATED THIS THE 2ND DAY OF NOVEMBER, 2018

PRESENT  
THE HON'BLE MR.JUSTICE K. N. PHANEENDRA  
AND  
THE HON'BLE MR.JUSTICE K. SOMASHEKAR

CRL.A. NO. 615/2013

MADHUKARA @ MADHU @ MALLESHA  
v/s.  
THE STATE OF KARNATAKA BY VINOBANAGARA POLICE STATION SHIMOGA

#### JUDGMENT

This appeal is preferred by the aggrieved accused No. 1 in SC SC No.78/2012 against the judgment of conviction and sentence passed by the Sessions Judge, I Fast Track Court, Shimoga, in convicting the appellant for the offence punishable under sections 302, 392 r/ w Sec.397 of IPC and also sentencing him to undergo imprisonment for life and to pay fine of Rs.10,000/-for the offence punishable under section 302 of IPC with default sentence; and also sentencing him for the offence punishable under section 397 of IPC to undergo rigorous imprisonment for a period of 10 years with fine of Rs.10,000/-with default sentence.

2. We have heard the arguments of the learned counsel for the appellant Sri Dinesh Kumar K. Rao for Sri. R.B Deshpande and also the learned Addl.SPP for the respondent State.We have carefully perused the records.

3. The brief factual matrix of the case that emanate from the records are that:

3.1 A lady by name Basamma had been residing in a House No.94, situated at II Cross, II Main, Shiva Nilaya in Shimogga Town.His son one Lingaraju was working as DGM in Gulbarga Canara Bank.The complainant by name Smitha and her mother Bharathi were also residing with the deceased Basamma in the said house.It is stated that the said Smitha used to go to college everyday.On 10.8.2011, the mother of the complainant by name Bharathi had been to Vaderahalli in order to attend some religious function, but the complainant Smitha and her grandmother-deceased Basamma were there in the house.

3.2 On 11.8.2011 at about 7.30 a.m., the complainant Smitha left the house to go to college and deceased Basamma was alone in the said house, as she was very old and unable to walk, therefore, the complainant has locked the house and kept the key inside the window and went to the college.She came back at about 2.00 p.m., and found that the key was missing which was kept near the window, however the house was latched from outside.She opened the latch from outside and entered the house and found Basamma, lying on a cot

and she was not moving and not talking in spite of her best efforts. Immediately, she telephoned to her father, in-turn he told her to make efforts to wake up Basamma, but in spite of that, the complainant could not able to do anything, because, by that that time, Basamma is dead.

Thereafter, the aunt of the complainant and others also came to that house and found Basamma was already dead. They also observed that four gold bangles, two lined gold chain and one pair of ear stud (vole) which were on the person of the deceased Basamma were missing. They also observe blood on the bed. Therefore, she suspected somebody opened the lock of the house and entered the house and committed the murder of the deceased Basamma for the purpose of taking away the above said gold ornaments. On these allegations, the complainant Smitha, PW- 1 lodged a report before Vinob Nagar Police Station, Shimogga. The Police have registered a case in Crime No.127/2011 for the offence punishable under section 302 and 397 of IPC and took up the investigation.

3.3 After thorough investigation, the Police filed a charge sheet against two accused persons. A1 Madhukara and A2 Malyappa were arrested and produced before the court and after securing the presence of the accused, the learned Trial Judge framed charges against the accused persons and put them on trial for the said offences.

3.4 The prosecution in order to prove the guilt of the accused, examined as many as 23 witnesses as PWs.1 to 23 and got marked 30 documents as Exs.P- 1 to P-30 and during the course of cross examination of the defence witnesses Exs.D1 and D2 were got marked. Ex.D-3 is the remand application marked during the course of cross examination of the Investigating Officer. Material objects MOs.1 to 12 were also got marked. After the completion of the prosecution witnesses, the accused was examined and his statement u/s.313 of Cr.P.C. was recorded. The accused had no special defence except denying the total case of the prosecution. He did not enter into any defence evidence and as such, after hearing the counsel for the accused and the learned PP, the trial Court, rendered the judgment of conviction and awarded sentence accordingly as noted above, against A1 and acquitted accused No.2 for the above said charges.

4. We have carefully once again re evaluated the materials available on record. In fact, we have also seen the video of the CD played in the open court which is marked at Ex.P-28 in the presence of the learned counsel for the appellant as well as the learned Addl.SPP for the State.

5. The learned counsel for the appellant very strenuously contends before this court that it is a circumstantial evidence case. The prosecution has to prove all the circumstances projected beyond all reasonable doubt. The entire case revolves around various circumstances, particularly the alleged recovery of gold ornaments at the instance of the accused and as well as the conduct of the accused and identification of the gold ornaments by the kith and kin of the deceased and to some extent motive factor. He contends before

the court that none of the circumstances projected by the prosecution has been proved beyond reasonable doubt. Though the accused has no special defence, the prosecution has to stand or fall on its own legs. Unless the prosecution proves beyond reasonable doubt, there is no responsibility on the accused to show any defence or to take any defence at all. He contends before the court that the so called recovery alleged by the prosecution is false one and it is created and the learned Trial Judge has not considered the evidence of the witnesses for recovery with reference to the evidence of PWs. 2 & 3.

6. The movements of the accused which is relied upon by the prosecution through various witnesses particularly PWs. 14, 15 and 16 and also the evidence of PWs. 6 & 7 has not been properly appreciated by the trial Court. The trial Court might not have seen the compact disk produced before the court in order to ascertain the truthfulness of the evidence of the recovery witnesses. He also contends that, there are chances of somebody committing the offence and in order to falsely implicate the accused, the recovery process might have been concocted with the assistance of the kith and kin of the deceased. Therefore, he contends that this court has to re-evaluate the materials on record to draw an inference in this regard.

7. Per contra, learned Addl. SPP strenuously submitted that, though there are discrepancies in the evidence of PW- 2 and other witnesses, but they have supported the case of the prosecution with regard to the recovery and also the conduct of the accused prior to and immediately after the incident. Those discrepancies are minor discrepancies and they would not go to the root of the prosecution case so as to totally topple the case of the prosecution. He also once again taken us through the evidence of the prosecution witnesses with reference to the recovery and tried to convince the court, and submitted that, in spite of such discrepancies, the court can rely upon the evidence of the prosecution witnesses which has been done by the trial Court. He also contends that the trial Court has considered all the points raised by the learned counsel for the accused before this court and there is no room for interference. Hence, the learned Addl. SPP pleaded for dismissal of the appeal.

8. On the basis of the above said rival contentions, the points that would arise for our consideration are:

(1) Whether the prosecution has proved the guilt of the accused for the offence punishable under sections 302 and 397 of IPC beyond all reasonable doubt?

(2) Whether the sentence passed by the trial Court is proper and correct?

The case of the prosecution revolves around various circumstances in this case.

9. We are aware of the legal position that in a case of circumstantial evidence, the prosecution has to point out what are all the circumstances, they rely upon and whether those circumstances have been proved to the hilt, and proven circumstances complete the chain so as to draw an inference of guilt against the accused.

10. In this particular case, the circumstances relied upon by the prosecution can be broadly classified into the following:

- (1) Homicidal death of the deceased;
- (2) Recovery of Incriminating articles at the instance of accused No.1;
- (3) Identification of gold articles by the relatives of the deceased; ( 4) The conduct or movements of the accused prior to and after the incident and lastly;
- (5) Motive.

Now, we will consider the above said points one by one:

11. (1) and (3) Homicidal death of the deceased and Identification of gold articles by the relatives of the deceased:

For the purpose of convenience we will take up circumstances 1 and 3 together for consideration as there is no much dispute so far as these two aspects are concerned. The prosecution has proved the homicidal death of the deceased. The inquest mahazar Ex.P7, the post mortem examination report Ex.P13 and evidence of PW.5 who is the inquest panch and Doctor-PW.21 and other witnesses who saw the dead body i.e., PW.1, PW.2 and PW.3, the relatives of deceased and PW.9 Anitha, they all categorically stated about the death of the deceased and also there was injury to the neck of the deceased. The post mortem examination report clearly discloses that, death was due to Asphyxia as a result of compression of neck. Therefore, the prosecution by means of the above said materials on record and also establishing the injuries on the dead body of the deceased has categorically established the homicidal death of the deceased.

12. So far as the identification of the articles are concerned, the accused in fact has not claimed the articles belonging to him or he has not denied the fact with regard to the articles found with the deceased prior to her death. PW.1 PW.1 and PW.2 have categorically identified the said articles soon after the alleged recovery of the said articles, in this case marked as M.Os.3 to 7. The Court has passed an order granting interim custody of the said articles in favour of PW.2 and this has also not been objected by the accused. Therefore, the evidence of PW.1 and PW.2 and also the maid servant PW.9, it clearly discloses that the deceased was wearing the gold ornaments during her life time everyday and these witnesses had seen the said gold articles on the person of the deceased when she was alive and after the alleged recovery of these articles, they were shown to the relatives of the deceased and they have categorically identified the said articles belonged to deceased Basamma.

Moreover, while submitting the arguments before the Court, learned counsel for the appellant very fairly submitted that the appellant would not dispute the identification of the

articles as that of deceased Basamma, but he contested the case on the other grounds before the Court.

13. ( 3) RECOVERY:Now the main important circumstance that remains for consideration for this Court is Recovery of the incriminating articles at the instance of accused no.1.We will take up this particular aspect first and then discuss with regard to the conduct of the accused prior to and after the incident, later.

14. The prosecution has relied upon the evidence of PW. 3, PW.4, PW.10 and PW.23 in this regard. It is not disputed that accused no.1 was arrested on 26.8.2011 and according to the prosecution the accused no.1 led the police and panch witnesses and others to his pump house situated in the same village and according to the police, the accused opened the door of the said pump house situated in his arecanut garden and entered into the said house and brought a bounty which was tied in a plastic cover and thereafter with a cloth and the said cloth and plastic cover was opened in the presence of panch witnesses and the said.bounty contained one gold chain and four bangles.The police drew up the mahazar at the spot as per Ex.P.4 and the said ornaments were identified by PW.3 and to that extent also a mahazar was drawn as per Ex.P3.

15. The evidence of PW.3 and PW.4 also coupled with the evidence of investigating officer and as well, the video compact disc play a very important role in this particular case.The said compact disc has been marked before the Trial Court as Ex.P28.Both of us along with learned counsel for the appellant and learned Addl.SPP have meticulously examined and witnessed the videograph containing the recovery proceedings.Before advertng to the videograph, the evidence of PW.3 and PW.4 play a very important role in this particular case. We will consider the evidence of these witnesses first.

16. PW.3 in fact, is not a panch witness, not a signatory to the panchnama.However, she has stated something with regard to the recovery.She has categorically stated in her evidence that on 26.8.2011 at about 4.30 p.m. herself and her close relative i.e., sister's son by name Shivshankar received information from the police at about 4.30 p.m. that the accused no.1 was arrested and they were proceeding to the garden land of the accused.After receiving the information this witness and Shivshankar and as well as another witness Gurumurthy (PW.4) had been to that particular place.It is further deposed that, the accused has brought out the said cover containing golden articles from inside the pump house and opened the same which contained four golden bangles and one golden chain and she identified them as MOS.3 to 7 already marked and she also identified them as the jewels belonging to her mother-in-law Basamma.It is categorically admitted by her that the police have videographed the entire recovery proceedings. A laptop was secured to the Court and video was shown to the witness and she has identified herself in the videograph and also the witness Gurumurthy and Shivshankar.

17. In the course of cross-examination it is elicited that at about 4.30 p.m. on that particular day they came to know about the police bringing the accused to the garden land of the accused, therefore, herself, Gurumurthy and Shivshankar went to that particular spot and by that time about 500 to 600 people had already gathered and police have brought the accused to the said land. Further, she deposes that when they reached the garden land, police were already there, accused was sitting on a katta. All the others gathered there were standing outside the pump house. As soon they went there, the police had shown the gold articles to this lady and others, but police have not packed the same etc. Therefore, looking to the above said evidence, it creates a serious doubt as to why the police even before taking the accused to the said spot, divulged this particular aspect to PW.3 and also PW.2.

18. It is worth to note here, some portion of evidence of PW.2 who has also stated in his examination-in-chief itself that on that particular day on 26.8.2011 at about 3.30 p.m., itself the police have informed him that they have arrested the accused who has committed the murder of Basamma and for the purpose of recovery they are proceeding. Therefore, it goes without saying that, the close relatives of deceased Basamma were made known about the arrest of the accused and the police were proceeding for recovery of the articles to the land of the accused. It is not conceivable as to why the police have to inform these witnesses even before the accused leading the police to that particular place and the police recovered the said articles. The voluntary statement of the accused should not have been divulged to any other person except the panch witness who were present along with the police together along with accused for recovery proceedings. It is not known what made the police officer to divulge that important aspect to PW.2 and PW.3 in this regard. Therefore, in this regard some admission of PW.2 gain some importance. PW.2 though in an isolated manner has deposed in his examination-in-chief that on 13.8.2011 itself the police have secured the presence of this witness and shown MOS.3 to 7 to him in the police station. When he went there, on 13.08.2011 the accused no.1 was very much present in the police station and this PW.2 went to the police station, for the first time on 13.08.2011, he has seen the gold articles and also accused no.1. Further he has stated that on 28.8.2011 also when MOS.3 to 7 were recovered, it was night hours and accused no.2 was in the police station and he also identified accused no.2 in the police station.

19. Therefore, if this particular portion of the evidence is taken into consideration, it creates a serious doubt whether accused no.1 was already available to the police and any gold articles were already taken by the police and shown to these witnesses. Therefore, it creates a serious doubt as to whether the gold ornaments were already available to the police in view of the above said evidence of PWs.2 and 3.

20. PW.4 Gurumurthy, has deposed in his evidence that he was present when the police took the accused to that particular spot and according to him, accused no.1 and police went inside the pump house in his garden land and he brought a cloth cover which was kept behind the television and he brought the same outside the pump house and opened the

same which contained four gold bangles and one gold chain. He also identifies his signature on Ex.P4. In the course of cross examination, he categorically admitted that, the said pump house was not locked and it was open. When the accused went inside the pump house, he did not go inside, but he was standing outside the door of the said pump house and thereafter, the accused was taken inside and one police constable went inside the house and the police constable has completely opened the door of the pump house and went inside. The Trial Court has allowed the prosecution to play the videograph and after perusing the same, the witness has stated the above said factual aspects. It is also admitted that, when the accused was taken inside the pump house and two police constables went inside and while coming back one of the police constable was just behind the accused. Therefore, it is clear from the evidence of this witness that this witness never went inside the pump house and he must not have seen whether actually this cloth bounty (cover) whether it was kept behind the television or anywhere. Nobody spoke about this particular fact as to the accused after going inside the pump house removed the said cloth cover which was kept behind the television.

21. With all curiosity, we have carefully watched the videograph twice along with learned counsel for the appellant and learned Addl.SPP with the help of a Laptop operated by a computer technician. Learned counsel for the appellant has pointed out after seeing the videograph which was also fairly accepted by the learned Addl.SPP that, the accused was taken inside the pump house. It is very much visible the said pump house was very dark and videographer did not enter the pump house for the purpose of taking the video so as to show what transpired inside the pump house. Accused and some four or five persons went inside the pump house and while coming back it is very much clear that somebody wearing a checks shirt, was thrusting a cloth bounty (cover) to the hands of the accused and somebody was whispering saying in kannada ( o ) that means give it to him. These two aspects in fact, has not been clarified by the prosecution as to why the police constables went inside the pump house, why the investigating officer has not taken care to send the panch witnesses inside the pump house would very well show the conduct of the accused as to actually where he kept the packet and from where he removed the same and brought outside the pump house. Therefore, a serious doubt is created when a particular person who is said to be a police constable having the cloth packet in his hand and thrusting the same into the hands of the accused and thereafter the accused coming out and opening the said cloth packet in the presence of the panch witnesses. The investigating officer has also not explained anything in his cross-examination.

22. It is worth to mention here the evidence of the investigating officer though he has stated in so many words with regard to recovery of the said articles at the instance of accused no.1. In the course of cross examination it is suggested to him that, one Mr.Ningegowda a Police personnel was also allowed to go inside the pump house and he actually brought the said cloth packet and handed over the same to the hands of the accused. But in a very evasive manner he has not properly answered the said question. But as we have observed

on a careful perusal of the videograph, it is clear that, somebody was thrusting the said cloth packet to the hands of the accused and whispering that " give it to him ".When this particular aspect has not been explained, in our opinion, it creates a serious doubt as to whether the accused has actually kept that particular cloth packet behind the television and he alone exclusively knew about the same and he brought out the same at the first instance when the police taken him to the pump house.

23. It is also worth to refer here, that on perusal of the videograph, it is clear that, the police took the accused near the pump house, he simply touched and pushed the door and the door was opened. Therefore, it clearly goes to show that the door was neither latched nor locked at that particular point of time and it was opened. If suppose, PW.3 Bharathi, PW.4 Gurumurthy and Mr. Shivshankar had already been to that particular spot as they knew that the police are bringing the accused to the particular spot and the door was opened there was chances of these persons entering into that particular place and examine the situation inside the pump house and there are chances of somebody getting entry into the pump house and keeping the packet in the said place. Therefore, when two inferences can be drawn on the same set of circumstance, in our opinion, an inference favourable to the accused has to be preferred. Therefore, looking to the above facts and circumstances, it cannot be said that there is a fair investigation with regard to recovery as stated by the Police, from accused no.1. Therefore, we are not ready to accept the circumstance of recovery as projected by the prosecution, as it is proved beyond all reasonable doubt.

24. PW.14 one Mr. Pradeep Kumar though examined to establish the movement of the accused, he has stated in his evidence at paragraph- 4 that on 19.08.2011, he came to know that accused no.1 and one Mr. Prakash have fell down from the motor cycle and sustained injuries. This witness had been to the hospital and enquired accused no.1 and Mr. Prakash. They have stated that they had been to three or four pawn brokers shop and while coming back, they fell down from the motor cycle and sustained those injuries. This portion of the evidence also creates some doubt as to why accused no.1 has to go to pawn brokers shop particularly three or four pawn brokers shop. This also creates serious doubt whether these jewels were already pledged with somebody and police have got such information though there is no evidence to the said fact but this cannot be easily brushed aside.

25. Further, added to the above, the evidence of PW.2 as we have already referred to has specifically stated that he has seen the the gold ornaments on 13.8.2011 itself. This also creates a serious doubt whether the police in order to fix accused nos.1 and 2 into the crime have created or concocted a story of recovery after arrest of the accused. When these doubts are very much crept in the prosecution evidence itself, it is not safe, particularly in a circumstantial case to rely upon such a grumbling circumstance in order to arrive at a conclusion that the accused has committed such an offence. Therefore, in our opinion, the Trial Court has not bestowed its attention so far as these aspects are concerned to find out



the real truth whether actually the gold articles were recovered at the instance of accused no.1 or not.Hence, we differ from the opinion of the Trial Court so far as this aspect is concerned and hold that the prosecution has not been able to establish the recovery of gold articles exclusively at the instance of accused no.1 as the said place was accessible to the third parties.In view of the surrounding circumstances that so many persons have arrived at the place and at the time of alleged recovery also some unknown persons were allowed to enter into the pump house and also thrusting of the cover to the hands of the accused is also apparently visible in the videograph.

26. ( 4) The Conduct or Movements of the accused prior to and after the incident:

Now, the circumstance of ' conduct of the accused ' prior to and after the incident is taken for our consideration.Of course, PW.6 and PW.7 are the persons working as Masons near the house of the deceased.It is deposed by them that, just opposite to the house of the deceased, there was a new construction of a house and these two persons were working there.They have stated that on 11.8.2011 at about 9.45 or 10 AM when PW.6 had been to the house near the house of the deceased they observed a Hero Hondo Motor cycle came there and two persons got down from the said motor cycle.A person wearing lungi who was wobbling and in fact both of them went inside the said house and after half an hour they went away from that house.At about 2.45 p.m. PW.1 came to the house and after entering into the house she came out from the house screaming, stating that her grand mother is dead.Lot of people gathered and they were talking that the grand mother of PW.1 was murdered and somebody has taken away the gold ornaments on the body of the deceased. It is further deposed that, on 26.8.2011 the police have secured the presence of these witnesses and showed accused no.1 and he identified him as one of the person who came to the said house of the deceased on 11.8.2011.Again on 28.8.2011 they identified accused no.2 in the police station and they identified him as the person who was riding the motor cycle on that particular day and this witness came to know about the name of accused no.1 at that particular point of time.

27. Of course a serious objection has been taken by the learned counsel for the appellant that identification parade has not been conducted so far as the accused persons are concerned.It is not the case of the prosecution that accused nos.1 and 2 were known to these two witnesses and therefore, there was no question of identification.The accused persons were shown in the police station and particularly the nature of evidence adduced clearly discloses that, the police have shown the said persons as the accused persons in the case. Perhaps due to the say of the police, these two persons might have identified the accused persons as the same persons who had been to the house of the deceased on that particular day.

28. When the Court has doubted the conduct of investigating agency with regard to the recovery, in our opinion, it may not be safe to rely upon this particular circumstance to come to a definite conclusion that, the accused no.1 is the perpetrator of the

crime. Particularly, the Trial Court has not relied upon the evidence of these witnesses, so far as accused no.2 is concerned, the same set of circumstances with regard to the conduct of the accused nos.1 and 2 prior to the incident and same allegations and same evidence have been pitted against accused nos.1 and 2 so far as prior conduct is concerned. Prior conduct of accused NOS. 1 and 2 cannot be split up and given benefit to one of the accused i.e. accused no.2 and rely upon the same evidence for the purpose of convicting the other accused person i.e. accused no.1. Therefore, in our opinion, the same benefit of doubt has to be extended to accused no.1 also. Therefore, the circumstance of both accused last seen together near the house of the deceased and going inside house and coming out after half an hour cannot be said as a strong circumstance so far as accused no.1 alone is concerned. Therefore, we are of the opinion that when the prosecution case itself is doubtful with regard to recovery as stated above, the circumstance also cannot come to the help of the prosecution to say that the prosecution has proved the case beyond all reasonable doubt.

29. The next circumstance is that accused nos.1 and 2 immediately after the incident going to the land of accused no.1. PW.14-Pradeep Kumar has stated that on 10.08.2011 in the evening at about 6.30 p.m. they talked with accused no.1 and gave Rs.50,000/- to accused no.1 and in fact PW.14 has to go to the land of accused no.1 for the purpose of cutting and removing areca in the land of accused no.1. Accordingly, on 11.8.2011 this witness and other coolie workers had been to the land of accused no.1 and they were doing their work. At about 1.00 p.m., accused nos.1 and 2 came in a motor cycle and accused no.1 got down from the motor cycle and thereafter, accused no.2 went away from that spot. In fact, this witness talked with accused no.1 and questioned him where he had been, then accused no.1 replied that he had been to a temple along with accused no.2 and thereafter, this witness went away from that particular spot. This witness has never stated that when the accused came there, he had one packet in his hand or entered pump house in his presence etc. So merely accused no.1 on the same day went to his land at 1.00 p.m., it no where takes us to draw an inference that only after commission of the offence with the bounty, the accused nos.1 and 2 went to the land of accused no.1 for the purpose of keeping the jewellery packet inside the pump house. This circumstance, in our opinion, is a distorted circumstance which cannot be in any manner conclusively establish the commission of the offence by the accused and they came there only for the purpose of keeping the bounty inside the pump house. Therefore, this circumstance also, in our opinion, is not sufficient to draw any inference against the accused.

30. PW.15 Madhu is another witness who also spoke about the conduct of the accused about his previous intention. It is the case of the prosecution that accused no.1 at some point of time prior to the incident took this particular witness along with him, showed the house of the deceased and told him that deceased was having so much of jewellery and they can rob that particular lady for the purpose of wrongful gain. But PW.14 Pradeep Kumar refused to join hands with accused no.1 for the said purpose. Having come to know about

that particular aspect, the intention of accused no.1, PW.14 never gone to anybody and inform the police about the intention of accused no.1 in order to prevent a crime that may occur in future. Therefore, the conduct of PW.14 also cannot be relied upon to show the previous intention of the accused persons, because of his conduct he never stated the date and time, on which day the accused no.1 took him and thereafter he never stated that he has informed the same atleast to the kith and kin of deceased Basamma in order to alarm them to take care of the deceased. Therefore, the conduct of PW.14 is not upright and therefore, the evidence of this witness is not so credible for acceptance.

31. ( 5) MOTIVE: The last but not the least circumstance is the motive. According to the prosecution the accused no.1 was indebted with the Bank and other private persons and in order to discharge his loan, he was searching for an opportunity to gain something from the deceased by causing death of the deceased. Of course, PW.2, PW.11 and PW.13 are the witnesses relied upon by the prosecution. These witnesses have stated that there was some debt so far as accused no.1 is concerned. It is their case that accused no.1 has undertaken to discharge the loan of his father and the Bank Officer PW.13 has stated that there was a loan in their Bank taken by the father of accused no.1 and accused no.1 has undertaken to discharge the said loan. Even though there was loan transaction, but it is clear that accused no.1 has got areca land and some other lands in the village and on the previous date on 10.8.2011 itself he received an amount of Rs. 50,000/- from PW.14. Therefore, whether this can be a strong motive for the purpose of killing the said lady and robbing her, in our opinion, is very feeble and it is not so strong enough to draw an inference, and because of this motive, the accused have committed the offence. Therefore, the motive factor to some extent is not sufficient alone to conclude that accused has committed the offence of murder and robbery. Looking to the above said facts and circumstances, we are of the opinion that the prosecution has not proved the case beyond reasonable doubt.

32. The other witnesses examined before the Court are not so significant. PW.5 is the witness to the spot mahazar-Ex.P2. PW.17 is the police constable who apprehended accused no.2. PW.18 is the person who watched the dead body, transported the dead body after inquest, PW.19 is the person who carried the articles to the FSL and PW.20 is the person who after receiving the complaint registered a case in Cr.No.127/2011 and discharged the FIR-Ex.P12 to the Court.

33. So looking to the above said factual aspects and reanalysis of the entire materials on record, oral and documentary, we are of the opinion that though the prosecution has tried to establish the circumstances, but only successful in creating a suspicion in the mind of the Court. The suspension has not been properly clarified and explained. Any amount of suspension however strong it may be can't take the place of proof. It is a well recognized principle of Criminal Jurisprudence that, there is a long distance to travel between the words, " the case must have been proved and might have been proved ". It is a long tested principle that the case must be proved by the prosecution beyond reasonable doubt. If any

doubt which is sufficient to shake the very case of the prosecution, or sufficient to doubt the fairness of the investigation in such an eventuality the court should not believe the story of the prosecution as a gospel truth. Therefore, if the court has given the benefit of doubt to accused no.2, it also should have given the benefit of doubt to accused no.1 also. Therefore, we are of the opinion the said benefit of doubt has to be extended to accused no.1 holding that the prosecution has not proved the case beyond all reasonable doubts.

34. Before concluding, we have observed that the compact disc produced before the Court is virtually stitched by the Trial Court officials along with the paper. When originally the disc was played before the court, twice the file was opened and we are able to see the said video graph completely. But subsequently, when it was again played the files did not open because of the stitch made by the office of the Trial Court. Therefore, we are inclined to direct the Trial Courts that whenever the Trial Court admits the electronic evidence, they must take utmost care in order to preserve the electronic evidence intact, till the case is logically concluded. Even the investigating officers whenever they collect the electronic evidence during the course of investigation, they have to preserve it in a proper manner and keep them in custody in an anti-static envelope, away from humidity, heat etc. Therefore, we prefer to set down certain guidelines in this regard, which are as follows:

(1) All the concerned in each stage has to take proper precautions for search, seizure, packing, labeling, sending the digital evidence to expert, submitting to the Trial Court with proper custody.

(2) Investigating agency has to make efforts to disable security settings like PIN, Password, Pattern Lock, Finger Print etc., before seizure procedure so that it should not create further obstruction/hurdle at any stage for the purpose of perusal, analysis of electronic gadgets.

(3) The media containing the electronic record should be submitted by the investigating officer in a sealed and secured manner to the Court. Before that, the investigating officer has to keep the copy of the said electronic evidence in their computers, so that even if the compact disc or any electronic gadget produced before the Court, if for any reason is destroyed or corrupted, the copy which was preserved by the police can be used as secondary evidence before the Trial Court.

(4) The media viz., CD/DVD/Pendrive/Hard Disk/Magnetic device etc., shall be preserved in anti static envelope, away from humidity and heat in a proper manner even before the same is produced before the court and after production the court should also take care to keep them in proper manner till the said evidence is admitted by the Court during the course of the evidence.

(5) It has to be ensured that such media do not get damaged due to the packing, sustain scratches (if optical) in any way while handling the file.

(6) Concerned Government Authorities and the High Court have to take strict measures to provide Proper training to the investigating officers and also the concerned staff, Judicial officers and staff of the court with reference to packing and preserving the media for future use and retrieval of the contents of the said electronic media, as and when required, so that it would safely exist till the case is logically concluded.

(7) The copy of the electronic record shall be kept in the server or in the PC of the concerned police station or the PC provided to the concerned investigating officer and also the PC provided to the concerned Court for reference as back up. An endorsement should also be made in the order sheet in this regard or in the case diary, as the case may be.

(8) As soon as an electronic record is admitted in evidence, a copy of the relevant portion be stored in the concerned folder of the said case in a separate media and also stored in the PC in a separate drive so that a back up is preserved for future reference, even if for any reason hard disk/C.D. is destroyed or gets corrupted or rendered un-readable.

(9) The electronic media shall be kept in safe deposit with the Chief Ministerial Office of the Court with a direction to preserve it in proper manner till the case is logically concluded.

(10) Experts at FSL also if possible have to retain a copy of mirror image, extracted data with evidentiary value with proper labeling, which may be used as a secondary evidence at any point of time.

35. In view of the above said facts and circumstances; we proceed to pass the following:

#### ORDER

(1) The appeal is allowed. Consequently, the judgment of Conviction and Order of Sentence dated 14/15.03.2013 passed by the Sessions Judge, I Fast Track Court, Shimoga in S.C. No.78/2012, is hereby set aside. Accused No.1-Madhukara @ Madhu @ Mallesha, is hereby acquitted of the charges  eveled against him for the offences punishable under Sections 302, 394 r/ w 397 of IPC.

(2) Accused No.1 Madhukara @ Madhu @ Mallesha is ordered to be released from the custody forthwith, if he is not required in any other case.

(3) Registry is hereby directed to intimate the concerned Jail Authority to release Accused No.1 Madhukara O Madhu @ Mallesha from custody forthwith.

(4) If the accused has already deposited any fine amount, the same is ordered to be refunded to him under acknowledgement.

(5) Further, the Registry is hereby directed to circulate a copy of this judgment to: (i) All the Judicial officers; (ii) The Director and Inspector General of Police; and (iii) The Director, FSL; to take care as to how the electronic evidence collected by the police during the course of

investigation shall be preserved and how the courts have to preserve the electronic evidence after recording the same before the Court till the case is logically concluded.

(6) Registry is also hereby directed to send a copy of this judgment to:( 1) The Chief Secretary to the Government of Karnataka; and ( 2) The Principal Secretary to the Home Department; with a direction to circulate it to all the Investigating Agency and also to take appropriate action and pro-active measures to enhance the capacity building by conducting training to develop Standard Operating Procedure (SOP) to handle digital evidence from scene of crime till the logical conclusion of the case.

Government also to take steps to develop infrastructure such as Regional Cyber Labs, provide Cyber investigation Kits, proper and safety storage equipments etc., to all the concerned including courts.