



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.245 OF 2021

Parmeshwar s/o. Punamsing Bhond,
Age 21 years, Occ. Nil,
r/o. Shevgaon,
Dist. Ahmednagar

..Appellant

Vs.

The State of Maharashtra,
Through Police Inspector,
Shevgaon Police Station,
Dist. Ahmednagar

..Respondents

**AND
CRIMINAL APPEAL NO.326 OF 2021**

Laxman Kisan Kamble,
Age 32 years, Occ. Nil,
r/o. Ramnagar,Tq. Shevgaon,
Dist. Ahmednagar

..Appellant

Vs.

The State of Maharashtra,
Through Shevgaon Police Station,
Shevgaon
Dist. Ahmednagar

..Respondents

Mr.S.G.Magre, Advocate and Mr.V.A.Bagal, Advocates for appellant in
Cri. Appeal No.245 of 2021

Mr.S.V.Sudrik and Mr.Santosh Jadhavar, Advocates for appellant in Cri.
Appeal No.326 of 2021

Mrs.S.N.Deshmukh, APP for respondent in both appeals

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : JULY 05, 2024
PRONOUNCED ON : JULY 22,2024

JUDGMENT (*Per R.G.Avachat, J.*):-

Both these appeals are being decided by this common judgment, since the challenge therein is to one and the same judgment and order of conviction and consequential sentence dated 01.04.2021, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.384 of 2019. Vide the impugned judgment and order, the appellants were convicted for the offences punishable under Section 302 r/w. 34 and Section 506 of Indian Penal Code and therefore, sentenced to suffer life imprisonment with fine of Rs.10,000/-; and R.I. for three months with fine of Rs.1,000/-, respectively, with default stipulation for non payment of the amount of fine.

2. One Krushna Punamsing Bhond was also an accused in the sessions case. He, however, passed away, pending trial. The case, therefore, stood abated against him.

3. The facts, in brief, giving rise to the present appeals are as follows:-

Bapusaheb s/o. Eknath Ghanwat (deceased) was resident of Shevgaon. He would run a Xerox Centre in partnership with PW 2 - Laxman Madke. Both Bapusaheb and Laxman Madke were close friends. Their xerox centre was in front of Tahsil office, at Shevgaon town. There was a large piece of open land belonging to Jama Masjid Trust, Shevgaon. At some distance away from said open ground, there were huts. One of the huts was occupied by PW 4 - Vanita. She used to go to the xerox centre of deceased Bapusaheb for taking xerox copies. It is the case of prosecution that deceased Bapusaheb had, once, expressed his friend (PW 2 - Laxman Madke) that he liked PW 4 - Vanita. PW 4 - Vanita testified that she was emotionally involved with Krushna (deceased accused).

4. It was 07.08.2019, both Laxman Madke and Bapusaheb (deceased) closed their xerox centre and went to wine and dine at 'Hotel Nisarg'. By 10.30 p.m., both started for their respective houses on their motorbikes. Bapusaheb happened to be in front of the hut of PW 4 - Vanita. The appellants and deceased accused - Krushna intercepted Bapusaheb. One of them slapped him (Bapusaheb). The trio took him to the open ground and assaulted him with weapons like, Sattur and iron rod. While leaving the place, the trio approached PW 4 - Vanita and threatened her of dire

consequences, if she would go public with the incident. On the following morning, the dead body of Bapusaheb was noticed. The matter was reported to the police. The police officials went to the crime-scene. Bapusaheb was lying dead. His motorbike was also found lying around. PW 1 - Kakasaheb, brother of the deceased, was informed by his employer. He too rushed to the crime-scene. In the meanwhile, the dead body of Bapusaheb was rushed to hospital for inquest and autopsy. Face of the deceased was seen like smashed with stone. PW 1 - Kakasaheb lodged the First Information Report (FIR)(Exh.23), alleging therein that some unknown persons, for unknown reason, committed murder of his brother Bapusaheb.

5. Crime vide C.R. No.364 of 2019 was, therefore, registered for the offence punishable under Section 302 of Indian Penal Code. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Vanita (PW 4) too was examined. She related about the incident and the threats extended to her. Section 506 of I.P.C. was, therefore, invoked.

6. The appellants were arrested. Blood stained shirt on the person of the appellant - Laxman Kamble was seized at the time of his arrest. Appellant - Laxman Kamble made disclosure statement,

pursuant to which Sattur and iron rod came to be seized from bushes near the crime-scene. Appellant - Parmeshwar made disclosure statement, pursuant to which the clothes on his person and the person of his brother - Krushna (deceased accused) came to be seized along with the cellphone said to have been belonging to deceased Bapusaheb. All the seized articles were submitted to F.S.L. Upon completion of the investigation, charge sheet was filed. On committal of the case, it was assigned to the Court of Addl. Sessions Judge (trial court) for trial in accordance with law. The trial court framed Charge (Exh.6). The appellant pleaded not guilty. Their defence was of false implication.

7. To bring home the Charge, the prosecution examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence, convicted and consequentially, sentenced the appellants, as stated above.

8. Heard learned counsel for the appellants and learned APP for the respondent.

9. Learned counsel for the appellants in both the appeals would submit that the cross-examination of PW 4 - Vanita would

indicate that she was not an eye-witness of truth. The admissions elicited during her cross-examination rendered her to be an unreliable witness. The case, thus, rests on the circumstantial evidence. The circumstances relied on were: motive; and seizure of blood-stained clothes, and the weapons, allegedly, used in commission of the crime. The C.A. reports in relation to most of the articles seized do not further the case of prosecution since determination of group of blood found on seized articles was inconclusive. To top it, the trial court did not put the C.A. reports and the contents thereof to the appellants in their examination under Section 313 of the Code of Criminal Procedure. Said material, therefore, could not be used as a piece of evidence to convict the appellants. According to learned counsel, the appellants were resident of Ramnagar, Tq. Shevgaon. While seizure of the blood stained clothes and the cellphone was from Shamnagar, the Investigating Officer made no investigation in the direction to find the place, from which these articles were seized, really belonged to the appellant - Parmeshwar. Turning to the receipt of purchase of the cellphone, our attention was drawn to the column relating to signature of the purchaser of the article, indicating the same to have been blank.

10. According to learned counsel, it was the month of August, a rainy season. Some of the witnesses admitted the city to have experienced rains on the given day. It was an open place of not less than 8 acres. The Investigating Officer minutely searched the same. That time, no Sattur or iron rod could be found. They also questioned, as to how the seized articles were found to have stains of blood when those were, allegedly, lying at the place for little over two days, when there was rains.

11. It was also submitted by learned counsel for the appellants that the signatures of the panch witnesses on various panchnamas defer. The witnesses admitted the same. Appellant – Laxman Kamble was arrested by little past 12.30 midnight. The shirt on his person was shown to have been seized by little past 1.00 a.m. It was just difficult to imagine that the panch witness went to the police station to attend the seizure and arrest panchnama. The signature appearing on the panchnama, if seen by naked eyes, would indicate difference therein. Same suggests the police officer might have put signature similar to that of the panch witness/es. Learned counsel would further submit that the seized articles remained with the Investigating Officer until 15.08.2019, i.e. for over

7-8 days from seizure thereof. It was a serious offence. The Investigating Officer ought not to have delayed sending of the articles to F.S.L., Nashik. Within few hours, one could have reached Nashik from Shevgaon Police Station. There is nothing to indicate that the seized articles were kept safe. The police officer, who carried the articles to the F.S.L., Nashik, has not been examined. According to learned counsel, based on such kind of material, the trial court ought not to have convicted the appellants. Both learned counsel, therefore, urged for allowing the appeals.

12. Learned APP would, on the other hand, submit that PW 4 – Vanita was a rustic woman. She gave details of the incident. Stray admissions emanating from her cross-examination would, therefore, be of little consequence. After said admissions, she again denied that whatever was stated by her in the examination-in-chief, was false. According to learned APP, the cross-examination of PW 4 – Vanita is conspicuously silent to deny her version in examination in chief, that the appellants and the deceased accused Krushna had threatened her (PW 4) of dire consequence, if she disclosed the incident. Turning to the FIR (Exh.23), learned APP would submit that the informant was not an eye-witness to the incident. Face of the deceased Bapusaheb appeared to have been smashed with stone,

was just a feeling of the informant. The fact remains that the deceased was assaulted with Sattur and iron rod. On seizure of those articles, opinion of the Medical Officer (PW 6) was solicited. He opined that the injuries suffered by the deceased were possible by such articles. According to learned APP, both Bapusaheb (deceased) and PW 2 – Laxman Madke were close friends. PW 2 had gifted cellphone to Bapusaheb. It was recovered pursuant to the disclosure statement made by the appellant Laxman. PW 8 – Dnyaneshwar, proprietor of the mobile shop, tendered in evidence the office-copy of the purchase receipt of the cellphone in the name of PW 2 – Laxman Madke. On the question of seizure of articles from the alleged open place, learned APP would submit that although it was open ground, there were thorny bushes. The articles came to be seized from the bushes. It was a place non-accessible to anyone else than the one who had hidden the weapon of assault at that place. In support of her contention, she relied on the judgment of the Apex Court in the case of **State of H.P. Vs. Jeet Singh, AIR 1999 SC 1293**. Learned APP took us through the medical evidence to submit the same to be consistent with the prosecution case that the deceased to have been assaulted with weapons like Sattur and iron bar. Learned APP would, ultimately, urge for dismissal of the appeal or remanding of the matter to the trial court.

13. Considered the submissions advanced. Perused the evidence on record. Let us appreciate the same.

14. PW 6 - Dr.Deepak conducted autopsy on the mortal remains of the Bapusaheb (deceased). He noticed following injuries on the person of Bapusaheb:-

1) Multiple irregular incised lacerated wounds present over right side of face and right lateral aspect and anterior surface of neck upto base of neck. Underlying muscles, blood vessels (right internal juglar vein, right carotid artery etc), trachea tongue are lacerated. Right ear absent. Underlying mandible exposed and fractured in the middle. Clean cut margins of wound present at multiple places. All incised lacerated wounds are intermingling with each other and reddish in colour.

2) Incised would of size 4x1x0.5 cm. present over right clavicle over medial half of clavicle and reddish in colour.

The post mortem report under his signature suggests the cause of death: “*due to multiple irregular incised lacerated wounds over face and neck*”. It is further in his evidence that the Investigating Officer had placed before him the seized Sattur and iron bar. He opened the seal and examined those articles. In his opinion, the injuries suffered by the deceased were possible with those articles. It is further in his

evidence that he again sealed those articles and handed it over to the police official, on the day on which those were given to him for inspection, i.e. on 10.08.2019. It is further in his evidence that on arrest of the appellants and Krushna (deceased accused), he medically examined them at the request of the police officer and obtained their blood samples. It is further in his evidence that the clothes on person of the deceased were removed and handed over to the police officer.

15. The inquest panchnama (Exh.37) indicates the deceased to have suffered severe injuries to his face. There is no variance between the inquest panchnama (Exh.37) and the post-mortem report (Exh.61). It could, therefore, safely be concluded that the deceased died of multiple irregular incised lacerated wounds over face and neck.

16. The question is, whether the appellants are authors of the crime. The case is based on eye-witness account and the circumstantial evidence as well.

17. PW 4 - Vanita was said to be an eye-witness to the said incident. It is in her evidence that she was residing in a hut, in front of the Government I.T.I., Shevgaon, along with her son Akash. She

knew Bapusaheb (deceased) as she used to visit his xerox centre. She also knew the appellants and Krushna (deceased accused) because the grandfather of Krushna (deceased accused) and Parmeshwar (appellant) would reside in a hut in the nearby of her hut. According to her, the appellant - Laxman was friend of Parmeshwar (appellant) and Krushna (deceased accused). It is further in her evidence that by 10.00 p.m. on 07.08.2019, Bapusaheb (deceased) had come in front of her hut on a motorbike. He was talking on cellphone. She along with her son was sitting in her hut-cum-tent. After dinner, the appellants were present at the hut of their grandfather. The trio went close to Bapusaheb. The appellant - Parmeshwar slapped on the face of Bapusaheb and pushed him from the motorbike. The three then took Bapusaheb to an open ground to the backside of her hut. Accused Krushna (deceased) uprooted nail of the tent. After a while, she heard shouts of Bapusaheb. Thereafter the trio came to her. They threatened her of dire consequences, if she went public with the incident. It is further in her evidence that she was emotionally involved with Krushna (deceased accused).

18. During cross-examination of PW 4 - Vanita, it has been brought on record that it was a big open plot. No electricity was

available there. It was dark by 10.30 p.m. Nothing was visible as to who had come to that plot/ground. It is further in her evidence that both Parmeshwar and his brother Krushna were residing in Ramnagar area. It is further in her evidence that she would go to sleep by 08.00 p.m. or 08.30 p.m. after taking dinner, everyday. On 07.08.2019, as usual, she took dinner and retired for bed by 08.30 p.m. On the next day, she woke up as usual. She, however, denied that whatever she testified in her examination-in-chief was not true. Her evidence that she would go to sleep by 08.00 p.m. everyday and even on the given day also, she went to bed by the same time and woke up as usual in the morning, lead us to observe that her evidence about having seen the appellants and Krushna (deceased accused) to have taken Bapusaheb (deceased) to the open ground and assaulted him, inspires no confidence. It is true that the appellants, after having assaulted the deceased, returned to her and threatened with dire consequence, has not been specifically denied in the cross-examination. The last sentence of her cross-examination, however, indicates that the defence has denied her evidence in its entirety. Learned APP would, therefore, not be justified in contending that the trio had threatened her after having assaulted Bapusaheb (deceased), went unchallenged and therefore, her evidence needs to be accepted.

Circumstantial Evidence :-

19. In the case of **Anwar Ali and anr. Vs. State of Himachal Pradesh**, the Apex Court observed :-

B. Circumstantial evidence – Scope and sweep of – In case of a circumstantial evidence – The circumstances, taken cumulatively – should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and – Incapable of explanation of any other hypothesis than that of the guilt of the accused and – Such evidence should only be consistent with the guilt of the accused but should be inconsistent with his innocence

20. PW 1 - Kakasaheb (informant) was real brother of deceased Bapusaheb. After having learnt his brother Bapusaheb found to have been dead on the ground behind Jama Masjid, he went to the very place. He was not an eye witness to the incident. According to him, the head of the deceased Bapusaheb appeared to have been smashed with stone. He lodged the FIR (Exh.23), alleging therein that some unknown person killed his brother for unknown reason. His evidence, at the most, is relevant in setting the criminal law into motion.

21. PW 2 - Laxman Madke was close friend of Bapusaheb (deceased). His evidence indicates that both he and Bapusaheb would run "Sadguru Xerox", copying centre, in partnership, in front of Tahsil office, at Shevgaon town. It is further in his evidence that because of the strong bond between the two, he had gifted Bapusaheb (deceased) 'Samsung - Galaxy J7' mobile handset. It was purchased from Sonu Mobile Gallery for Rs.16,000/-. It is further in his evidence that Bapusaheb (deceased) had, just 15 days before the fateful day, related him to have liked Vanita (PW 4). It is further in his evidence that after having closed the xerox centre by 08.30 p.m., both of them went to 'Hotel Nisarg' for dinner. First, they took wine and then dined. By 10.30 p.m., Bapusaheb (deceased) left for his home on motorbike. He (PW 2) too started thereafter a bit later, because his motorbike gave starting problem. It is further in his evidence that after having reached home, he made number of phone calls to Bapusaheb (deceased), to ascertain whether he had reached his home. According to him, the calls went unanswered.

22. Here, in view of the evidence of PW 2 - Laxman Madke, a case of motive was said to be made out. According to the prosecution, PW 4 - Vanita testified that she was in love with Krushna

(deceased accused). Bapusaheb (deceased) expressed PW 2 to have liked Vanita. Crime was fall out of his liking Vanita (PW 4).

23. PW 2 - Laxman Madke was subjected to searching cross-examination. Although, the fact that he was close friend of deceased Bapusaheb has been made out from his evidence, his conduct somewhat appears to be unnatural. Admittedly, both of them were very close friends. According to him, he made many phone calls to ascertain, whether Bapusaheb reached home after he left 'Hotel Nisarg' by 10.30 p.m. His cross-examination, however, indicates that he was just a next-door neighbour. There was only intervening wall separating their respective residences. In such circumstances, it would have been natural conduct on his part to visit Bapusaheb's house to find whether he reached home. It is only on the following morning, he received phone call from police and therefore, he rushed to the crime-scene.

24. PW 3 - Harish was a Clerk with Panchayat Samiti Office, Shevgaon. He was panch witness to three-four panchnamas. His evidence indicates that the B.D.O. directed him to assist the police in the investigation. He, therefore, first went to the mortuary at Shevgaon Rural Hospital. Inquest panchnama (Exh.37) was drawn in his presence (the same has been admitted by the defence). He then

accompanied the police to the crime-scene. In his presence, a crime scene panchnama (Exh.40) was drawn. It was at the middle of a big open plot behind Jama Masjid. It is further in his evidence that the police seized blood mixed soil and plain earth from the crime-scene. A sketch of the crime scene was also prepared. His evidence would further indicate that on the same day by 04.00 p.m., he again visited the police station. A panchnama (Exh.42), relating to seizure of clothes of the deceased, was drawn in his presence. The clothes of the deceased were white-shirt, jeans pant, sando-baniyan and underwear. He identified those articles before the court. The evidence of PW 3 - Harish further indicates that he again went to the police station at 12.30 midnight of 09.08.2019. According to him, the appellant - Laxman Kamble was arrested in his presence. A blood-stained white shirt on his person and blue colour jeans pant were seized by the police under panchnama (Exh.43).

25. PW 3 - Harish was subjected to searching cross-examination. It is in his evidence that the police officer searched the crime-scene and the area around, so as to find whether any suspicious article was noticed. He admitted that there was difference in his signature appearing on the panchnamas (Exh.40, 42 and 43). According to him, inspite of the minute inspection of the

crime-scene and the open site around, no incriminating article was found. It is further in his evidence that below his signature at the wrapper, time of his putting signature was not mentioned. Label was not affixed on the clothes. The wrappers on the clothes too, do not bear time by which those were packed and sealed. The labels thereon do not bear date. It is further in his evidence that before he reached the police station, the police had already prepared arrest panchnama of the appellant - Laxman Kamble. According to him, the panchnama is silent nor was he aware regarding whether the substituted clothes were provided to the appellant - Laxman to put on soon after the clothes on his person were taken charge of.

26. PW 5 - Diwakar was an employee of electricity department of Municipal Council, Shevgaon. He too was directed by his higher-ups to assist the police in the investigation. It is in his evidence that on 09.08.2019, he reached the police station. The appellant - Laxman Kamble made disclosure statement that he would point out the place whereat the iron bar and chopper were placed/concealed. His statement was recorded vide Exh.54. It is further in his evidence that appellant - Laxman then led them to the crime-scene area and from bushes, he took out an iron bar and a chopper. The police seized the same. According to him, both the

articles were stained with blood. The police wrapped both the articles separately. The label bearing his signature was fixed thereon. A seizure panchnama (Exh.55) was drawn.

27. It is further in his evidence that on the following day, i.e. on 10.08.2019, he again went to the police station. The appellant - Parmeshwar made disclosure statement to have concealed the clothes on the person of the Krushna (deceased accused) and himself and the cellphone of the deceased Bapusaheb, at one place and he would take out the same. Said statement was recorded vide Exh.56. He then took them to Shamnagar area. There was one tin-shed house. It was just bolted from outside. The appellant - Parmeshwar opened the same. There was wooden cot. The appellant - Parmeshwar produced a bag kept below the cot. The bag contained two shirts, even number of trousers and cellphone. One shirt was of pink colour and the another was bluish. Both the trousers were white. All of them were seized under panchnama Exh.57.

28. PW 5 - Diwakar was subjected to searching cross-examination. There is evidence of other witnesses that town Shevgaon had experienced rains during those days. According to PW 5 - Diwakar, the open ground was dry. It was, however, suggested that the police cleaned the iron bar and chopper with water and then

packed those articles. This suggestion goes a long way to indicate the appellant - Laxman to have admitted seizure of articles in the presence of this witness. No such suggestion was, however, given on behalf of other accused/one of the appellants and Krushna (deceased accused).

29. PW 8 - Dnyaneshwar was proprietor of Sonu Mobile Gallery. It is in his evidence that he sold 'Samsung - Galaxy J7' mobile handset to Laxman Madke (PW 2) for Rs.16,000/- on 16.08.2016. He produced in evidence his Shop-Act Licence besides the office/carbon copy of the receipt relating to cellphone. It is at Exh.94. Our attention was drawn to the column on the receipt, relating to the signature of purchaser of the article. Said column is blank. It, however, appears that before the trial court, the bill book was produced. We, have, therefore, no reason to doubt the evidence of PW 8 - Dnyaneshwar that he had sold the said cellphone to PW 2 - Laxman Madke.

30. There is evidence to indicate that services of sniffer dogs were availed. Same took police nowhere.

31. PW 7 - Sujit Thakare was, A.P.I., attached Shevgaon Police Station. He did investigation of the crime. Close reading of

his evidence would indicate that he prepared panchnama in the presence of panchas namely, Bhausahab Pawar and Harish Bhalerao. His evidence further indicates that the seized articles were referred to the Medical Officer to solicit opinion, as to whether the injuries suffered by the deceased were possible therewith. The Medical Officer gave opinion supporting the prosecution case. The record, however, indicates that these articles were given to the Medical Officer on 10.08.2019. He opened the seal and inspected those articles. It is in his evidence that he again wrapped those articles and delivered back to the police on 13.08.2019. No separate panchnama was drawn in that regard, i.e. breaking of seal, again sealing the articles and delivery thereof to the police. The evidence of the Investigating Officer indicates that he had referred both the appellants and the deceased accused for their medical examination on 10.08.2019. The Medical Officer had obtained their blood samples for analysis and report. The record indicates that all the seized articles were at the police station until they were sent to F.S.L., Nashik, on 15.08.2019. The same indicates that some articles remained at the police station for about eight days, while others for not less than three days. The police constable who carried those articles to F.S.L. Nashik has not been examined. Although all the C.A. reports have been admitted in evidence with marking them exhibit

numbers, the trial court has not referred any of the C.A. reports or contents thereof to the appellants in their examination under Section 313 of the Code of Criminal Procedure. Learned counsel for the appellants, are, therefore, justified in contending that those could not be read in evidence against the appellants. True, said exercise could be done by this court or the matter could be remanded to the trial court for that purpose. On appreciation of the entire evidence on record, however, we find that no such exercise needs to be undertaken.

32. We have already found the evidence of PW 4 - Vanita (so called eye-witness) to have not been inspiring confidence. The C.A. report relating to the blood sample of the deceased Bapusaheb indicates that the blood group of the deceased could not be ascertained. True, the clothes on the person of the deceased Bapusaheb borne blood stains of blood-group "A". The clothes were handed over by the Medical Officer to the police constable on duty, who carried them to the police station, whereat they were seized. Still, we take that the blood-group of the deceased was "A", while blood-group of the appellants were "B" and "O". The C.A. reports pertaining to the seized articles, indicate that the result of the analysis as regards group of blood of the stains found there, was

inconclusive. It, therefore, cannot be said that the prosecution has conclusively proved the fact that the seized iron bar and the chopper were used in committing murder of Bapusaheb. True, the shirt on the person of appellant - Laxman Kamble was found to have stained with blood of the blood-group "A" (blood-group of deceased Bapusaheb), while C.A. report relating to the clothes of appellant - Parmeshwar was inconclusive.

33. Close reading of the prosecution evidence indicates that the clothes seized, pursuant to the disclosure statement made by the appellant Parmeshwar, were on the person of himself and Krushna (deceased accused) on the fateful day, has not been proved. Same is the case about the clothes on the person of the appellant Laxman Kamble. He was arrested two days after the incident. There is nothing to indicate that the very clothes were on his person while the incident took place. So far as regards seizure of the cellphone, pursuant to the disclosure statement of appellant - Parmeshwar is concerned, although the C.D.Rs. were collected during investigation, those have not been placed on record to lead to the conclusion that the cellphone that was purchased by PW 2 - Laxman was really gifted by him to deceased Bapusaheb. There is also no evidence that Bapusaheb was making use of the said cellphone. Admittedly, it

is not the case of prosecution that the deceased was robbed of any of his articles or same was the motive behind commission of the crime. We have referred to the C.A. reports only with a view to observe that they would not lead us to hold the appellants to have committed murder of Bapusaheb. True, the trial court could have put questions to the appellants relating to the contents of the C.A. Reports.

34. In the case of **Narsinbhai Haribhai Prajapati etc. Vs. Chhatrasinh and ors., AIR 1977 SC 1753:-**

Penal Code (45 of 1860), S.302, S.34 – Evidence – Evidence of eye-witnesses found totally unacceptable – Held presence of motive and recovery of blood-stained clothes and dharias with the accused were wholly insufficient for sustaining charge of murder.

35. In short, the eye witness account of PW 4 – Vanita inspires no confidence. Thus, what remains is the evidence relating to seizure of iron bar and chopper, pursuant to the disclosure statement and seizure of clothes on the person of the appellants and deceased Bapusaheb. The seized articles namely, iron bar and chopper did not borne blood stains of the blood-group of the deceased Bapusaheb. The chemical analysis in that regard was inconclusive. All the articles remained with the police station for

about eight days. The appellant - Laxman was arrested in the midnight little past 01.00 a.m. PW 3 - Harish, who is the panch witness, admitted that there was variance in his signature appearing on 2-3 panchnamas. We too noticed the same. On some of the panchnamas, the signatures have been put in such a way, which lead us to infer that those might have been tried to be imitated.

36. The motive has not been proved. There is no evidence to indicate that the cellphone seized was with the deceased at the relevant time. PW 2 - Laxman Madke, being close friend of the deceased Bapusaheb, was interested one. His conduct in not visiting the house of the deceased Bapusaheb after having found his number of calls went unanswered, were unnatural. All these facts lead us to infer the prosecution to have failed to bring home the charge beyond reasonable doubt.

37. The trial court, based on such kind/quality of evidence, ought not to have convicted the appellants. Interference with the impugned order of conviction and the consequential sentence, therefore, is warranted.

38. In the result, the appeals succeed. Hence, the following order:-

- (i) The Criminal Appeals are is allowed.
- (ii) The order of conviction and consequential sentence dated 01.04.2021, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.384 of 2019 for the offences punishable under Section 302 r/w. 34 and Section 506 of Indian Penal Code, is set aside. The appellants are acquitted of the said offences.
- (iii) The appellants be released forthwith, if not required in any other case.
- (iv) Fine amount deposited by the appellants, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP