

HIGH COURT OF KARNATAKA**Date of Decision: 28 November 2023****Bench: Dr. Justice H.B. Prabhakara Sastry and Justice Anil B Katti**

CRL.A No.565 OF 2017 (A)

STATE OF KARNATAKA ...APPELLANT**Versus****VENUGOPAL @ VENU and Others ...RESPONDENTS****Legislation:**

Section 313, 378(1) & (3) of the Criminal Procedure Code (Cr.P.C.)

Section 323, 341, 395 of the Indian Penal Code, 1860 (IPC)

Subject: Appeal against the acquittal of accused in a robbery case involving carjacking, and theft of cash, a gold chain, and a mobile phone.**Headnotes:**

Criminal Appeal – Acquittal in Robbery Case – Appeal by State against acquittal in a robbery case involving accused Nos. 2 and 3 – Incident involving carjacking and theft of cash, gold chain, and mobile phone – Trial court's acquittal based on insufficient evidence and discrepancies in prosecution's case. [Para 1-6, 15-26]

Evidence and Witnesses – Issues in Recovery and Identification – Discrepancies in recovery of stolen items and identification of accused – Inconsistencies in prosecution witnesses' testimonies regarding recovery of complainant's car and mobile phone – Complainant's identification of accused not corroborated by prior descriptions or test identification parade. [Para 19-25]

Principles of Criminal Jurisprudence – Presumption of Innocence and Acquittal – Emphasis on the double presumption in favor of the accused in

cases of acquittal – Appellate court's interference only for substantial and compelling reasons – Reference to relevant Supreme Court judgments establishing principles guiding appeal against acquittal. [Para 14, 17, 24]

Decision – Upholding Trial Court's Judgment of Acquittal – Trial Court's judgment based on careful consideration of evidence and legal principles – Acquittal of accused Nos. 2 and 3 upheld due to failure of prosecution to prove guilt beyond reasonable doubt. [Para 26]

ORDER – Dismissal of Criminal Appeal – Criminal Appeal No. 565 of 2017 (A) dismissed due to lack of merit, affirming Trial Court's decision.

Referred Cases:

- Chandrappa and others -vs- State of Karnataka, (2007) 4 Supreme Court Cases 415
- Sudershan Kumar -vs- State of Himachal Pradesh, (2014) 15 Supreme Court Cases 666
- Jafarudheen and others -vs- State of Kerala, (2022) 8 Supreme Court Cases 440
- Ravi Sharma -vs- State (Government of NCT of Delhi) and another, (2022) 8 Supreme Court Cases 536
- Roopwanti Vs. State of Haryana and others, 2023 SCC online 179

Representing Advocates:

For the Appellant: Sri B.N. Jagadeesh, Additional State Public Prosecutor

For Respondent 1: Sri Chandrhasa Rai B., Advocate

For Respondent 2: Sri P.M. Gopi, Advocate

JUDGMENT

Appellant/State feeling aggrieved by the judgment of Trial Court on the file of Prl.Sessions Judge, Bengaluru Rural District, Bengaluru, in S.C.No.59/2014, dated 20.04.2016 preferred this appeal.

2. Parties to the appeal are referred with their ranks as assigned in the Trial Court for the sake of convenience.

3. The factual matrix leading to the case of prosecution can be stated in nutshell to the effect that on intervening night of 04.11.2010 and 05.11.20210, the complainant with his friends CW.4 N.R.Honnasiddaiah and CW.5 Ranganatha Rao went to Tumakuru and after taking food they were returning to their village. The complainant alone was going in his car bearing No.K.A.04-M.G.2727, while CW.4 N.R.Honnasiddaiah and CW.5 Ranganatha Rao were in another car. On the way near Rayarapalya Gate, six persons who came on two motor cycle waylaid and out of them four persons got down and pushed the complainant to the back seat of his car. One of them drove the car up to Shivaganga and the remaining three persons snatched the cash of Rs.25,000/-, gold chain and mobile set from the complainant. Thereafter, they pushed him into the eucalyptus grove near Gottigere cross. They left the spot by taking the car of complainant, by then time was between 12.30 a.m. to 1.30 a.m. The complainant proceeded further on the way and woke up some person and went with him to the Dabaspeta Police Station around 4 a.m. on 05.11.2010 then filed the complaint. On the basis of the said complaint filed by the complainant Subbaramaiah D.P., the case was registered in Dabaspeta Police Station Crime No.208/2010 for the offence punishable under Sections 341, 323 and 395 of Indian Penal Code, 1860 (hereinafter for brevity referred to as "IPC"). The Investigating Officer on completion of investigation filed the charge sheet for the offence under Section 395 of IPC.
4. In response to the summons accused Nos. 2 and 3 have appeared through their counsel. The case against accused Nos.1, 4 and 5 was split up. The Trial Court on being Prima Facie satisfied of the charge sheet material framed charge against the accused Nos.2 and 3 for the offences alleged against them. The accused Nos.2 and 3 pleaded not guilty and claimed to be tried. Prosecution in order to prove the allegations made against the accused relied on the oral testimony of PWs.1 to 12 and the documents at Ex.P.1 to P.17.
5. On closure of the prosecution evidence, the statement of accused under Section 313 of Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as 'the Cr.P.C.') came to be recorded. The accused Nos.1 and 2 have denied all the incriminating material evidence appearing against them and claimed that false case is filed. The Trial Court after appreciation of evidence on record acquitted the accused Nos.2 and 3 from the charges leveled against them.

6. Appellant/State challenging the judgment of acquittal of accused Nos.2 and 3 contended that the Trial Court has not properly appreciated the evidence on record. The complainant PW.1 Subbaramaiah D.P. has identified the accused Nos.2 and 3 before the Court as the persons who were among other accused on the day of incident. The stolen articles were recovered at the instance of accused and the same have been identified by complainant PW.1 Subbaramaiah D.P. Accused Nos.2 and 3 have sold the car to PW.8 Shamshuddin and the same is recovered at the instance of accused No.2 under the recovery panchanama Ex.P.7, which was purchased by him through PW.9 Imran. The mobile of complainant is seized from the house of accused No.3 under the panchanama Ex.P.17. The recovery at the instance of accused Nos.2 and 3 has been proved by the prosecution out of the material evidence placed on record. The purchaser of the car PW.8 Samshuddin has supported the case of prosecution. The Trial Court was not justified in doubting the identity of accused Nos.2 and 3 and the recovery evidence placed on record by the prosecution. The observations and findings recorded by the Trial Court are contrary to law and evidence on record and the same cannot be legally sustained. Therefore, prayed for allowing the appeal and to convict accused Nos.2 and 3 for the offences alleged against them.
7. In response to the notice of appeal, respondent Nos.2 and 3 appeared through their counsel.
8. Heard the arguments of both sides.
9. After hearing both sides and on perusal of Trial Court records, the following points arises for consideration.
 - 1) *Whether the prosecution has proved beyond all reasonable doubt that on the intervening night of 04.11.2010 and 05.11.2010 between 12.30 a.m. to 1.30 a.m. near Rayarapalya Gate on NH-4 within the limits of Dabaspeta Police Station accused Nos.2 and 3 along with the accused Nos. 1, 4 and 5 stopped the car bearing No.K.A.04-M.G.2727 in which CW.1 Subbaramaiah D.P. was going and accused pushed him to the back seat of the car and snatched from him cash of Rs.25,000/-, a gold chain and a mobile set and pushed him into a eucalyptus grove near Gottigere cross and thereafter took away the*

car thereby committed an offence punishable under Section 395 of IPC?

2) *Whether, the judgment of Trial Court requires any interference by this Court?*

10. On careful perusal of the oral and documentary evidence placed on record, it would go to show that the alleged incident took place near Rayarapalya Gate on NH-4 within the limits of Dabaspeta Police Station on the intervening night of 04.11.2010 and 05.11.2010 between 12.30 a.m to 1.30 a.m. while complainant and his friends were returning from Tumakuru to their village.

Complainant alone was driving his car bearing No.K.A.04-M.G.2727, whereas his friends CW.4 N.R.Honnasiddaiah and CW.5 Ranganatha Rao were in another car and their car was ahead of the car driven by complainant PW.1 Subbaramaiah D.P. The prosecution alleges that six persons came on two motorcycles and out of them four persons got down and pushed the complainant to the back seat of his car and one of them drove the car up to Shivaganga and the remaining three accused snatched the cash of Rs.25,000/-, chain and mobile set from the complainant. Thereafter, they pushed the complainant into an eucalyptus grove near Gottigere cross and from there complainant woke up some person and went with him to the Dabaspeta Police Station and then filed the complaint Ex.P.1. On the basis of complaint filed by complainant PW.1 Subbaramaiah D.P. criminal law was set into motion by registering the case Ex.P.11.

11. The prosecution to prove the incident of robbery by accused Nos.2 and 3 along with other accused relied on the oral testimony of PW.1 Subbaramaiah D.P. and that of his friend PW.4 N.R.Honnasiddaiah. The prosecution to prove the pledging of stolen articles i.e., gold chain of PW.1 relied on the oral testimony of PW.5 Kumara, Panch witness to the recovery panchanama Ex.P.6 and PW.7 Mullaram owner of the Jewellery shop 'Ambe Matha Jewellers' with the receipt produced by him at Ex.P.8 and the chain was recovered under the panchanama Ex.P.6. The prosecution to prove the recovery of car alleged to have been sold by accused No.2 relied on the oral testimony of PW.6 C.L.Jagadeesh Prasad panch witness to the recovery panchanama Ex.P.7 and also the evidence of PW.8 Shamshuddin who has purchased the car sold through PW.9 Imran. The prosecution also relied on the evidence of PW.1 Subbaramaiah D.P. in identifying accused Nos.2 and

- 3, since he had sufficient opportunity to see them in his car till the time he was pushed out of car at an eucalyptus grove near Gottigere cross. The said evidence is sought to be further corroborated by the evidence of Investigating Officer PW.10 Chandradhara S.R., PW.11 B.Maruthi and PW.12 B.R.Yathiraj.
12. Learned Addl.State Public Prosecutor for appellant/State has argued that there are no valid reason to discard the oral testimony of PW.1 to prove the incident and also in identifying accused Nos.2 and 3 since he had sufficient time to see them while they were in the car till he was pushed out of the car near Gottigere cross. The evidence of PW.4 N.R.Honnasiddaiah also substantiate the evidence of complainant PW.1 Subbaramaiah D.P. The recovery of gold chain pledged by accused No.5 from 'Ambe Matha Jewellers' has been proved by examining the independent panch witness PW.5 Kumara and the owner of jewellery shop of PW.7 Mullaram. The recovery of car has been proved by the prosecution out of the evidence of independent panch witness PW.6 C.L.Jagadeesh Prasad to the recovery panchanama of the car Ex.P.7. The purchaser of car PW.8 Shamshuddin who has purchased the same through PW.9 Imran has supported the case of prosecution. The said recovery evidence has been substantiated by the evidence of Investigating Officer PW.10 Chandradhara S.R., PW.11 B.Maruthi and PW.12 Yathiraj. The Trial Court has conveniently ignored the evidence of these material witnesses of the prosecution and as a result recorded erroneous findings in acquitting both the accused.
13. Per Contra the learned counsel for respondents has argued that it is only accused Nos.2 and 3 who have faced the trial. The alleged recovery at their instance under the recovery panchanama Ex.P.7 at the instance of accused No.2 and the seizure of mobile at the instance of accused No.3 has to be only appreciated. Insofar as the recovery of car under the panchanama Ex.P.7, the evidence of PW.6 C.L.Jagadeesh Prasad and that of PW.8 Shamshuddin who is said to have purchased the car through PW.9 Imran is not in conformity with the case made out by the prosecution and their evidence cannot be relied to prove the recovery panchanama Ex.P.7 for having recovered the car at the instance of accused No.2. The mobile of complainant is alleged to have been recovered from the house of accused No.3 in presence of PW.5 Kumara and CW.8 under recovery panchanama Ex.P.17 and the photograph at Ex.P.3. However, PW.5 Kumara has not spoken anything about the recovery of mobile at the instance of accused

No.3 from his house. The prosecution has failed to establish that the recovery of car and the mobile belongs to the complainant at the instance of accused Nos.2 and 3 out of the above referred evidence of PWs.5, 6, 8 and 9. The Trial Court has rightly appreciated all the material circumstances placed on record by the prosecution and was justified in acquitting the accused.

The said finding recorded by the Trial Court are based on material evidence placed on record by the prosecution which does not call for any interference by this Court.

14. Before proceeding further in analysing the evidence led in the matter, it is to be borne in mind that it is an appeal against the judgment of acquittal of the accused from the alleged offence punishable under Sections 341, 323 and 395 of IPC. Therefore, the accused has primarily the double benefit. Firstly, the presumption under law that, unless the guilt is proved, the accused has to be treated as innocent in the alleged crime. Secondly, the accused is already enjoying the benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analysed.

(a) Our Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -vs- State of Karnataka, reported in (2007) 4 Supreme Court Cases 415***, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph 42(4) and paragraph 42(5) as below:

“ 42(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

42(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

(b) In the case of ***Sudershan Kumar -vs- State of Himachal Pradesh reported in (2014) 15 Supreme Court Cases 666***, while referring

to **Chandrappa's case (supra)**, the Hon'ble Apex Court at Paragraph 31 of its Judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of **Jafarudheen and others -vs- State of Kerala**, reported in **(2022) 8 Supreme Court Cases 440**, at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

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

The above principle laid down by it in its previous case was reaffirmed by the Hon'ble Apex Court, in the case of **Ravi Sharma -vs- State (Government of NCT of Delhi) and another** reported in **(2022) 8 Supreme Court Cases 536**.

The Hon'ble Apex Court in another latest judgment in **Roopwanti Vs. State of Haryana and others** reported in **2023 SCC online 179**, wherein it has been observed and held in paragraph No.7 that:

“ In cases where a reversal of acquittal is sought, the Courts must keep in mind the presumption of innocence in favour of the accused, on grounds of it surviving to rigorous of full trial is strengthened and stands forfeited. The prosecution then while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the forfeited presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgment by this Court”.

It is keeping in mind the above principles laid down by the Hon'ble Apex Court, we proceed to analyse the evidence placed in this matter.

15. The prosecution to prove the incident as alleged in the complaint Ex.P.1 relies on the oral testimony of PW.1 Subbaramaiah D.P. and that of his friend PW.4 N.R.Honnasiddaiah. PW.1 Subbaramaiah D.P. has deposed to the effect that on the intervening night of 4.11.2010 to 5.11.2010 in between 12:30 a.m. to 1:30 a.m. complainant PW.1 Subbaramaiah D.P. along with his friends N.R.Honnasiddaiah and CW.5 Ranganatha Rao were returning after having food in Tumakuru to their village. Complainant alone was going in his car bearing registration No.K.A.04-M.G.2727. Whereas CW.4 N.R.Honnasiddaiah and CW.5 Ranganatha Rao proceeding in another car ahead of the car driven by complainant PW.1 Subbaramaiah D.P. On the way near Rayarapalya Gate six persons came on two bikes and hit the bonnet of the car with a bottle. He immediately stopped the car. Out of them four persons got down and pushed the complainant to the back seat of his car and one of them drove the car up to Shivaganga. The remaining three persons snatched cash of rupees Rs.25,000/-, chain and mobile set from the complainant. Thereafter, they pushed him out of car near eucalyptus grove near Gottigere cross and went away by taking his car. PW.1 complaint Subbaramaiah D.P. woke up some person and went along with him to file the complaint Ex.P.1.

16. PW.4 N.R.Honnasiddaiah indisputably was proceeding in another car along with CW.5 Ranganatha Rao. They have not stopped their vehicle even after going some distance having not found the car of a complainant PW.1 Subbaramaiah D.P. However, it is the evidence of PW.4 N.R.Honnasiddaiah that on the next day PW.1 Subbaramaiah D.P. over phone informed him that four to five persons near Shivaganga took the car and snatched the ring, mobile and cash of Rs.25,000/- . This witness is a hearsay witness and has not seen any incident as alleged in the complaint Ex.P.1.

17. It is the evidence of PW.1 Subbaramaiah D.P. that on the next day police called him and he has shown the place of incident and accordingly spot panchanama Ex.P.2 is prepared. PW.2 Ramanjinaiah and PW.3 K. Narayan are the panch witnesses to the spot panchanama Ex.P.2. On perusal of the spot panchanama Ex.P.2, it would go to show that complainant has shown the place where the car was stopped and also the place where he was pushed out of the car and accordingly panchanama at Ex.P.2 was

prepared. The Investigating Officer PW.10 Chandradhara S.R. would go to show that he has prepared the panchanama Ex.P.2 of the places as shown by complainant PW.1 Subbaramaiah D.P. The evidence of PW.4 N.R.Honnasiddaiah regarding the incident cannot be of any assistance to the case of prosecution to corroborate the evidence of PW.1 Subbaramaiah D.P. regarding the incident. PW.2 Ramanjinaiah panch witness to the spot panchanama Ex.P.2 has not supported the case of prosecution. However, PW.3 has spoken about preparation of panchanama Ex.P.2 in his presence. If the cross

examination of above witnesses is carefully perused, then it would go to show that the places of incident and the preparation of panchanama Ex.P.2 is not seriously disputed by the defence. Therefore, the prosecution has to prove that accused Nos.2 and 3 were amongst the four persons who entered the car driven by complainant PW.1 Subbaramaiah D.P. Further, the prosecution is also required to prove the recovery at the instance of accused Nos.2 and 3 with the allegations made in the complaint Ex.P.1.

18. The recovery of stolen article at the instance of accused No.5, i.e., gold chain from the jewellery shop of PW.7 Mullaram under the recovery panchanama Ex.P.6 in presence of PW.5 Kumara, PW.7 Mullaram owner of the jewellery shop and the receipt Ex.P.8 and the related evidence with that of Investigating Officer cannot be considered while deciding the case against accused Nos.2 and 3. It is only the relevant recovery at the instance of accused Nos.2 and 3 with that of Investigating Officer PW.10 Chandradhara S.R., PW.11 B.Maruthi and PW.12 B.R.Yathiraj has to be appreciated.

19. On careful perusal of the evidence of Investigating Officer PW.12 B.R.Yathiraj, it would go to show that the involvement of accused Nos.2 and 3 is basically on the arrest of accused No.5 on 12.12.2010 by PW.11 B.Maruthi. On the basis of his voluntary statement Ex.P.13, accused No.5 led the police officials and the panchas to T.Dasarahalli and shown accused No.2 and he was arrested from the said place. On the same day accused No.3 was also arrested and both of them have given voluntary statement Ex.P.14 and Ex.P.15. It is on the basis of said voluntary statement after their arrest, they were produced before the Court and police custody was taken. At the instance of accused Nos.2 and 3, the car belong to the complainant alleged to have been sold to PW.8 Shamshuddin through PW.9 Imran by accused No.2 came to be seized under the panchanama Ex.P.7. Similarly accuse No.1 led the police officials and the panch witnesses to his

house and produced the mobile belonging to the complainant which came to be seized under the panchanama Ex.P.17.

20. The evidence of PW.6 C.L.Jagadeesh Prasad and PW.9 Imran through him the prosecution alleges that accused No.2 has sold the car to PW.8 Shamshuddin will have to be now appreciated to decide as to whether the prosecution out of their evidence could be able to prove recovery of car bearing number No.K.A.04-M.G.2727 belongs to the complainant under the seizure panchanama Ex.P.7.

It is the evidence of PW.6 C.L.Jagadeesh Prasad that two persons in the police jeep took himself and police officials to Surathkal to the house of person to whom car was sold. On seeing the car parked in front of the said house, the said two persons with police told that it is the same car sold to Muslim person which came to be seized under panchanama Ex.P.7, Ex.P.4 and Ex.P.5 are the photographs of the seized car. This witness was partly declared as hostile by the prosecution, since he did not speak about accused No.2 having sold the car to the Muslim person. However, during the course of cross examination by the learned Public Prosecutor, he has admitted that accused No.2 who is before the Court took him to Surathkal and pleaded his ignorance that name of the said Muslim is Shamshuddin.

PW.8 Shamshuddin has deposed to the effect that about three years back he has purchased the car in the photograph Ex.P.4 through PW.9 Imran and the police had brought accused No.3 and told him that it is the stolen car. He was declared as hostile witness and even during the course of his cross examination by learned Public Prosecutor, he did not admit that it is a accused No.2 who has shown the car sold to him is recovered under the recovery panchanama Ex.P.7.

PW.9 Imran is a witness through whom the prosecution claims that the car was sold to PW.8 Shamsuddin which was offered to be sold by accused No.2. However, he has totally turned adverse to the case of prosecution and though he was subjected to lengthy cross examination, nothing worth material was brought on record to prove that at the instance of accused No.2 he has arranged to sell the car to PW.8 Shamshuddin. The evidence of PW.6 C.L.Jagadeesh and PW.8 Shamshuddin as referred above stands contrary regarding who sold the car to PW.8 Shamshuddin.

21. It is the evidence of Investigating Officer PW.11 B.Maruthi that on 13.12.2010 CPI gave custody of accused No.5 and directed him to recover

the car, if it is shown by accused No.5. He further deposed to the effect that he went along with CW.10 and PW.6 C.L.Jagadeesh Prasad to Surathkal to the house of PW.8 Shamshuddin. It is at this stage the witness states that it is not accused No.5, but it is accused No.2 who has shown the house of PW.8 Shamshuddin and further deposed that it is accused No.2 who had sold the car to PW.8 Shamshuddin through PW.9

Imran by getting an advance money of Rs.50,000/-, out of the agreed consideration amount of Rs.1,20,000/-. Therefore, the car parked in front of the house of PW.8 Shamshuddin came to be recovered under the panchanama Ex.P.7.

22. It is the specific evidence of PW.12 Yathiraj in his examination in chief, that he has produced accused No.2 before the Court and took him to the police custody till 16.12.2010 and handed over accused No.2 to PW.11

B.Maruthi for taking further action in the matter along with the voluntary statement of accused No.2 i.e., Ex.P.14. The date shown in the voluntary statement is recorded as 12.12.2010 and PW.12 states that it is wrongly typed as 12.12.2010 instead of 13.12.2010. It appears that the said evidence is corrected by PW.12 only to match the recovery panchanama of car Ex.P.7. On 13.12.2010 the similar date of 12.12.2010 is appearing in the voluntary statement of accused No.3 as 12.12.2010. However, PW.12 has not offered any explanation with regard to his above referred discrepancy with reference to the date in the voluntary statement of accused No.3 Ex.P.15, though he was arrested on 13.12.2010 as per his own evidence. The above referred evidence would go to show that there is a discrepancy regarding as to whether in fact accused No.2 or accused No.3 led the police officials and panchas for recovery of the car under the panchanama Ex.P.7. In

view of the above referred evidence of PW.6 C.L.Jagadeesh Prasad, PW.8 Shamshuddin and PW.9 Imran with that of Investigating Officer PW.11 B.Maruthi, their evidence does not repose confidence in this Court in accepting their evidence in proof of recovery of the car belongs to complainant PW.1 Subbaramaiah D.P. at the instance of accuse No.2 under the recovery panchanama Ex.P.7.

23. The prosecution claims that pursuant to the voluntary statement of accused No.3 Ex.P.15 and at his instance, the mobile belongs to the complainant was recovered from the house of accused No.3. It is the evidence of Investigating Officer PW.12 Yathiraj in paragraph 10 of his evidence that on 14.12.2010 he secured PW.5 Kumara and CW.8 to his office and accused No.3 has led the police officials and panch witnesses to his

house in Rukmini Nagar and produced the mobile phone which came to be seized under the panchanama Ex.P.17. If the said evidence of PW.12 Yathiraj is to be accepted, then necessarily PW.5 Kumara has to corroborate the said evidence of Investigating Officer. However, the evidence of PW.5 Kumar would go to show that, he has never whispered anything about he being called by the Investigating Officer PW.12 Yathiraj and accused No.3 has led the panch witnesses and the police officials to his house and produced the mobile kept in his house. The other recovery panch witness. CW.8 B.V. Jagannath s/o Venkatachalapathi has not been examined by the prosecution. Therefore, the uncorroborated evidence of PW.12 Yathiraj Investigating Officer cannot be relied to prove that accused No.3 has led PW.5 Kumara and CW.8 B.V. Jagannath s/o Venkatachalapathi panch witness along with the police staff to his house and produced one mobile phone kept in between the books which came to be seized as claimed under the panchamana Ex.P.17. The Investigating Officer PW.12 Yathiraj has also not collected any documents to show that the house belongs to accused No.3. Pavan Kumar or he is residing with his parents as tenant. Therefore, the prosecution has failed to prove the recovery of a mobile pursuant to the voluntary statement of accused No.3 Ex.P.15 and the relevant portion regarding the production of mobile phone Ex.P.16 and recovery of the same under the panchanama Ex.P.17.

24. Undisputedly on the basis of complaint Ex.P.1 filed by the complainant PW.1, case was registered under Dabaspet Police Station Crime No.208/2010 against unknown persons. It means that the accused were not known to the complainant. The involvement of accused Nos.2 and 3 in this case is after the arrest of accused No.5 on 12.12.2010. The complainant has not given any description of the assailants in the complainant Ex.P.1 about the four persons alleged to have forcibly entering his car and snatching the cash of Rs.25,000/-, gold chain and mobile. However, PW.1 in his examination in chief states that after one month of the incident, he was called to the office of CPI Nelamangala and shown three persons and out of them he identifies accused Nos.2 and 3 before the Court at the time of giving evidence. The said identification of complainant PW.1 Subbaramaiah D.P. is on the basis of police inspector of Nelamangala showing three accused persons in CPI office Nelamangala and not on the basis of any earlier description of the persons who entered in his car as alleged in the complaint Ex.P.1. PW.12 Yathiraj claimed in his evidence that he has recorded further statement of complainant PW.1 Subbaramaiah D.P.

This further statement of complainant is after the recovery panchanama Exs.P.6, 7 and 17 and by showing 3 persons in the office of CPI Nelamangala to PW.1 complainant and he subsequently identifying them as accused Nos.2 and 3 during the course of his evidence before Court is in fact no identification at all.

25. The alleged assailants who entered the car of complainant PW.1 Subbaramaiah D.P. are unknown to the complainant and therefore the case was registered and FIR was drawn Ex.P.11 in Dabaspeta Police Station Crime No.208/2010 against unknown persons. The descriptions of persons who entered in the car of complainant PW.1 Subbaramaiah D.P. has not been given in the complaint

Ex.P.1. The Investigating Officer admittedly has not conducted any test identification parade for identifying the assailants who entered the car of complainant. The evidence of PW.11 B.Maruthi would go to show that while he was on patrolling duty on 12.12.2010 apprehended accused No.5 and produced him before PW.12 Yathiraj. It appears that it is only on the basis of alleged voluntary statement of accused No.5 Ex.P.13 the other accused are involved in this case. The three persons shown by PW.12 Yathiraj to the complainant PW.1 Subbaramaiah D.P. and on the basis of disclosure of PW.12 Yathiraj, PW.1 Subbaramaiah D.P. identifies them as the person shown to him in the CPI office during the course of his evidence before the Court and such identification based on the disclosure of PW.12 Yathiraj cannot be accepted as proper identification of accused Nos.2 and 3 as the persons who entered the car along with other two accused on the day of incident as claimed in the complaint Ex.P.1. Accused Nos.2 and 3 can be connected as the persons who entered in the car of complainant with the other two persons only on the circumstance of prosecution establishing the recovery at their instance.

26. PW.12 Yathiraj on the basis of voluntary statement of accused Nos.2 and 3 vide Ex.P.14, 15 the relevant portion of which is at Ex.P.16 claims to have recovered car and mobile under the panchanama Exs.P.7 and 17. However, the prosecution in the evidence of PWs.5 to 9 failed to prove the recovery under the panchanam Exs.P.7 and 17. Therefore, it has to be held that prosecution has failed to bring home the guilt of accused beyond all reasonable doubt. The Trial Court has rightly appreciated the oral and documentary evidence placed on record and acquitted the accused. The said finding recorded by the Trial Court is based on the material evidence

placed on record and the same does not call for any interference by this Court. Consequently, we proceed to pass the following:

ORDER

The Criminal Appeal stands ***dismissed*** as devoid of merits.
Registry to transmit a copy of this judgment along with Sessions Judge's Court records to the concerned Sessions Judge's Court without delay.

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*Disclaimer: Always compare with the original copy
of judgment from the official website.