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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.15 OF 2023

Shri Nima Tamang,
s/o Krishna Tamang,
aged about 31 years
c/o Hawana Cuba Palolem,
n/o Sankh, Khalanga,
Rukum, (presently in custody
at Central Jail, Colvale, Goa).

... Appellant.

Versus

The State of Goa,
Through the Police Inspector,
Canacona Police Station,
Cancona, Goa.

... Respondent.

Mr Gina Maria Almeida, Advocate for the Appellant under Legal Aid Scheme.

Mr Nikhil Vaze, Additional Public Prosecutor for the Respondent.

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON: 24 July, 2023

PRONOUNCED ON: 02 August, 2023

JUDGMENT: (Per Bharat P. Deshpande, J.)

1. Appellant/Accused preferred present appeal thereby challenging the judgment and conviction dated 28.07.2022 in Sessions Case No.9/2019 passed by Additional Sessions Judge, Margao thereby holding

the Appellant as guilty for the offences punishable under Section 302 and 394 of IPC.

2. Ms Gina Maria Almeida, learned Counsel appeared for the Appellant (appointed under Legal Aid Scheme) and learned Additional Public Prosecutor Mr Nikhil Vaze appeared for the State

3. Accused was charged for the offences punishable under Section 302 and 394 of IPC wherein it was alleged that on 12.02.2019 at around 02:30 hours, he assaulted the waiter by name Ranjit s/o Hari Singh, aged 33 years, resident of Hawana Cuba, Palolem, Canacona, Goa with wooden rib on his head, face and committed murder and decamped with cash and mobile of the deceased. On explaining the charge, Accused pleaded not guilty and claimed to be tried. Prosecution examined in all 20 witnesses. No witness in support of defence was examined. The Statement of Accused under Section 313 of Cr.P.C. was recorded wherein he denied the entire case of the Prosecution.

4. Admittedly, entire case of Prosecution is based on circumstantial evidence. The Trial Court in this impugned judgment carved out the circumstances which are found in para No.8 itself. However, we would like to consider the circumstances which according to us are relevant for the Prosecution to prove the guilt of the Accused beyond all reasonable doubt.

5. Learned Trial Court while deciding the case based on circumstantial evidence, rightly placed reliance in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra; (1984) 4 SCC 116*.

6. The points for determination are as under together with our findings against it:-

- i. Whether the Prosecution succeeded in proving that Accused committed murder of the deceased?
- ii. Whether Prosecution succeeded in proving that the Accused committed robbery while committing murder of the deceased?

7. The complaint was lodged by Francis Xavier Dourado/PW1 who is the owner of the Restaurant known as Hawana Cuba situated at Palolem, Canacona. In all, 8 employees were working with him and the business was managed by one employee known as Janak. On 11.02.2019, he closed the restaurant at around 11:00 p.m. and went to his residence. At around 2:45 hours, on 12.02.2019, his employee Janak came to his residence and informed that his employee i.e. Accused assaulted other employee by name Ranjeet Singh. Accordingly, he went to the restaurant and found Ranjeet Singh fallen on the rear side of the kitchen door with blood on his person. The ambulance was called and said Ranjeet Singh was taken to the hospital. However Said Ranjeet Singh expired while he was taken to Hospicio Hospital. PW1 specifically stated that the Accused was not present at the restaurant when he reached there on the information of assault on Ranjeet. Accordingly, he lodged the complaint against Accused for committing murder. The complaint is at Exhibit 14. He then deposed that deceased Ranjeet had injuries on his head, face, which were bleeding. He then claimed that the Accused was of aggressive nature. The panchanama was conducted by the police of the scene of offence during which they collected various exhibits including blood samples, three

pieces of wood and a pair of slippers. He categorically disclosed in the cross examination that when he reached the spot, all other employees except the Accused were present.

8. PW2/Hemant Dessai acted as a pancha witness on 12.02.2019 which was conducted at Canacona Police Station. Between 8:30 a.m. to 10:00 a.m. At that time, the Accused was shown to the panchas who disclosed his name as Nima Tamang. The Accused was found wearing blue colour full sleeves jacket with adidas logo. The said jacket was taken and put in an envelope and sealed. He then deposed that the Accused was wearing a black colour t-shirt with the name Jockey on it. Said t-shirt had bloodstains. This t-shirt was put in an envelope and sealed. He then deposed that Accused was wearing blue colour jeans pant in which they found cash of ₹11,310/- in his front left pocket. Similarly, there were two mobile phones in the rear pocket out of which one was of Samsung make and the other was of VIVO make. The name of Ranjit was found written on one mobile. Both the phones were packed and sealed. He then deposed that there were bloodstains on the right front portion of the jeans pant which was attached, packed and sealed. He then deposed that there were bloodstains on the right foot of the Accused. All these items were shown to the witness in the Court which he identified. There is hardly any cross examination to this witness except few denials.

9. The third witness is Dr. Vinita Torquato who deposed that on 13.02.2019, she was posted at the Blood Bank, Hospicio Hospital, Margao and she received a letter from Dr. Mandar Kantak along with the sample of blood of deceased Ranjit in a sealed vial with request to

perform blood group examination. Accordingly, she carried out the examination and found the blood of the deceased as B Rh+ve.

10. PW4/Dr.Satish Komarpant was posted as medical officer at Community Health Centre, Canacona and on 12.02.2019, he received letter from P.I. Canacona to examine injured by name Ranjit Singh who was brought by Ambulance. He then examined the injured Ranjit at 3:30 a.m. and found the injuries (1) black eyes (both); (2) lacerations of sizes 6 x 2 x 1 cms. on the mid forehead (vertical), 4 x 2 x 1 cms. on the left side forehead (vertical), 1 x 0.5 x 0.5 cms. on the right side of upper lip and 2 x 0.5 x 0.5 cms. on the left side of chin. He deposed that the patient was not moving his right lower limb. All the injuries were found to be caused by blunt and hard object and less than six hours duration. He then claimed that the opinion regarding injuries was reserved except laceration on the chin which was simple in nature. He then referred the said Ranjit to Hospicio Hospital for further management. He identified hurt certificate at Exhibit 25 colly. He further opined that the patient was not fit to give his statement. On questioning, he deposed that the injuries could have been caused by wooden rib. During cross examination, he opined that all such injuries could have been caused due to a fall on hard and blunt surface.

11. PW5/Amarnath Komarpant acted as a pancha witness on 12.02.2019 which was conducted at Havana Cuba Bar and Restaurant at Palolem from 7:55 a.m. to 1:30 p.m. At the said spot, PW1-Francisco the owner of the Bar was present who showed the scene of offence. The said scene of offence was on the back side of the Bar and Restaurant. There

was one room made of plywood having roof of zinc sheets and adjoining the said room, there was another room of metal sheets. The room of plywood was a store room while the room of metal sheets was the kitchen of the Restaurant. On the way to the said kitchen, there was one slipper of left leg which PW1 identified as that of deceased. A little away from the said slipper there was one wooden rib. They also found another slipper of right leg which was a meter away from the first slipper. He deposed that there were bloodstains on the said piece of wooden rib. He then noticed one laterite stone at a distance of one meter away from the second slipper wherein they found bloodstains. Near the said stone, there was another piece of wooden rib stained with blood. He noticed bloodstains on the lower portion of the door of the kitchen. There was one wooden box near the kitchen door. There was another piece of wooden rib on the said box. He noticed blood fallen on the sand. The panchanama is at Exhibit 27. The MOs were shown to the witness which he identified as the same.

12. Dr. Madhu Ghodairekar was examined as PW6. He was working as Associate Professor at GMC and posted at Hospicio Hospital, Margao. He received request letter from P.I. Canacona Police Station in Crime No.20/2019 with a request to collect blood sample of the Accused for DNA profiling on FTA card. Accordingly, he filled the identification form prescribed by the centre for DNA Fingerprinting and Diagnostics and thereafter collected blood on FTA card in presence of Mr. Atish Fatarpeker (Scientific Assistant). PSI Prashal Dessai signed the said form along with the doctor. Similarly, he put his signature and stamp across the

photograph of the Accused affixed on the said form, whose blood was taken. He identified the said form at Exhibit 30.

13. PW7/Dr. Girish Kamat deposed that on 12.02.2019 he received request from P.I. Canacona to conduct medical examination of the Accused in Crime No.20/2019. Accordingly, he took the consent of Accused which is at Exhibit 33. He examined the Accused and found that there were no surface injuries seen over his body but there were dried brownish stains seen over the outer surface of the right ankle and dorsal of right foot. He took two swabs from the said stains for serological examination/DNA profiling and referred the same to the Blood Bank for blood grouping and RH typing. He then referred the Accused to the Department of Casualty to preserve blood for alcohol estimation. He identified report dated 12.02.2019 which is at Exhibit 34. He further identified two sets of Appendix I and a form for forwarding material for biological/serological examination at Exhibit 36. He also identified the Accused on the basis of identification mark as recorded in the report.

14. The next witness examined by the Prosecution is Dr. Mandar Kantak/PW8 who conducted post mortem examination over the dead body of Ranjit as per the request of Canacona Police Station. He claimed that the dead body of Ranjit was identified by Mr. Janak, the worker at Havana Cuba Bar and Restaurant, Palolem, Canacona, Goa. On external examination, he found the following injuries:-

“On external examination of the body, bilateral black-eye effect was seen for both eyes with bilateral conjunctival congestion. Brownish sand particles and mud particles were seen over the body especially over the head, face, neck and limbs.

The following surface injuries were noted:-

- 1) Laceration, split, 6 x 2 x 1 cms, partly oblique, irregularly edged with tissue bridging, from mid-nasion to left side forehead with underlying 6 x 3 cms bruise.*
- 2) Laceration, split, 4 x 2 x 1, partly oblique, irregular edged with tissue bridging, from just above midleft eyebrow extending laterally with underlying 4 x 3 cms bruise, over left side forehead.*
- 3) Abrasion. 3 x 2 cms area, 4 ½ cms above medial third left eyebrow, irregular edged with underlying 3 x 2 ½ cms bruise, over left side forehead.*
- 4) Laceration, split, 2 x 1 ½ x ½ cms, partly oblique, just above distal third right eyebrow extending medially with irregular edges and tissue bridging with underlying 3 x 2 cms bruise, over right side forehead.*
- 5) Bruise, 12 x 8 cms, irregular area, over right occipito-parieto-temporal scalp.*
- 6) Bruise, 4 x 3 cms area over right upper and lower eyelids.*
- 7) Bruise, 4 x 3 ½ cms area over left upper and lower eyelids.*
- 8) Bruise, 2 ½ x 1 ½ cms area over midbridge of nose.*
- 9) Abrasion, 1 ½ x ½ cms over right malar cheek region.*
- 10) Laceration, 1 x ½ x ¼ cms over mid upper right lip extending to mucosa aspect, vertical, with underlying 2 x 1 cms bruise.*
- 11) Laceration, 1 x ½ x ¼ cms over midlower right lip extending to mucosal aspect, vertical, with underlying 2 x 1 ½ cms bruise.*
- 12) Laceration, 2 x ½ x ¼ cms over left aspect of chin midarea left with underlying 2 x 1 cms bruise.*
- 13) Abrasion, 1 x ½ cms over back of right shoulder.*
- 14) Puncture wound, 0.2 x 0.1 cms x vessel deep for mid back right wrist with insitu gelco.*

15) Abrasion, multiple, 4 x 3 cms area over midback left left forearm, largest 1 x ½ cms.

16) Puncture wound 0.2 x 0.1 cms x vessel deep for midback left wrist with insitu gelco.

17) Puncture wound 0.2 x 0.1 cm x vessel deep for medial aspect of left ankle of foot.”

15. According to PW8, injuries No.(1) to (13) and (15) were caused by blunt force by object/surface and antemortem and reddish in nature.

16. During internal examination, he found antemortem extra vasation of blood underneath the scalp under injuries No.(1) to (5) caused by blunt force impact. He also found multiple comminuted, depressed dislocations - fractures on both sided frontal bones and both occipital bones with fissure fractures-dislocations joining across right parietal bone and also extending to both fronto-temporo-occipital, sphenoid and ethmoid bones, base of skull to cribriform plate of ethmoid, with multiple tears and antemortem extravasation of blood in dura. He also found thin extradural, subdural and subarchnoid haemorrhages over both frontal and subdural and subarchnoid haemorrhages over right temporal and both occipital cerebral lobes. He then observed multiple subcortical contusions 3 x 2 x 1 cms. and 2 x 1 ½ x ½ cms. in both frontal lobes left and right. He then found coarse and fluid and clotted blood in mouth oozing from base of skull and mouth (lips) injuries. Both lungs were congested and oedematous with pinkish frothy fluid oozing out on cut section. He then found multiple comminuted fractures - dislocation of all nasal bones vide injury No.(8) as a result of blunt force impact.

17. In his opinion, the cause of death is due to damage of head and brain as a result of blunt force impact by object/surface vide injuries No. (1) to (5) which were found antemortem at the time of death and were individually or collectively fatal in the ordinary course of nature. During cross examination, PW8 Dr. Mandar stated that all the injuries found on the deceased could have been caused by the wooden rib shown to him. He then explained that if the deceased was standing, he would have been assaulted multiple times with the said MO, to receive injuries No.(1) to (5). He then explained that if the deceased was lying down on a hard surface, one blow could have caused all five injuries. He then disclosed that injuries No.(6) to (13) and (15) would require multiple assaults by blunt object. However, he then clarified that injuries No.(1) to (12) could not have been caused by a simple fall. However, such injuries could have been caused if the deceased had fallen from a height.

18. PW9/Pedro Gonsalves acted as a pancha witness for inquest panchanama which was conducted on 12.02.2019 at the T.B. Hospital Morgue at Margao. At that time, the dead body of the deceased was identified by one Janak. He then described the clothes found on the dead body and claimed that the body was full of sand and mud. The found dried blood from his head to the shoulder level. He then identified the clothes attached from the dead body and also photographs. There is no cross examination to this witness from the Accused.

19. The next witness is PW10/Mahendra Bhandari the police photographer who deposed that requisition was received from Canacona Police Station and accordingly he went to Palolem beach and clicked

photographs during the scene of offence panchanama which he identified at Exhibit 47. Thereafter, he was present at Hospicio Hospital during inquest panchanama wherein he collected photographs which he identified at Exhibit 48. He described the procedure for downloading the photographs and preparing the CD and furnishing it along with certificate under Section 65-B.

20. PW11/Om Bahadur deposed that he was working as a cook at Havana Cuba Restaurant since last 18 years. On 12.02.2019 at around 2:00 a.m. when he was sleeping in the room which is situated on the rear side of the Restaurant, one helper by name Arvind woke him stating that Ranjit Singh was beaten by someone and was lying on the rear side door of the kitchen. Accordingly, he noticed that Ranjit Singh was fallen in a pool of blood and was unable to talk. He then deposed that all the staff working in the said Restaurant except the Accused were present at the spot. He then deposed that one Janak who was keeping the accounts of the said restaurant went to the house of owner/PW1 to inform him and then police came at the spot. The ambulance was called and Ranjit Singh was shifted to the hospital. He then deposed that Ranjit Singh was working in the said Restaurant since November 2018 while the Accused started working only eight days prior to the date of incident.

21. PW11/Om Bahadur claimed that somewhere on 11.02.2019 at around 11:30 p.m., Accused met him and asked for advance. He told the Accused that he will have to wait for a month to complete for payment of salary. He then claimed that Ranjit Singh used to keep all his cash in his pocket.

22. PW12/Yuvraj Simkhada deposed that he was working as cook at Havana Cuba Restaurant, Palolem since 2017. He identified the Accused and claimed that he knew the Accused since he was working as cook at Mollus Classic Restaurant and was his facebook friend. He then claimed that on 12.02.2019, he was working at Kings Villa Resort at Oriem beach. He then claimed that at around 3:00 a.m. to 4:00 a.m. on 12.02.2019, police came and asked him whether he had contact number of the Accused. Accordingly, he showed them the facebook profile of the Accused wherein there was photograph and phone number of the Accused.

23. The next witness examined by the Prosecution is PW13/Arvind Paswan who claimed that he was working as helper at Havana Cuba Restaurant at Palolem beach. On 12.02.2019, he had his dinner at around midnight and then he went to sleep. He along with Ranjit Singh, Kamlesh Maji went to sleep in front of the bar counter on the beach. At around 2:00 a.m., he heard dogs barking from the rear side of the shack. He woke up the Manager of the shack by name Janak and other staff. While he was waking up the other staff, Janak went on the rear side to see why the dogs were barking. He along with other staff also followed Janak. On the rear side they noticed Ranjit Singh was lying in a pool of blood near the rear side of the kitchen door. Thereafter, Janak told the owner who came and called the Ambulance. The said Ranjit was then shifted to the hospital. He then deposed that police came at the spot and took all the staff members to the Police Station. He identified the Accused as working in the said shack as waiter. He categorically stated that Accused was not

present when he woke up other staff members. He then deposed that Ranjit would keep his money in his possession.

24. PW14/Damodar Shirodkar was the PSI at Canacona Police Station who only forwarded dead body of Ranjit to the morgue at Margao for preservation.

25. PW15/Prashal Dessai the PSI deposed that on 12.02.2019, he was posted at Canacona Police Station and he arrested the Accused in Crime No.20/2019 in presence of two pancha witnesses and vide panchanama at Exhibit 16. He disclosed that Accused was found wearing blue colour full sleeves jacket, black colour half sleeves t-shirt with reddish stains, one jeans pant in which they found cash of ₹11,310/- and two mobile phones. He deposed that jeans pant worn by the Accused was also found with reddish stains. He then specifically deposed that there were some reddish stains on the right leg ankle and foot of the Accused. During cross examination, he stated that Police Constable Nagendra brought the Accused to the Police Station at around 8:05 a.m. and thereafter he conducted the panchanama. However, he does not know from where the Accused was brought.

26. PW17/Rajendra Prabhudessai the P.I. of Canacona Police Station deposed in detail about the registration of FIR at Exhibit 13, conducting of scene of offence panchanama at Bar and Restaurant at Palolem and attaching exhibits. He then deposed that while he was conducting scene of offence panchanama, it was informed that Accused was apprehended and brought to the Police Station and accordingly, he instructed PSI Shri Prashal Dessai to conduct arrest panchanama and get the Accused

medically examined. He further deposed that on 12.02.2019, he conducted inquest panchanama on the dead body of Ranjit Singh and then forwarded the body for the post mortem examination. He deposed in detail the injuries found on the dead body while conducting inquest panchanama. He then deposed that request was made to Medico-legal Officer to collect blood sample for DNA profiling of Accused and the deceased. Such DNA profiling was forwarded to the CFSL for Fingerprinting and Diagnostics and the reports were received. This witness has been cross examined at length.

27. PW18/Nagendra Parit the Constable attached to Canacona Police Station deposed that on 12.02.2019, he received information that assault case has been registered at the Police Station and he was directed to keep watch at Canacona Railway Station. Photograph of the suspect was also sent to him. He was also informed the name of the suspect as Nima Tamang. Accordingly, he went to Canacona Railway Station. At about 7:45 a.m. to 7:50 a.m., he saw a person with the description matching with the photograph at the Railway Station. The Accused asked him about the time of the railway which would arrive at the said Railway Station. PW18/Nagendra deposed that at that time, he was in civil dress. He told the Accused that the railway has already left. Therefore, Accused asked him where the bus stand is and requested him to drop him at the bus stop. Accordingly, he took the Accused from the Railway Station directly to Canacona Police Station. He identified that the Accused was wearing blue colour full sleeves jacket and blue colour jeans. At the Police Station, PSI Prashal conducted arrest panchanama and attached the clothes and other articles found with the Accused.

28. PW19/Ms. Pooja Tripathi is the Government Examiner from Hyderabad who deposed that she is working as DNA Examiner in the Laboratory of DNA Fingerprinting Services, CDFD at Hyderabad since March 2014. She completed her Masters in Biotechnology and worked in other Research Institutes before joining CDFD at Hyderabad. She further deposed about the case received on 08.05.2019 in seven sealed parcels which were brought by Mr. Paresh Velip of Canacona Police Station, Goa. She then deposed of processing of exhibits on 13.05.2019 and completed the extraction quantification PCR and Genotyping by 24.05.2019. The case was then submitted for decoding on 28.05.2019 and further decoded by CDFD Officers on 29.05.2019. She then prepared the report and submitted to the forwarding Authority.

29. PW19 then deposed about the result of examination on page Nos.2 and 3 of her deposition wherein she stated the source of Exhibit A (one small piece of wood said to be triangular wooden rib with reddish colour stains attached under the scene of offence panchanama, marked as Exh.SOO-9). According to her, this Exhibit A did not yield DNA suitable for analysis.

30. She then deposed that the source of Exhibit B (one wooden block said to be wooden rib lifted from sand in front of the kitchen door with reddish colour stains attached under the scene of offence panchanama, marked as Exh. SOO-10) and Exhibit E (two stained cotton swabs taken from the outer surface of right ankle and the dorsal surface of right foot of the accused Mr. Nima Tamang, marked as Exh.S) yielded autosomal DNA profiles of male origin and are identical to the autosomal DNA

profile of the source of Exhibit F (bloodstains said to be of deceased Mr. Ranjeet Singh, marked as Exh.G) as shown in Table 1.

31. PW19 then deposed that source of Exhibit C (one black colour half sleeves t-shirt said to be attached under arrest cum attachment panchanama, marked as Exh.A2) and Exhibit D (one blue colour jeans pant said to be attached under arrest cum attachment panchanama, marked as Exh.A5) yielded mixed autosomal DNA profiles and are matching with the autosomal DNA profiles of the sources of Exhibits F (bloodstains said to be of deceased Mr. Ranjeet Singh, marked as Exh.G) and G (bloodstains said to be of accused Mr. Nima Tamang, marked as Exh.X).

32. PW19 then deposed that Y-chromosomal DNA profiles of the sources of Exhibits B (one wooden block said to be wooden rib lifted from sand in front of the kitchen door with reddish colour stains attached under the scene of offence panchanama marked as Exh.SOO-10), D (one blue colour jeans pant said to be attached under arrest cum attachment panchanama, marked as Exh.A5) and E (two stained cotton swabs taken from the outer surface of right ankle and the dorsal surface of right foot of the accused Mr. Nima Tamang, marked as Exh.S) are identical to the Y-chromosomal DNA profile of the source of Exhibit F (bloodstains said to be of deceased Mr. Ranjeet Singh, marked as Exh.G), as shown in Table 2.

33. PW19 then deposed that source of Exhibit C (one black colour half sleeves t-shirt said to be attached under arrest cum attachment panchanama, marked as Exh.A2) yielded mixed Y-chromosomal DNA

profile and is matching with the Y-chromosomal DNA profiles of the sources of Exhibits F (bloodstains said to be of deceased Mr. Ranjeet Singh, marked as Exh.G) and G (bloodstains said to be of accused Mr. Nima Tamang, marked as Exh.X). She then deposed that alleles present in the Y-chromosomal DNA profiles of sources of Exhibits F and G are accounted for being present in the mixed Y-chromosomal DNA profile of the source of Exhibit C, as shown in Table 2.

34. Finally, PW19 concluded that the result from DNA tests performed on Exhibits provided is sufficient to conclude that (1) The biological material present on the sources of Exhibits B (stained wooden rib lifted from sand in front of the kitchen door, marked as Exh. SOO-10) and E (two stained cotton swabs taken from the outer surface of right ankle and the dorsal surface of right foot of the accused Mr. Nima Tamang, marked as Exh.S) is from the source of Exhibit F (deceased Mr. Ranjeet Singh). (2) The biological material present on the sources of Exhibits C (black colour half sleeves t-shirt, marked as Exh.A2) and D (blue colour jeans pant, marked as Exh.A5) is from the sources of Exhibit F (deceased Mr. Ranjeet Singh) and Exhibit G (accused Mr. Nima Tamang).

35. PW19 then identified exhibits as well as the reports. During cross examination, she claimed that the quantity of bloodstains found on the cotton swabs taken from outer surface of right ankle and dorsal surface of right foot of the Accused was sufficient for examination. She then explained that the bloodstains of the deceased Ranjit Singh marked as Exh.G were sent on a blood stained card.

36. PW20/Suresh Velip deposed that he was working as Head Constable at Canacona Police Station and on 12.02.2019, PC-Nagendra returned to the Police Station from Railway Station, Canacona along with one person by name Nima Tamang and stated that said person was moving suspiciously and on questioning, failed to give satisfactory answers. On verifying photo of the suspected person circulated by P.I. Canacona in Crime No.20/2019, he confirmed that the said person is the said suspected Accused.

37. The material collected during evidence of the Prosecution witnesses was then put to the Accused under Section 313 Cr.P.C. Accused admitted about the ownership of PW1 of Hawana Cuba Bar and Restaurant and that he has employed eight persons including the Accused himself. He also admitted that Ranjeet Singh was found with injuries on his face and head and was lying near the restaurant. He then admitted that said Ranjeet Singh was working in the said restaurant whereas Accused joined the said restaurant only eight days prior to the incident. Most of the questions were answered by the Accused as “false” or “I do not know”.

38. As far as the evidence of PW11/Om Bahadur, PW12/Yuvraj Simkhada, PW13/Arvind Paswan are concerned, though the material evidence was put to the Accused under Section 313 Cr.P.C. he admitted that these persons were working in the said restaurant and present during that night. As far as the contention of PW11/Om Bahadur that all the staff members of the restaurant were present except the Accused, is concerned, Accused answered to it as “false” and claimed that he was

present at that time. Accordingly, he answered other questions put to him as “true” which are found at Question Nos.183 to 186. Similar answers were given by the Accused to the other witnesses. To a specific question at Question No.206, he answered that he got up when he heard the noise.

39. With this material on record, the learned Additional Sessions Judge considered the circumstances and held that all the circumstances are pointing finger against the Accused in respect of both the offences.

40. The matter is squarely based on circumstantial evidence and therefore, we have to consider settled propositions of law as laid down in the case of *Sharad Birdhichand Sarda* (supra) on which the learned Trial Court has placed reliance in its judgment. The five golden principles which we have to consider and as held by the Apex Court will have to be taken into consideration. Though the learned Trial Court has considered the circumstances, for the decision of the present appeal and reappraising of the entire evidence, consider following circumstances for the purpose of ascertaining whether prosecution succeeded in pointing finger only against the Accused as the perpetrator of the said offence.

41. The circumstances which Prosecution is required to prove and link for the purpose of holding the Accused guilty are as under:-

- i. Homicidal death,
- ii. Presence of the Accused at the restaurant just prior to the alleged incident,
- iii. Absence of the Accused immediately on detecting the body of the victim with injuries,

- iv. Presence of the Accused at the Railway Station within six hours from the time of alleged offences.
- v. Bloodstained clothes of the Accused and blood found on the person of the Accused.
- vi. No visible injuries found on the Accused,
- vii. The blood group of the Accused and the deceased,
- viii. DNA reports,
- ix. Absence of explanation by the Accused to the adverse circumstances under Section 313 Cr.P.C.
- x. Motive.

42. The first circumstance is with regard to cause of death. It is not much disputed that the cause of death as deposed by Dr. Mandar Kantak/PW8 is established beyond all reasonable doubt. The inquest panchanama described the injuries found on the face of the deceased. PW4/Dr. Satish Komarpant the medical officer stationed at Community Health Centre, Canacona, specifically deposed that he examined the patient at 3:30 a.m who was brought in an Ambulance and found that various injuries on eyes, face, head and the patient was unconscious. He also deposed that such injuries were caused by blunt and hard object and less than three hours duration.

43. PW1/Francis, the owner of the restaurant and the complainant, deposed that intimation was given to him by one of his employees namely Janak, at around 2:45 a.m. He immediately visited his restaurant and found the deceased fallen on the rear side of the kitchen door with blood on his person. This aspect is further confirmed by other witnesses such

as PW11/Om Bahadur, PW13/Arvind, who were present in the said restaurant and witnessed the injuries found on the deceased. PW8/Dr. Mandar Kantak apart from describing various injuries has quoted in para 14 above, described the internal injuries as mentioned in para 16 and then opined the cause of death as due to damage to the head and brain as a result of blunt force impact/object/surface vide injuries No.1 to 5. According to him, such injuries are individually or collectively considered as fatal in the ordinary course of nature. According to his opinion, such injuries could have been caused by the wooden rib and not by simple fall. Thus, this evidence supported by contemporaneous documentary evidence and ocular testimony of the witnesses prove beyond doubt that death of Ranjit was homicidal.

44. The second circumstance is about the presence of Accused at the restaurant immediately prior to detection of the body of Ranjit with injuries near the rear side gate of the kitchen door. In this respect, PW11/Om Bahadur, PW13/Arvind, deposed about the presence of the Accused in the restaurant during that night. The Accused clearly admitted while recording his statement under Section 313 Cr.P.C. that he was present during that night in the restaurant. No doubt there were other witnesses present along with the deceased and the Accused, subsequent conduct of the Accused is relevant. Thus, the second circumstance about the presence of Accused during that night at the restaurant is fully established.

45. The third circumstance is regarding absence of the Accused immediately on noticing the injured/Ranjit at the rear side of the gate of

the kitchen. While answering the question put to the Accused about this circumstance deposed by the witnesses, he categorically claimed that he was also present along with others when the injured was noticed and that he was also taken to the Police Station along with other persons during that night itself.

46. PW18/Nagendra Parit the Police Constable of Canacona Police Station deposed that on 12.02.2019, he was deputed to keep vigil at Canacona Railway Station as one suspect involved in assault case was found absconding. Even the photograph of the suspect was forwarded to PW18 on WhatsApp. PW12/Yuvraj deposed that he was working as Cook at Hawana Cuba Restaurant, Palolem and he was the Facebook friend of the Accused. On 12.2.2019, he was working in Kings Villa Resort at Oriem Beach. On that day, during early morning at around 3:00 a.m. to 4:00 a.m., police came and asked him whether he had any contact number of the Accused and accordingly, he showed the Facebook profile and the photograph of the Accused and also provided the phone number of the Accused. This evidence of PW12/Yuvraj clearly goes to show that after detecting the alleged offence and the registration of complaint by PW1/Francis specifically disclosing name of the Accused as the suspect, police swung into action as the Accused was not found in the said restaurant. They collected the relevant details and the photograph of the Accused from PW12/Yuvraj between 3:00 a.m. to 4:00 a.m. and accordingly, such details were forwarded to PW18/Nagendra Parit who kept vigil at the Railway Station at Canacona. Accordingly, PW18/Nagendra Parit while keeping vigil at the Canacona Railway Station found the Accused moving in suspicious manner at around 7:45

a.m. Accordingly, he brought the Accused to the Police Station and handed him over to PW15/Prashal Dessai who immediately conducted arrest panchanama and attached the clothes with bloodstains. Thus, it clearly goes to show that immediately after the alleged offence/assault on the deceased, only the Accused was found absconding from the spot or the restaurant and he was apprehended at the Railway Station with some cash and two mobile phones.

47. It is also proved that the Accused joined the restaurant of PW1 only about eight days prior to the date of incident. Therefore, presence of the Accused at the Railway Station and making inquiries about the train timings would clearly go to show that he wanted to leave Goa by train. There is no explanation from the Accused as to why he wanted to leave the State of Goa and that too without any bag containing clothes, even though he joined the duty only eight days prior to the date of incident. The explanation given by the Accused while recording his statement under Section 313 of Cr.P.C. is only denial. Though he claimed that he was present at the restaurant when the deceased was found with injuries and that he was taken to the Police Station along with others, there is no such material. PW11/Om Bahadur and PW13/Arvind deposed that Accused was not found when Janak saw deceased near the rear door of kitchen.

48. PW15/Prashal Dessai the PSI who conducted arrest cum attachment panchanama of the Accused specifically deposed that Accused was handed over to him by PC-Nagendra Parit at around 8:05 a.m. PW17/Rajendra Prabhudessai the Investigating Officer deposed that

when he was conducting the scene of offence panchanama, he received message that the Accused has been apprehended and taken to the Police Station. Accordingly, he instructed PSI Prashal Dessai/PW15 to conduct arrest panchanama and to get the Accused medically examined. There is absolutely no suggestion either to PW15/Prashal Dessai or to PW17/PSI Rajendra Prabhudessai that the Accused was present at the restaurant along with others and that he was taken to the Police Station from the said restaurant after detecting the deceased with injuries. Thus, the so-called explanation of the Accused that he was present along with others when the body of the deceased with injuries was noticed and taken to the Police Station, is only an afterthought. It is thus clear that absence of the Accused immediately after detecting the deceased with injuries is fully established.

49. PW18/Nagendra Parit and PW15/Prashal Dessai deposed that the Accused was found moving at the Canacona Railway Station and on the basis of the photograph forwarded to PW18/Nagendra on his mobile phone, he noticed the Accused and then produced him before PW15/Prashal Dessai and then conducted arrest panchanama. This aspect is proved beyond doubt and there is absolutely no cross examination to show that Accused was brought to the Police Station along with others during the said night itself. It therefore clearly established that Accused was found moving at Canacona Railway Station, with the intention to leave State of Goa. The presence of Accused at the Railway Station within six hours from the commission of the offences is therefore established.

50. The circumstance with regard to bloodstains on the clothes of the Accused and also the bloodstain on his right side ankle and dorsal surface of the right foot, the Prosecution has examined PW15/Prashal Dessai who conducted the arrest panchanama in presence of PW2/Hemant Dessai and further supported by PW7/Dr. Girish Kamat who examined the Accused and collected the blood found on the right ankle and dorsal of the right foot of the Accused. In this respect, PW2/Hemant Dessai the pancha witness deposed that he acted as a pancha between 8:30 a.m. to 10:00 a.m. and the Accused was shown to them as a suspect in the case of assault. At that time, the Accused was found wearing blue colour full sleeves jacket, one black colour t-shirt with bloodstains and blue colour jeans pant containing cash of Rs.11,310/- and two mobile phones. He also deposed that bloodstains were found on the right front portion of the jeans pant. PW2/Hemant Dessai then specifically deposed that there were bloodstains on the right foot of the Accused. This aspect has been corroborated by PW15/Prashal Dessai who conducted the arrest cum attachment panchanama. These aspects are further mentioned in the arrest cum attachment panchanama which is at Exhibit 62.

51. PW7/Dr. Girish Kamat deposed that he examined the Accused in Canacona Police Station Crime No.20/2019 at around 1:55 p.m. on 12.02.2019 and he noticed dried brownish stains over the outer surface of right ankle and dorsal of right foot of the Accused. He took two swabs from the said stains for serological examination/DNA profiling and referred the same to the Blood Bank for blood grouping and RH typing. He also specifically deposed that on examination of the Accused, there was no surface injury seen over the body of the Accused. The blood

group of the Accused as per the report of the concerned doctor is O RH+. Thus, it is clear that when there was no external injury found on the body of the Accused, the dried blood detected on the right foot of the Accused cannot be that of the Accused himself. The knowledge about the presence of blood on the right foot of the Accused was therefore specifically with the Accused himself which he ought to have explained. In absence of any explanation and the fact that there was no bleeding injury found on the person of Accused, detection of such dried blood is significant and hence, it is a circumstance against the Accused which is established beyond reasonable doubt.

52. The bloodstained clothes were recovered from the person of the Accused during arrest cum attachment panchanama for which there is absolutely no explanation coming forward. Thus, attachment of bloodstained clothes and presence of dried blood on the right foot of the Accused is certainly a circumstance which has been established by the Prosecution in the present matter.

53. While discussing the fifth circumstance, and the evidence of Dr. Girish Kamat/PW7, it is clear that there was no visible external injury and that too a bleeding injury found on the person of the Accused when he was arrested in the above crime. This fact is fully established through Dr. Girish Kamat/PW7 and supported by PW2/Hemant Dessai the pancha witness and PW15/PSI Prashal Dessai. Accordingly, the circumstance that there was no visible external and bleeding injury on the person of Accused stands established.

54. The Blood Bank report at Exhibit 112 established that the blood group of the Accused is O+ whereas the blood group of the deceased is B+ which is clear from the post mortem report and from the Blood Bank report. Thus, it is clear that the blood groups of the Accused and the deceased are different. These blood groups are significant in order to consider the report of the DNA profiling. Hence, this circumstance stands proved beyond reasonable doubt.

55. PW7/Dr. Girish Kamat specifically deposed that he collected dried brownish stains found on the ankle and dorsal of right foot of the Accused with two swabs for the purpose of serological examination/ DNA profiling. These swabs were sealed and forwarded to the Blood Bank for blood grouping and RH typing. He identified two sets of appendix (I) and forwarding note which are at Exhibit 36.

56. PW6/Dr. Madhu Ghodairekar deposed that the Accused was forwarded to him with a request to collect blood sample for DNA profiling on FTA card. Accordingly, he filled the identification form prescribed by the Centre for DNA fingerprinting and diagnostics and thereafter collected blood of Accused on FTA card in presence of Atish Faterpekar the Scientific Assistant and PSI Prashal Dessai and obtained their signatures on the form. He identified the said form at Exhibit 30 which shows the photographs of the Accused along with other details, the consent of the Accused for collection of blood on the FTA card.

57. Similarly, Dr. Mandar Kantak/PW8 who conducted post mortem examination deposed that the blood of the deceased was forwarded for the purpose of DNA testing. All these blood samples along with FTA

cards were then forwarded to the laboratory for the purpose of DNA profiling and matching. Similarly, the other articles such as slippers of the deceased, the cotton gauze with blood stains collected from the laterite stones behind the storeroom, blood stains from the sand between the laterite stones and the metal sheet of the kitchen, the blood stains from the kitchen door, the triangular piece of wooden rib having blood stains, the wooden rib found in front of kitchen door having bloodstains, broken wooden rib found on the wooden box between the kitchen and the storeroom, the clothes of the deceased with bloodstains were forwarded for serological examination. All these items were received in the laboratory in intact condition and were examined by the expert who deposed as PW19 during the trial. Evidence of PW19 is very much significant which shows that the blood which was found on the clothes of the Accused, his right foot is found matching with the blood detected at the spot of the scene of offence, the blood found on the clothes of the deceased, the blood found on the wooden ribs. The DNA profile carried out at the laboratory is found matching with the DNA profile of the deceased. This evidence clearly goes to show that the bloodstains found on the clothes of the Accused and the dried bloodstain found on his right foot is that of the deceased. Similarly, the bloodstains found on the wooden ribs are also proved to be of the deceased. It therefore goes to show that the presence of blood found on the clothes and on the right foot of the Accused is found matching with the blood group of the deceased. Hence, the Accused was supposed to explain about the presence of blood of the deceased on his clothes as well as on the right foot. If no explanation is coming forward, it shows that such blood of the

deceased spilled upon the clothes and the body of the Accused when the assault was going on. It thus further proves that the Accused has to explain about the presence of the blood and when no explanation is coming forward, shows that the Accused himself is the perpetrator of the said offence.

58. In the case of *Mukesh & Anr vs State For Nct Of Delhi & Ors;* (2017) 6 SCC 1, which is known as Nirbhaya case, the concept of DNA profiling has been elaborately discussed and it is observed that DNA is scientifically accurate and exact science and that the Court was not justified in rejecting such DNA report.

59. In the case of *Snehal Dias vs. State;* 2019 SCC OnLine Bom 1535, a Coordinate Bench of this Court wherein M.S. Sonak, J is a member, considered the decision of Apex Court in the case of *Dharam Deo Yadav vs. State of U.P.;* (2014) 5 SCC 509 and observed that in criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. Therefore, the Investigating Officer has to deal with the scene of crime in a scientific manner and guard against potential contamination of physical evidence which can be found during the process of collection, packing and forwarding of sample, etc. Subject to fulfillment of these contentions, evidence of DNA profile is of great weightage. While observing so, this Court further referred to the case of *Jitendra Gabhane vs. State of Maharashtra;* Criminal Appeal No.200 of 2016, that it is absolutely necessary that the collection of samples and quality control

regards testing is to be of the highest standard in order to convict a person on the basis of DNA profiling.

60. No material evidence is produced during cross examination to show contrary. In fact, Prosecution evidence suggests of collecting the exhibits from the scene, during post mortem, at the time of arrest of Accused, and then sealing, preserving and forwarding it to CFSL is by using scientific method and ruling out possibility of tampering.

61. In the case of *Rahul vs. State of Delhi*; (2023) 1 SCC 83, the Apex Court discussed threadbare DNA procedure wherein it is observed that DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

62. The evidence of PW19/Ms. Pooja Tripathi that seven sealed parcels were received in her laboratory on 08.05.2019 and thereafter, she started processing of such exhibits on 13.05.2019. She completed the extraction quantification PCR and Genotyping by 24.05.2019. The case was then submitted for decoding on 28.05.2019 by the officers of CDFD. She then prepared the draft report and submitted it to the forwarding authority. According to her, the result of examination disclosed the source of Exh. SOO-10 i.e. wooden block/rib lifted from the sand in front of kitchen door with reddish stains and Exhibit 'S', two stained cotton swabs taken from the outer surface of the right ankle and dorsal surface of right foot of the Accused (Exhibit 'F') yielded autosomal DNA profile of male origin and are identical to the autosomal DNA profile of the source of Exhibit 'G' i.e. bloodstains to be of the deceased Ranjit.

63. Further, the result of examination shows that Exhibit A2 i.e. black colour half sleeves T-shirt found on the person of Accused at the time of arrest panchanama, Exhibit 'D' blue colour jeans pant of the Accused, yielded mixed autosomal DNA profiles and are matching with the autosomal DNA profiles of the sources of Exhibit 'G' i.e. bloodstains of the deceased and the bloodstains said to be that of the Accused. She then explained that Y-chromosomal DNA profiles of the sources of Exhibit SOO-10 and Exhibit A5 blue colour jeans pant of the Accused and Exhibit 'S', cotton swabs taken from the outer surface of right foot of the Accused are identical to Y-chromosomal DNA profile of the sources of Exhibit 'G' i.e. the bloodstains of the deceased. She then explained that the source of Exhibit A2 i.e. the black colour half sleeves T-shirt of the Accused yielded mixed Y-chromosomal DNA profile and is matching with Y-chromosomal DNA profile of sources Exhibit 'G' i.e. bloodstains of the deceased and Exhibit 'X' i.e. the blood of the Accused. Finally, she concluded that the result from DNA tests performed on exhibits are sufficient to conclude that:- (1) The biological material present on the sources of Exh. SOO-10 i.e. wooden rib with bloodstains and Exhibit 'S' i.e. two cotton swabs taken from the outer surface of the right leg of the Accused, is from the source of Exhibit 'F' i.e. the deceased, (2) The biological material present on the sources of Exhibit A2 i.e. black colour half sleeves T-shirt and Exhibit A5 blue colour jeans pant of the Accused are from the sources of Exhibit 'F' i.e. deceased.

64. The cross examination of PW19 is cryptic and her testimony has not been shaken at all. The documents produced on record including reports through PW19 supports the case of the Prosecution. Thus, there

is strong material to show that the DNA profile which was collected from the blood of the deceased is found matching with the DNA profile of the blood which was found on the clothes and on the right foot of the Accused. The explanation from the Accused to such circumstance is wanting. It therefore proves the present circumstance when the expert witness support the case of the Prosecution.

65. The above evidence was put to the Accused under Section 313 Cr.P.C. but apart from plain denials, there is no sufficient explanation. Certain facts which the Prosecution succeeded in proving are specifically within the knowledge of the Accused himself, such as the blood found on his clothes and on his right foot. This aspect ought to have been explained by the Accused. In absence of such explanation, it adds to the circumstance forming a chain of events against the Accused.

66. Lastly, the aspect of motive needs to be considered. It is the case of the Prosecution that the Accused was in need of money and since the deceased was looking after the affairs of the said restaurant, he was carrying the cash in his pocket. The Accused demanded money from PW11/Om Bahadur which is clear from his deposition wherein he states as under:-

“On 11.02.2019, at about 11.30 p.m., the accused met and asked me for an advance but I told him that he will have to wait atleast for one month and that he would be paid his salary alongwith his tips, due to him. Ranjit Singh used to keep all his cash in his pocket.

67. PW11/Om Bahadur categorically stated that Accused demanded money from him though he worked only for eight days. Such demand was

made during the same night but at around 11:30 p.m. The incident took place on 12.02.2019 at around 2:00 p.m. or so. Thus, one thing is clear that the Accused was in need of money whereas deceased Ranjit Singh who was looking after the affairs of the said restaurant, used to keep money in his pant pocket. Similarly, it is proved that an amount of Rs.11,310/- was recovered from the pant pocket of the Accused during his arrest.

68. It is well settled that proving motive directly is a difficult task. Most of the time from the circumstances brought on record, the motive has to be considered. In the present matter, Accused was found with the money of more than Rs.11,000/- in his pant pocket whereas PW11/Om Bahadur claimed that Accused demanded money from him on the earlier night. There is material to show that the motive for such assault was the need of the Accused in respect of the amount.

69. The cumulative effect of all the above circumstances would certainly go to show that it forms a complete chain of events pointing finger only against the Accused. Thus, the observations of the learned Trial Court as far as offence of murder is concerned, cannot be faulted with.

70. The second charge against Accused is regarding commission of robbery under Section 394 of IPC. In order to prove this aspect, it is the contention of Prosecution that the amount found with the Accused along with one mobile phone having the name Ranjit mentioned on the reverse of the said mobile shows that the Accused committed robbery after assaulting the deceased.

71. First of all, two mobile phones found with the Accused, though attached by the Investigating Officer, were not verified in presence of the pancha witnesses. The SIM cards in both the mobile phones were not checked. There is no material to show that the concerned officer tried to find out the SIM card details, the mobile phone number, the IMEI number so as to detect the name in whose favour the SIM card is issued. No request was made to the service provider to give the details of CDRs and SDRs of such mobile phones and/or the SIM cards. Only because the name “Ranjit” was found inscribed on the outer rear cover of one of the mobile phones will not prove that such mobile phone was that of the deceased. Such mobile phone was not shown to the witnesses specifically PW1, PW11, PW12 and PW13 who knew the deceased and were working together. In absence of such material evidence, the Prosecution has failed to establish that one of the mobile phones found with the Accused was that of the deceased, to prove the concept of robbery.

72. The next aspect is with regard to recovery of cash of Rs.11,310/- from the possession of Accused. Except the statement of PW11/Om Bahadur that the deceased used to keep cash in his pant pocket, there is no other material to show that the cash found in possession of the Accused was the same which was in the pant pocket of the deceased prior to the assault. Admittedly, there is no eyewitness to the incident and thus, ingredients of the offence of robbery are not at all established. The learned Sessions Judge erred in holding the Accused guilty for the said offence even though there is no such material produced by the Prosecution.

73. Now the question remains as to whether homicidal death/culpable homicide amounts to murder.

74. In this respect, Section 300 of IPC provides that culpable homicide is murder if the acts by which death is caused is done with the intention of causing death or secondly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death, thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death and fourthly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse or incurring the risk of causing death or injury as aforesaid.

75. The explanation of section 300 deals with when culpable homicide is not murder. The first explanation deals with the eventuality if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. The second explanation is if the offender in exercise of good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death, while exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary. The third explanation deals with the offender being a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary

for the due discharge of his duty. Explanation 4 deals with when an act is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation 5 deals when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

76. Above material on the basis of circumstances proved by the Prosecution shows that there was no question of any provocation or sudden fight since neither the witnesses deposed nor the panchanama proves about any sudden fight or provocation. The matter in hand squarely falls with Section 300, secondly which deals with the act when the intention of causing such bodily injury as the offender knows to be likely to cause death of a person to whom harm is caused. From the evidence, which shows that assault on the deceased was with the wooden log and that too on the face, frontal portion of the head with such force that the wooden log itself broke into pieces. The injuries found on the face and the fronto parietal region of the deceased would go to show the force used by the Accused in giving the blow with the help of wooden log. Apart from the surface injuries, there are fractures as well as internal injuries as described by Dr. Mandar Kantak/PW8 who opined that individual/collectively cause of death is due to injuries No.1 to 5. The body part chosen for giving blow is the face/frontal portion which is a vital part. Therefore, it could be safely inferred the intention and the knowledge of the Accused while giving forceful blow of the wooden log to a vital part of the body of the deceased.

77. With these observations, we confirm the findings of the learned Trial Court with regard to the offence of murder. However, for want of evidence, the conviction and sentence awarded by the Trial Court for the offence punishable under Section 394 of IPC needs to be quashed and set aside.

78. Hence, the following:

ORDER

- i. The appeal is partly allowed.
- ii. While maintaining the conviction and sentence under Section 302 of IPC awarded by the learned Trial Court, we quash and set aside the sentence of conviction under Section 394 of IPC.
- iii. Rest of the operative part of the Trial Court's order with regard to the grant of set off and destruction of the M.Os. stands maintained.

79. The appeal stands disposed of accordingly.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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DSOUZA

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