



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

CRIMINAL APPEAL NO.957 OF 2022

Sharad S/o Dashrath Shivade
Age: 45 years, Occu: Driver, Now : Nil,
R/o.: Shivratan Colony - Ayodhyanager,
Collector - Patta, Malegaon,
Tq. Malegaon, Dist. Nashik
Now at Nashik Road Central Prison, Nashik Appellant

Versus

The State of Maharashtra
Through P.S.O. Mohadi Police Station Respondent

Appearance :-

Mr. Rupesh Jaiswal, Advocate for the Appellant [Appointed through Legal Aid]

Mr. S. D. Ghayal, Addl. PP for Respondent - State

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

Reserved On : 16/01/2025

Pronounced On : 23/01/2025

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. By the present Appeal preferred under Section 374[2] of the Criminal Procedure Code, 1973 [hereinafter referred to as 'Cr.P.C.'], the Appellant has challenged his conviction for the offence punishable under Sections 302 and 324 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C.'] and consequent sentence to suffer Rigorous Imprisonment for life and to pay fine of Rs.1000/-, in default, to suffer Rigorous Imprisonment for a month and to suffer Rigorous Imprisonment for the period already undergone and to pay fine of Rs.500/-, in

default, to suffer Rigorous Imprisonment for fifteen [15] days, respectively, vide Judgment and Order dated 31/10/2018, passed by the learned Sessions Judge, Dhule, in Sessions Case No.87/2016.

2. The Prosecution's case, as revealed from the Police Report, is as under : -

[I] Priyanka Balasaheb Ahire [hereinafter referred to as 'the Deceased'] was married to PW - 2 [Balasaheb Onkar Ahire]. Initially, they were residing with their children at Malegaon. The Appellant was also residing in the same town. The Appellant used to trouble / threaten the Deceased. The Deceased and her family shifted to Dhule. PW - 4 [Bebibai Kautik Nagrale], who was the mother of Deceased, was also residing at Dhule. The Deceased was working in one Hospital at Dhule as a Nurse. PW - 1 / Informant [Sudhakar Dagadu Londhe] and the Deceased were knowing each other. The family of Deceased also knew PW - 1 [Sudhakar Dagadu Londhe]. The husband of the Deceased was a Painter and used to be out of town intermittently for some days. PW - 1 [Sudhakar Dagadu Londhe] used to receive the Deceased from the Hospital in late hours and drop her home.

[II] On 28/05/2016 in between 11.00 p.m. and 11.30 p.m., PW - 1 [Sudhakar Dagadu Londhe] received the Deceased from the Hospital and they both went to one Deepak Hotel situated at Malegaon road. They had water and were sitting in the Hotel. The Appellant came at the Hotel and went near them. The Appellant took the Deceased outside the Hotel and assaulted her by using Sickel [koyta]. PW - 1 [Sudhakar Dagadu Londhe] also went behind them and intervened. The Appellant gave a

blow by Sickle on the chest of PW - 1 [Sudhakar Dagadu Londhe], due to which, he suffered injury. The Appellant fled from the spot. On receiving the information about the incident, the Police Mobile Van came on the spot and shifted both the injured to the Hospital. The Deceased succumbed to the injuries. PW - 1 [Sudhakar Dagadu Londhe] was provided medical aid and his statement was recorded, which was treated as the First Information Report [FIR] at Exhibit - 21 and Crime No.60/2016 came to be registered against the Appellant for the offence punishable under Sections 302 and 307 of I.P.C.

[III] The Police performed the Inquest. The dead body was referred for Postmortem. The Police went on the spot of incident and conducted the Spot Panchnama. The statement of witnesses were recorded. The clothes of Deceased and the Informant were seized. The Appellant came to be arrested on 03/06/2016. During the course of investigation, the Article - 5/2 - Sickle came to be discovered / recovered and seized at the instance of the Appellant. From the Postmortem, the cause of death was revealed as '*Hemorrhage and shock due to injuries described*'. The Articles seized during the course of investigation were referred to the Chemical Analyzer. The reports of Chemical Analyzer were received. On completion of investigation, the Appellant came to be Charge-sheeted.

[IV] On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 307 of I.P.C. vide Exhibit - 15, to which, the Appellant pleaded not guilty and claimed to be tried. To establish the Charge, Prosecution examined in all fourteen [14] witnesses and brought on record the relevant documents. After the

Prosecution closed their evidence, the statement of the Appellant came to be recorded by the learned Trial Court under Section 313[1][b] of Cr.P.C. The Appellant stated that, he and the Deceased were in illicit relations, which were not liked by the husband of Deceased, therefore, one false report was lodged against him for the offence punishable under Section 354 of I.P.C. After the Deceased shifted to Dhule, she came in contact with the Informant [PW - 1]. After some time, the relation between the Deceased and Informant [PW - 1] came to an end and the Deceased wanted to re-establish the relations with the Appellant. The same was not liked by the husband of Deceased and therefore, he got his wife killed through the contract killers and falsely implicated the Appellant. After hearing both the sides and appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order, convicting and sentencing the Appellant as referred above in Paragraph No.1.

3. It is submitted by the learned Advocate for the Appellant that, the case is based on solitary eyewitness whose evidence gets falsified by the evidence of the mother of Deceased. There is variance in the testimony of solitary eyewitness and the mother of Deceased. No witness from the Hotel where the incident took place is examined. Though the discovery of blood stained Sickle is brought on record by the Prosecution, the Sickle was not sealed after its seizure and it was referred to the Chemical Analyzer belatedly. The Sickle was foisted on the Appellant. There is no evidence to show as to how the Appellant came to know that, the Deceased was at the Hotel with the Informant [PW - 1]. The evidence available on record do not inspire confidence and the impugned Judgment

convicting and sentencing the Appellant be set aside and Appeal be allowed.

4. It is submitted by the learned Addl. PP that, the Prosecution's case is based on the testimony of injured eyewitness, which is corroborated by the medical evidence. The history of assault was given by the Informant [PW - 1] at the time of his treatment. There is prompt lodging of FIR. The evidence of eyewitness remained unshaken in the cross-examination. The Appellant was having one sided love with the Deceased and he did not like the closeness between the Deceased and Informant [PW - 1] and therefore, he committed the Crime with deadly weapon. The Homicidal Death is proved through the medical evidence, which is corroborated by the Postmortem Report. The weapon of assault came to be discovered / recovered at the instance of the Appellant pursuant to the provisions of Section 27 of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act']. The weapon was found with blood stains of the Deceased's blood group. The other evidence on record corroborate the Prosecution's case. The learned Trial Court has properly appreciated the evidence on record and rightly convicted the Appellant. Hence, the Appeal be dismissed.

5. Heard both the side. Scrutinized the evidence on record. The Charge against the Appellant is that, he committed murder of the wife of PW - 2 [Balasaheb Onkar Ahire] and attempted to murder the Informant [PW - 1] in the late night of 28/05/2016. The Prosecutions evidence can be categorized as under :

- [i] Eyewitness ;
- [ii] Panch witnesses ;

- [iii] Medical evidence ;
- [iv] Family member / relative of the Deceased ;
- [v] The Police witnesses ;

6. PW - 1 [Sudhakar Dagadu Londhe] is examined as the eyewitness to the incident. He was a teacher. He knew PW - 4 [Bebibai Kautik Nagrale], who was the mother of Deceased. He was on visiting terms with PW - 4 [Bebibai Kautik Nagrale]. He was also knowing the Deceased, who was residing at Dhule. He knew the Appellant through the Deceased from last two [2] years from the date of incident. Initially, the Deceased and Appellant were residing at Malegaon within the same vicinity. The Deceased was working as a Nurse in the Hospital of Dr. Sumit Patil at Dhule. Intermittent telephonic conversations used to take place between him and the Deceased. Whenever the husband of Deceased would be out of town for his painting work at other places, he used to receive the Deceased from the Hospital in the night and drop her home. He used to go to the Hotel with the Deceased.

7. The evidence of PW - 2 [Balasaheb Onkar Ahire] shows that, he was the husband of Deceased. Initially, he along with Deceased and children was residing at Malegaon where the Appellant was also residing. The Appellant was behind the Deceased and wanted her to establish relations with him. The Appellant used to threaten the Deceased, for which, the Report was lodged with the Malegaon Police Station. Eventually, he shifted to Dhule along with the Deceased and children. The Deceased was working in the Clinic of Dr. Sumit Patil at Dhule. He knew PW - 1 [Sudhakar Dagadu Londhe] from last four [4] years from the incident, as he was residing near the house of

PW - 4 [Bebibai Kautik Nagrale]. He used to go out of station for his painting work for ten [10] to fifteen [15] days at a stretch. During that period, PW - 1 [Sudhakar Dagadu Londhe] used to receive the Deceased from the Hospital in the night time.

8. The evidence of PW - 4 [Bebibai Kautik Nagrale] shows that, she was the mother of Deceased and residing at Dhule. The Deceased was married to PW - 2 [Balasaheb Onkar Ahire] for last seventeen [17] years from the incident. Initially, Deceased was staying with her family at Malegaon. She knew the Appellant as he was residing nearby. The Appellant used to torture the Deceased, due to which, Deceased shifted to Dhule with her family. The Deceased was working in the Hospital of Dr. Sumit Patil at Dhule. She knew PW - 1 [Sudhakar Dagadu Londhe] since last twenty five [25] years from the date of incident.

9. From the evidence of the above referred witnesses, it is more than clear that, they all knew each other and also the Appellant. The Appellant was behind the Deceased. The Appellant, in his written 313 at Exhibit - 88, stated of love relations between him and the Deceased when the Deceased was residing at Malegaon and their relations were not liked by the husband of Deceased and false report was lodged against him by the Deceased at Malegaon Police Station. The husband got his wife killed through the contract killers.

10. Coming back to the evidence of PW - 1 [Sudhakar Dagadu Londhe], his evidence shows that, on 28/05/2016, he received phone call from the Deceased around 11.30 p.m. The Deceased told him that, food was to be taken for the children from the

Hotel, therefore, he went to the Clinic, received the Deceased and they both came to the Hotel Deepak situated at Malegaon road on his motorcycle. They sat in the Hotel and had water. The Appellant came in the Hotel and stood near them and greeted him. The Appellant and Deceased went outside the Hotel. Quarrel took place between the Deceased and Appellant. He went outside the Hotel. The Appellant gave blows by the Sickle on the neck and hand of the Deceased and she fell down. When he tried to support the Deceased, the Appellant gave blow by the Sickle on his chest, due to which, he got injured. The Appellant fled from the spot. The said incident took place between 11.30 p.m. to 12.00 a.m.

11. The cross-examination of PW - 1 [Sudhakar Dagadu Londhe] shows that, his evidence in respect of Appellant coming to the Hotel at the time of incident is strengthened. The cross-examination could not create any dent in the evidence of PW - 1 [Sudhakar Dagadu Londhe]. On the contrary, the cross-examination fortifies his evidence that, the Appellant came to the Hotel when he and Deceased were sitting at the Hotel. His evidence shows that, he witnessed the entire incident and there was sufficient light from the high-mast lamps. His further evidence shows that, the Deceased died on the spot, Police arrived and took him to the Civil Hospital for treatment. His report was taken in the Civil Hospital as per his narration, which was treated as First Information Report [FIR] at Exhibit - 21. His evidence shows that, his testimony was corroborated by his report, which was taken in the Hospital.

12. The evidence of PW - 14 [Dr. Siddharth Uday Patil] shows that, from October - 2015 to October - 2018, he was serving as

the Medical Officer at Government Medical College, Dhule. He was on duty as CMO on 29/05/2016. Around 01.10 hours, he examined PW - 1 [Sudhakar Dagadu Londhe], who gave the history of assault with sharp weapon around 12.30 a.m. On examination, he found incised wound 10 x 3 x 2 c.m. by size over the chest. The age of injury was within six [6] hours and caused by sharp object. The injury was simple in nature. The injury certificate at Exhibit - 85 corroborate his testimony. The same bears his signature. He accepted that, history of assault by means of sharp object was not specifically mentioned in Exhibit - 85. He denied the suggestion that, the injury suffered by PW - 1 [Sudhakar Dagadu Londhe] was self inflicted. He denied the other suggestions that, he issued false certificate.

13. The evidence of PW - 8 [Bharat Mahadeo Mali] shows that, on 29/05/2016 at about 10.45 a.m., he acted as the panch for the Inquest at Exhibit - 44. The dead body was of one woman by name Priyanka Balasaheb Ahire [Deceased]. There were injuries on different part of dead body. The cross-examination shows that, his evidence was not seriously challenged.

14. The evidence of PW - 13 [Mahendrakumar Prakash Gavai] shows that, the investigation of Crime which was registered on the report lodged by PW - 1 [Sudhakar Dagadu Londhe] was handed over to him. His evidence shows that, P.S.I. Mr. Y. B. Shaikh registered the Crime. Non examination of the said P.S.I. will not be fatal for the Prosecution, as the Informant is examined. His evidence shows that, the night patrolling police vehicle moved the injured and dead body to the Hospital. He visited the spot of incident and called the panchas and prepared

the Spot Panchnama. The blood, hairs, pieces of hair pin, pieces of bangles, *Mangalsutra* and three cut fingers of the Deceased were found on the spot. He seized the Articles under the Panchnama at Exhibit - 29. In the Hospital, he prepared the Inquest at Exhibit - 44 in the presence of panchas and referred the body for Postmortem and thereafter, handed over the body to the relatives of Deceased. It is brought in his cross-examination that, the Deceased and Appellant were in love relations. Non describing the physical appearance by the Rahul Dayaram Rawandle whose statement was recorded by him, will not at all affect the case of Prosecution, as the injured eyewitness i.e. PW - 1 [Sudhakar Dagadu Londhe] knew the Appellant. The cross-examination could not create any dent in the above discussed evidence of PW - 13 [Mahendrakumar Prakash Gavai].

15. The evidence of PW - 3 [Rajendra Bhagwan Bhoi] shows that, he was the panch for Spot Panchnama at Exhibit - 29. The Panchnama was done at 03.55 a.m. in front of Hotel Deepak. There was blood, pieces of bangles, broken *Mangalsutra*, one clip and pieces of fingers on the spot. The Spot Panchnama was prepared in the light of high-mast lamp. The said Articles were seized by the Police. He identified the said Articles during his evidence. It is affirmed in his cross-examination that, the spot of incident was a National Highway. He denied the suggestion that, the Spot Panchnama was already prepared. The cross-examination could not affect his testimony.

16. The evidence of PW - 5 [Ramesh Kashinath Gadhari], who was the Associate Professor with the Government Medical College, Dhule from February - 2014, shows that, on 29/05/2016, the dead body of Priyanka was brought by the

Police for Postmortem. He along with Dr. N. A. Devraj conducted the Postmortem and found internal injuries on the dead body, which were incorporated in the Postmortem Report at Exhibit – 34. The following internal injuries are mentioned in Column No.17 of the Postmortem Report :

- “1. Obliquely placed incised wound present over left fronto-parietal region, situated 1cm from midline, of size 5cm X 0.5cm X bone deep. Margins reddish in colour.
2. Incised wound present over right cheek, situated 2cm lateral to angle of mouth, horizontally placed, of size 3.5cm X 1cm X bone deep. Margins reddish in colour.
3. Incised wound present over right lateral aspect of neck, situated 0.5cm lateral to angle of mandible, horizontally placed, of size 3cm X 1cm X muscle deep. Margins reddish in colour.
4. Incised wound present over right submandibular region, situated 0.5cm lateral to midline, horizontally placed, of size 4.5cm X 2cm X muscle deep. Margins reddish in colour.
5. Incised wound present over right lateral aspect of neck, situated 3cm lateral midline, horizontally placed, of size 6cm X 2cm X bone deep. Margins reddish in colour. Underlying vessels cut and C6 vertebra cut fractured.
6. Incised wound present over right lateral aspect of neck, situated 3cm lateral midline, horizontally placed and merged with injury no.5 mentioned above, of size 6.5cm X 2cm X bone deep. Margins reddish in colour. Underlying vessels cut and C6 vertebra cut fractured.
7. Incised wound present over right postero-lateral aspect of neck, situated 0.5cm above injury no.6, obliquely placed, of size 8cm X 2cm X bone deep. Margins reddish in colour. Underlying vessels cut and C4 vertebra cut fractured.
8. Incised wound present over right side of occipital region, situated 3cm lateral to midline, obliquely placed, of size 5cm X 2cm X bone deep. Margins reddish in colour.
9. Incised wound present over antero-superior aspect of right shoulder, of size 7cm X 2cm X muscle deep, margins reddish in colour.
10. Incised wound present over middle third of antero-lateral aspect of right arm, situated 13cm below shoulder tip, horizontal, of size 9cm X 1cm X muscle deep. Margins reddish in colour.
11. Obliquely placed incised wound present over lower 2/3rd of postero-lateral aspect of right arm, of size 17cm X 4cm X bone deep, underlying bone fractured. Margins reddish in colour.

12. Obliquely placed incised wound present over upper third of postero-lateral aspect of right forearm, of size 3.5cm X 1.5cm X muscle deep. Margins reddish in colour.
13. Obliquely placed incised wound present over middle third of posterior aspect of right forearm, situated 7cm below injury no.12, of size 4cm X 2cm X muscle deep. Margins reddish in colour.
14. Obliquely placed incised wound present over lower third of posterior aspect of right forearm, situated 1cm above wrist joint, of size 2cm X 1cm X muscle deep. Margins reddish in colour.
15. Obliquely placed incised wound present over middle third of posterior aspect of left forearm, situated 9cm below elbow joint, of size 3cm X 1cm X muscle deep. Margins reddish in colour.
16. Incised wound present over posterior aspects of thumb, index and middle fingers of left hand over proximal phalanges, of size 8cm X 1cm X bone deep. Margins reddish in colour. Proximal phalanges of thumb, index and middle fingers of left hand cut fractured.
17. Chop amputation of left index finger at the level of middle phalanx present, distal amputated part of length 5cm present along with body.
18. Chop amputation of left middle finger at the level of middle phalanx present, distal amputated part of length 4.5cm present along with body.
19. Incised wound present over posterior aspect of middle phalanx of left little finger, of size 1.5cm X 0.5cm X bone deep. Margins reddish in colour. Underlying middle phalanx of left little finger fractured.
20. Horizontally placed incised wound present over upper third of anterior aspect of left leg, situated 4cm below knee joint level, of size 4cm X 1cm X muscle deep. Margins reddish in colour.
21. Obliquely placed incised wound present over upper third of antero-lateral aspect of right leg, of size 11cm X 2cm X bone deep. Margins reddish in colour. Underlying bone fractured.
22. Incised wound present over right lateral aspect of chest, situated 11cm below right shoulder tip, of size 12cm X 3cm X bone deep. Margins reddish in colour. Underlying scapula bone fractured."

16.1 His evidence shows that, the above referred injuries were antemortem and fresh and possible by impact of moderately heavy sharp cutting weapon. The cause of death was *haemorrhage and shock due to injuries described in Column No.17.*

17. In cross-examination, it is brought that, the injuries mentioned in the Postmortem Report were possible by any sharp edged object other than Sickles. His evidence remained unshaken in respect of receipt of the dead body, performing the Postmortem and cause of death.

18. The evidence of PW - 7 [Lahu Manga Sonawane] shows that, on 29/05/2016, he was called at the Mohadi Police Station where the clothes of Deceased comprising purple colour petticoat, one brassier, one nicker, one black sari, pieces of bangles, ear tops and *painjan* of legs were seized under the Panchnama at Exhibit - 39. His cross-examination shows that, he accompanied the other pancha by name Rajendra Madhukar Alhat to the Mohadi Police Station for Panchnama.

19. There is evidence of PW - 12 [Rajendra Madhukar Alhat], who acted as panch for the seizure of above referred Articles of the Deceased under the Panchnama at Exhibit - 39 on 29/05/2016 in the Mohadi Police Station. His evidence shows that, on the same day, the Police Constable Shri. Bhika Patil produced the clothes of injured PW - 1 [Sudhakar Dagadu Londhe] under the Panchnama at Exhibit - 62. It has come in his cross-examination that, it was his first time as the pancha for Mohadi Police Station. He denied the suggestion that, he was the spot panch.

20. The evidence of PW - 1 [Sudhakar Dagadu Londhe] shows that, he identified his clothes and saree of the Deceased, which they were wearing at the time of incident. From the evidence of the above referred panchas, the seizure of Articles, clothes of Deceased and the clothes of injured - Informant is established.

21. The arrest of the Appellant during the course of investigation is not in dispute. The evidence of PW - 9 [Mohammed Vaseem Abdul Raheem Manyar] shows that, on 05/06/2016, he was called at the Mohadi-Nagar Police Station to act as panch. As he did not support the case of Prosecution, he was cross-examined by the learned A.P.P. In the cross-examination, it is brought by the Prosecution that, the Article 5/2 - Sickle was seized at the instance of the Appellant, which was tied with rubber piece near the shock-up of motorcycle. This panch witness could not identify the Article 5/2 as to whether it was the same koyta, though he deposed that, it was similar to this Article. His cross-examination shows that, no disclosure was made by the Appellant in his presence and PW - 13 [Mahendrakumar Prakash Gavai], the Investigating Officer, removed the said Articles from the motorcycle. It is thus clear that, the evidence of this panch witness is not of any assistance for the Prosecution.

22. There is evidence of PW - 13 [Mahendrakumar Prakash Gavai], the Investigating Officer, on the point of discovery / recovery of the Sickle at the instance of Appellant. His evidence goes to show that, on 05/06/2016, while the Appellant was in custody, he showed his willingness to show the place where the weapon and motorcycle were concealed and Memorandum at Exhibit - 46 was prepared. His further evidence shows that, the Appellant led them to Malegaon along with the panchas to one house. After they all alighted, the Appellant took them in one small lane adjacent to the house and pointed one motorcycle, from which, the Appellant removed a rubber tube, in which, Article 5/2 - Sickle was concealed. The Article was stained with blood. The Article was seized under

the Seizure Panchnama at Exhibit - 47.

23. PW - 13 [Mahendrakumar Prakash Gavai] was extensively cross-examined by the defence. He denied the suggestion that, the blood was sprinkled on the Sickle and the discovery / recovery was foisted on the Appellant. He denied the suggestion that, the place where the motorcycle was standing was easily accessible to all. Non seizure of rubber tube, in which, the weapon was concealed, will not be sufficient to discard the evidence of discovery under Section 27 of the Evidence Act. The evidence of this Investigating Officer shows that, he deposed the exact disclosure statement made by the Appellant pursuant to which the discovery / recovery was made and the same was seized at the instance of the Appellant. His evidence regarding disclosure statement and recovery / discovery of blood stained Sickle at the instance of the Appellant is corroborated by the Memorandum and Seizure Panchnama at Exhibits - 46 and 47, respectively.

24. The CA report at Exhibit - 108 shows that, the blood group of the Deceased was 'A'. The Column 'Species origin' is shown 'Not attempted'. The CA report at Exhibit - 110 shows that, the blood group of PW - 1 [Sudhakar Dagadu Londhe] was 'A'. The CA report at Exhibit - 106 shows that, all the Articles including the Sickle, except glass bangle pieces, two metal anklet and scrapping in plastic bottle, were stained with human blood of group - 'A',. Thus, the discovery of Sickle Article - 5/2 - becomes relevant. The Prosecution has examined PW-10 [Sachin Baburao Wagh], whose evidence shows that, he was Police Constable and carried the muddemal in the Crime to the Forensic Laboratory at Nashik. Non producing the warrant/tickets for his travel itself will not be sufficient to discard his

testimony. He denied the suggestion of tampering with the Articles.

25. The evidence of PW - 6 [Devendra Hemant Amrutkar], who was having the business of selling cutting articles would not be of much helped to the Prosecution. As it has come in his evidence that, the Appellant inquired about the Sickles and he informed him that, he will purchase the same in next [2] two to [4] four days. No clear evidence is brought that, Article 5/2 - Sickles was purchased from PW - 6 [Devendra Hemant Amrutkar].

26. There is evidence of PW - 11 [Prashant Bhaskar Chaudhary], who clicked photographs and video-graphs during the course of investigation.

27. The Appellant examined the Nodal Officer of Vodafone Company, Pune as the Defence Witness [Aditya Pradeep Nifadkar]. His evidence shows that, as per the norms and rules, the call detail records are maintained for one [1] years only and accordingly, he communicated to the Court. Nothing has come in his evidence, which would be of any assistance to the Appellant. This witness was not even referred during the course of arguments.

28. By examining the injured eyewitness as PW - 1 [Sudhakar Dagadu Londhe], the Prosecution established that, the Appellant inflicted serious injuries on the Deceased and caused injury to him by use of Sickles. The evidence of eyewitness remained unshaken in the cross-examination. The injury of PW - 1 [Sudhakar Dagadu Londhe] is proved through the medical evidence. The evidence of injured eyewitness stands on the

higher pedestral. His evidence in respect of assault over the Deceased by the Appellant is corroborated by the medical evidence. The medical evidence established that, the death was due to the injuries on the dead body. The evidence of eyewitness is fully corroborated by the medical evidence. Though it has come in the evidence of PW - 4 [Bebibai Kautik Nagrale], the mother of Deceased, that, on 28/05/2016 i.e. date of incident, the Deceased had come to her house from the Clinic at 11.00 p.m, in her cross-examination, suggestion is given that, thereafter the Deceased left for her room with PW - 1 [Sudhakar Dagadu Londhe] on his motorcycle. At the same time, she deposed of receiving the phone call around 11.30 p.m. from PW - 1 [Sudhakar Dagadu Londhe] that, the Deceased suffered blow and died and so, she went to the Deepak Hotel, where she saw her daughter lying in dead condition. Therefore, her evidence that, the Deceased came to her house at 11.00 p.m., will not lead to the inference that, thereafter Deceased did not went with PW - 1 [Sudhakar Dagadu Londhe]. In view of the other evidence on record, the variation in the evidence of PW - 1 [Sudhakar Dagadu Londhe] and PW - 4 [Bebibai Kautik Nagrale] that, he went to receive the Deceased and from there, they went to the Hotel and Deceased had come to her house at 11.00 p.m., will not be fatal for the Prosecution. The weapon of assault stained with human blood of 'A' group came to be seized at the instance of the Appellant, which further corroborate the testimony of the injured eyewitness. The clothes of Deceased and injured eyewitness were found to be stained with blood. There were number of injuries on the dead body which resulted in death. As the Appellant was known to injured PW - 1 [Sudhakar Dagadu Londhe], there is no question of establishing the identity of the assaulter. There is clear evidence on record

that, the place of incident was well illuminated. From the concrete and unshaken evidence of the Prosecution, it is firmly established that, the Appellant committed the Murder of Deceased. In the case based on the testimony of eyewitness, the motive has little significance. However, from the evidence of PW - 2 [Balasaheb Onkar Ahire] and PW - 4 [Bebibai Kautik Nagrale], the husband and mother, respectively of the Deceased read with statement of the Appellant under Section 313[1][b] of Cr.P.C., it is clear that, the Appellant was involved with the Deceased.

29. It is submitted by the learned Advocate for the Appellant that, alternatively, the case would fall under Exception - 1 of Section 300 of I.P.C. He submits that, due to intimate relations with the Deceased, the Appellant lost his control which was the result of grave and sudden provocation on noticing the Deceased and injured eyewitness together in the Hotel in late hours, which led to the incident. In support of his submissions, he cited the following Judgments :

- [a] **Nawaz Vs. State Rep. By Inspector of Police ; 2019 [3] SCC 517 ;**
- [b] **Kandaswamy Ramaraj Vs. The State By Inspector of Police, CBCID, in Criminal Appeal No.259/2015 of the Hon'ble Apex Court dated November 07, 2019 ;**
- [c] **Dauvaram Nirmalkar Vs. State of Chhattisgarh ; 2022 AIR [SC] 3620 ;**

30. We have gone through the said Judgments. Coming to the case on hand, the clear evidence of injured eyewitness PW - 1 [Sudhakar Dagadu Londhe] established that, the Appellant came to the Hotel, took Deceased outside the Hotel and inflicted number of fatal blows on her with the Sickel and when he

intervened, he was also assaulted with Sickle. This evidence shows that, the Appellant had come to the spot of incident with preparation and premeditation. He brought Sickle with him. The number of assaults on the Deceased clearly shows his intention to eliminate her. There is no iota of evidence that, either PW - 1 [Sudhakar Dagadu Londhe] or Deceased gave sudden provocation to the Appellant. It is not the case that, the assault was by any Article which was readily available on the spot. On re-appreciation of the evidence available on record, as discussed above, Prosecution successfully established the Charge of Murder and causing voluntarily hurt by dangerous weapon on the Informant [PW - 1] against the Appellant. From the evidence available on record, the case do not fall within the exceptions to Section 300 of I.P.C. In the facts and circumstances of the case on hand, in our considered view, the above referred Judgments are of no assistance to the Appellant. No interference is called for in the impugned Judgment and order of conviction recorded by the learned Trial Court for the offence punishable under Sections 302 and 324 of I.P.C. Hence, we proceed to pass the following order :

ORDER

- [I] Criminal Appeal is dismissed.
- [II] The Record and Proceedings be sent back to the learned Trial Court.
- [III] The fee of learned Advocate Mr. Rupesh Jaiswal appointed for the Appellant is quantified at Rs.12,000/- [Rupees Twelve Thousand Only] to be paid by the High Court Legal Services Sub - Committee, Aurangabad.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer

Signed by: Md. Sameer Q.

Designation: PA To Honourable Judge

Date: 23/01/2025 14:55:35