



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.425 OF 2023
WITH
CRI-INTERIM APPLICATION NO.365 OF 2026**

1. Sakhrabai Shivaji Mallav
Age: 52 years, Occ. Labour,
R/o. Tirhe, Tal. North Solapur,
Dist. Solapur.

2. Anita Vijay Bhoi
Age: 38 years, Occ. Labour,
R/o. Sarkoli, Tal. Pandharpur,
Dist. Solapur.

[At present both at Yerwada Central Prison]

...Appellants

VERSUS

1. The State of Maharashtra,
Through Police Station, Solapur,
District. Solapur.

... Respondent

Appearance :

Mr. Ritesh Thobde a/w Mr. Pushkaraj Yadav Deshmukh a/w Mr. Changdev Shingade and Ms. Divyashree Dhumal, Advocates for the Appellants
Mr. S. H. Yadav, APP for the Respondent - State

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

**Reserved on : 2nd September, 2026
Pronounced on : 21st September, 2026**

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

1. This is an Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'the Cr.PC'] against the

Judgment and Order dated 21.02.2023 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.89/2021, convicting and sentencing the Appellants as under :

1. *Accused Sakhrabai Shivaji Mallav and Anita Vijay Bhoi are hereby convicted vide Section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 302 section 34 of the Indian Penal Code and they are 302 r.w.. sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.1000/-(Rs. One Thousand Only) each. In default of payment of fine, the accused shall suffer Rigorous Imprisonment for one month.*
2. *Accused Salahrabai Shivaji Mallav and Anita Vijay Bhoi are hereby convicted vide Section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 307 r.w. section 34 of the Indian Penal Code. However since accused are convicted for the offence punishable under Section 302 r.w. section 34 of I.D.C., no seperate sentence is awarded on them.*
3. *Accused Sakhrabai Shivaji Mallav and Anita Vijay Bhoi are hereby convicted vide Section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 452 r.w. section 34 of the Indian Penal Code and they are sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.1000/-(Rs.One Thousand) each. in default of payment of fine, the accused shall suffer Rigorous Imprisonment for one month.*
4. *Accused Sakhrabai Shivaji Mallav is hereby convicted vide Section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 504 of the Indian Penal Code and she is sentenced to suffer Rigorous Imprisonment for six months and to pay fine of Rs.500/-(Rs.Five Hundred). In default of payment of fine, the accused shall suffer Rigorous Imprisonment for 15 days.*
5. *Accused Sakhrabai Shivaji Mallav is hereby convicted, vide Section 235(2) of the Code of Criminal Procedure of the offence punishable under Section 506 of the Indian Penal Code and she is sentenced to suffer Rigoro is Imprisonment for one year and to pay fine of Rs.1000/-(Rs. One Thousand). In default of payment of fine, the accused shall suffer Rigorous Imprisonment for one month.*

6. *Accused Anita Vijay Bhoi is hereby acquitted vide Section 235(1) of the Code of Criminal Procedure of the offence punishable under Section 504 and under Section 506 of I.P.C.*
7.
8.
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11.”

2. The Prosecution’s case, as revealed from the police report, is as under :

[I] Appellant No.1 – Sakhrabai is the sister of the deceased – Informant / Hausabai. Appellant No.2 – Anita is the daughter of Appellant No.1 – Sakhrabai. The deceased – Hausabai was residing alone at her house in Village - Tirhe, Taluka – South Solapur, District - Solapur. Her son – Bhimrao was residing with his family in the agricultural field. The deceased – Hausabai and Appellant No.1 – Sakhrabai were residing nearby. There were illicit relations between the deceased – Hausabai and the husband of Appellant No.1 – Sakhrabai. For that reason, Appellant No.1 – Sakhrabai used to quarrel frequently with the deceased – Hausabai. On 12.12.2020, around 13:00 hours, when the deceased – Hausabai was sleeping in her house, she heard voice from outside and she opened the door. Both the Appellants, the daughter-in-law of Appellant No.1 – Sakhrabai, and the son of Appellant No.2 – Anita entered the house of the deceased – Hausabai. Appellant No.2 – Anita caught hold the right hand of deceased – Hausabai, son of Appellant

No.2 – Anita caught hold the left hand of the deceased – Hausabai, daughter-in-law – Sunita caught hold the hair of the deceased – Hausabai, and Appellant No.1 – Sakhrabai dealt blows with knife on the deceased – Hausabai. Due to the shouts, neighbourers gathered outside the house of the deceased – Hausabai. Appellant No.1 – Sakhrabai along with Appellant No.2 – Anita threatened the neighbourers, and so they ran away. Thereafter, Appellant No.1 – Sakhrabai and Appellant No.2 – Anita again dealt blows with knife on the deceased – Hausabai. After the assault, the assaulters left after closing the door from outside. The neighbourers opened the door. The son of deceased – Hausabai was informed by the villagers over the phone. The deceased – Hausabai was removed to the Civil Hospital for treatment. The statement of the deceased – Hausabai was recorded by the police, and Crime bearing No.753/2020 came to be registered with Solapur Rural Police Station for the offence punishable under Sections 307, 452 read with Section 34 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'].

[II] During investigation, the Spot Panchnama was done and the knife, pieces of bangles were seized from the spot of incident. Statements of witnesses were recorded. The Appellants were taken into custody. The clothes of the Appellants were seized. The supplementary

statement of the deceased – Hausabai was recorded, wherein, she exonerated the daughter-in-law of Appellant No.1 - Sakhrabai. The seized Articles were sent for Chemical Analysis. The deceased – Hausabai succumbed to the injuries during medical treatment. The dead body was sent for the post-mortem, and the cause of death revealed as "*Stab injury to abdomen (Unnatural)*". The offence punishable under Section 307 of IPC was converted to the offence punishable under Section 302 of IPC. On completion of investigation, the Appellants came to be charge-sheeted. As the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Magistrate passed the committal order. The learned Trial Court framed the charge against the Appellants for the offence punishable under Sections 302, 307, 452, 504 and 506 r/w Section 34 of IPC below Exhibit – 8. Both the Appellants pleaded not guilty and claimed to be tried. In support of the charge, the Prosecution examined in all sixteen (16) witnesses and brought on record the relevant documents. After filing of evidence closure pursis by the Prosecution, the statements of the Appellants came to be recorded under Section 313(1)(b) of Cr.PC. The Appellants stated that, they were falsely implicated. After hearing both the sides and appreciating the evidence on record, the learned Trial Court convicted and sentenced the Appellants as above.

3. Heard the learned Counsel for the Appellants and the learned APP for the Respondent – State. Scrutinized the evidence on record.

[A] It is submitted by the learned Counsel for the Appellants that, the eyewitnesses did not support the case of Prosecution. The Dying Declarations were not voluntary and the same were tutored, as the son of the deceased – Hausabai was present at the time of recording the statement of the deceased. In the second Dying Declaration, the deceased – Hausabai exonerated the daughter-in-law – Sunita. Both the statements of the deceased recorded by the Police Officer were inconsistent to each other, and therefore independent corroboration was necessary to prove the charge. No statement of the deceased was recorded by the Magistrate. There are material omissions in the evidence of the son of the deceased – Hausabai, and therefore his version in respect of oral Dying Declaration cannot be believed. It has come in the evidence of the son of the deceased – Hausabai that, the deceased was not conscious when she was admitted to the Hospital. There is no endorsement on the thumb impression of the deceased. The CA reports show that, the result of ABO grouping of the blood of deceased – Hausabai was inconclusive. Due to sore relations, the Appellants were falsely implicated. The learned Trial Court took the aid of the previous statements of the witnesses recorded under Sections

161 and 164 of Cr.PC to corroborate the Dying Declaration and convicted the Appellants. Considering the inconsistency in the Dying Declarations, they cannot form the basis to prove the charge. The motive cannot substitute proof. The Appeal be allowed. In support of his submissions, he relied on several decisions, which would be considered in the later part of this Judgment.

[B] It is submitted by the learned APP that, the Prosecution's case is based on the Dying Declarations, wherein the deceased – Hausabai has named the Appellants as the assaulters. The weapon used in the assault was a knife, which was seized from the spot of incident. The injuries on the dead body shown in the inquest and in the post-mortem report corroborate each other. The evidence on record goes to show that, the injuries on the deceased were possibly by use of knife. Though some of the witnesses have not supported the Prosecution's case, the circumstantial evidence proved the charge against the Appellants. The Prosecution has brought on record the motive behind the crime. The learned Trial Court has rightly convicted and sentenced the Appellants, and no interference was called for in the same.

4. In **Somasundaram @ Somu Vs. State; (2020) 7 SCC 722, Ram Kishan Singh Vs. Harmit Kaur and Another; (1972) 3 SCC 280, Baij Nath Sah Vs. State of Bihar; (2010) 6 SCC 736; Rajkumar Chotalal**

Rajput @ Chela Vs. State of Maharashtra, in Criminal Appeal No.611/2014, Bombay High Court on 21.09.2021; Audumbar Digambar Jagdane and Another Vs. State of Maharashtra, in Criminal Appeal No.505/1994, Bombay High Court on 14.08.1998, cited by the learned Counsel for the Appellants, the settled legal position that, the statement under Section 164 of Cr.PC is not the substantive piece of evidence and it can be used only to corroborate or contradict the witness *vis-a-vis* statement before the Court and it would be impermissible to record conviction on the basis of the statement under Section 164 of Cr.PC, is reiterated.

5. In **Thurukanni Pompiaj Vs. State of Mysore; AIR 1965 SC 939, Kamla Vs. State of Punjab; (1993) 1 SCC 1 and Uttam Vs. State of Maharashtra; (2022) SCC 576**, cited by the learned Counsel for the Appellants, the settled legal principle in respect of Dying Declarations is reiterated that, the Dying Declaration may form the sole basis of conviction only when found reliable, where there are multiple Dying Declarations, consistency, voluntariness, earliest recording, absence of tutoring and the declarant's capacity to observe and remember are the material considerations and each case must be judged on its own facts and circumstances.

6. In **Poonam Bai Vs. State of Chhattisgarh; (2019) 6 SCC 145, Arun Bhanudas Pawar Vs. State of Maharashtra; (2008) 11 SCC 232, Puran Chand Vs. State of Haryana; (2010) 6 SCC 566, State of Madhya Pradesh Vs. Ramjan Khan and Others; 2024 INSC 823, Sunil Kashinath Raimale Vs. State of Maharashtra; 2006 Cri. LJ 589 and Shahrukh Salim Pathan Vs. State of Maharashtra; in Criminal Appeal No.355/2016, Bombay High Court dated 14.06.2023**, cited by the learned Counsel for the Appellants, the principles in respect of oral Dying Declarations are reiterated that, the oral Dying Declarations not mentioned in the witnesses' statements under Section 161 of Cr.PC but introduced for the first time during trial was held to be an afterthought and the improved version, rendering such evidence unsafe to rely upon, the Courts have to be extremely careful when they deal with a Dying Declaration as the maker thereof is not available for the cross-examination, which poses a great difficulty to the accused person, a mechanical approach in relying upon a Dying Declaration just because it is there is extremely dangerous, the Court has to examine a Dying Declaration scrupulously with a microscopic eye to find out whether the Dying Declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the Dying

Declaration and the signature of the deceased's relative on the Dying Declaration establishes his presence at the time of recording, thereby supporting the defence contention that, the possibility of tutoring cannot be ruled out.

7. In **Gajanan Hanmantu Jiddewar Vs. State of Maharashtra; 2016 All MR Cri. 4919 and the State of Maharashtra Vs. Guddu Krish Yadav in Confirmation Case No.4/2019, Bombay High Court dated 06.05.2022**, cited by the learned Counsel for the Appellants, it is observed that, no identification of the thumb impression, no signature of the attesting witness and no endorsement regarding the patient's fitness to record the Dying Declaration, were the major and glaring omissions affecting the reliability of the Dying Declaration.

8. In **Aher Raja Khima Vs. State of Saurashtra; AIR 1956 SC 217, Jaffar Hussain Dastagir Vs. State of Maharashtra; (1969) 2 SCC 872, Shri. Nankishore Naik Vs. State of Goa; 2014 All MR Cri. 2374, Subramanya Vs. State of Karnataka; 2022 SCC online SC 1400, Kansa Behra Vs. State of Orissa; (1987) 3 SCC 480 and Anwar Ali Vs. State of Himachal Pradesh; (2020) 10 SCC 166**, cited by the learned Counsel for the Appellants, the principles in respect of recovery and forensic evidence are laid down. It is observed that, when the police had already obtained the information about the location, the discovery cannot be

said pursuant to the information derived from the accused, mere detection of human blood on the recovered clothes, without evidence of the blood group, could not positively connect the bloodstains with the deceased and in the absence of such evidence, the bloodstains could not be treated as a circumstance against the accused and motive may provide a link in a case based on circumstantial evidence, its absence cannot be treated as fatal; however, absence of motive is a factor that weighs in favour of the accused and motive cannot substitute for clear and convincing proof of guilt.

9. The principles laid down in the above Judgments are well settled. When the charge is for the offence punishable under Section 302 of IPC, the Prosecution has to establish that, the death was homicidal. The evidence of PW – 8 [Bhimrao Mahadev Mallav] shows that, he is the son of deceased – Hausabai. He resides in the agricultural field and his deceased mother – Hausabai resides in the village. On 12.12.2020, when he was in agricultural field, he received a phone call from Sukeshini Mallav in respect of the incident of assault on Hausabai. He immediately came to the village and removed his deceased mother – Hausabai with the help of other villagers to the Hospital. The evidence of PW – 6 [Dr. Tejas Tapan Mhatre] shows that, on 12.12.2020, he was the Medical Officer at Solapur Civil Hospital. He was on 24 hours duty. On that day,

around 03:00 p.m., the deceased – Hausabai was brought to the Hospital with a history of assault by stabbing and she was hospitalized. The cross-examination shows that, initially, she was taken to the casualty department.

10. The evidence of PW – 16 [Suhas Laxman Jagtap], the Investigating Officer, shows that, on 06.01.2021, Hausabai died during the treatment in the Civil Hospital. The evidence of PW – 2 [Tai Ankush Bohi] shows that, on 06.01.2021, she had been to Civil Hospital, Solapur and saw the dead body of Housabai. There were injuries on the left side chest, stomach, left hand and thigh. She deposed that, the inquest below Exhibit – 19 was prepared. The evidence of PW – 16 [Suhas Laxman Jagtap], Investigating Officer, shows that, the inquest was prepared by PSI Tavare.

11. The evidence of PW – 15 [Dr. Vinod Vasant Rathod] shows that, he was Assistant Professor in the Department of Forensic Science at Civil Hospital. On 07.01.2021, he performed the postmortem on the dead body of deceased - Hausabai. He noticed six (06) injuries on the dead body, which were as follows :

- "1. Sutured wound of size 3 cm on left side of abdomen, 7 cm below xiphoid process, 5 cm lateral to midline, 2 sutures in situ, on opening of sutures, stab wound of size 3.cm x 2 cm x muscle deep, healing margins.*

2. *Sutured wound of size 4 cm on right side of abdomen 9 cm above pubic symphysis, 7 cm lateral to midline, 3 sutures in situ, on opening of sutures, stab wound of size 4cm x 1 cm x muscle deep, healing margins.*
3. *Sutured wound of size 6 cm on dorsum of left hand, 2 cm below wrist, between thumb and index fingure, 5 sutures in situ, on opening of sutures, incised wound of size 6 cm x 1 cm x muscle deep, healing margins.*
4. *Surgical sutured incised wound of length 42 cm, present vertically on midline from 3 cm above xiphisternum to umbilicus, 32 sutures in situ suggestive of laparotomy wound, no gaping present, healing margins.*
5. *Surgical sutured puncture wound of 1 cm X 1 cm X cavity deep on right iliac region suggestive of drainage wound, 2 sutures in situ, no gaping present, healing margins.*
6. *Therapeutic injection mark on right groin, 1 suture in situ, reddish margins."*

11.1. His further evidence shows that, he noticed the injury to the intestine and liver due to stabbing. The probable cause of death was stab injury to abdomen and the postmortem report was at Exhibit – 48 and the provisional cause of death certificate was at Exhibit – 49. In the cross-examination, it has come that, after stabbing the injury if death occurs lately, there may be infection in absence of medical treatment. Suggestion that, death was due to heart attack is denied.

12. The cross-examination of the aforesaid witnesses shows that, the homicidal death of Hausabai is not seriously disputed by the Appellants. There is ample evidence brought on record by the Prosecution to establish that, the death of Hausabai was homicidal. In light of the

above discussed evidence, the Prosecution has successfully established that, the death of Hausabai was homicidal.

13. The Prosecution's case largely rests on the Dying Declarations, oral and written. As far as the oral Dying Declaration is concerned, the Prosecution examined PW – 8 [Bhimrao Mahadev Mallav], the son of deceased – Hausabai. He deposed that, the deceased – Hausabai was his mother and he was residing separately in the agricultural field. On 12.12.2020, when he was in his agricultural field, he received a phone call from PW – 12 [Sukeshini Tukaram Mallav] that, the deceased – Hausabai was beaten. He reached the house of deceased – Hausabai. With the help of the villagers, he removed deceased – Hausabai to the Hospital. On the way to Hospital, the deceased – Hausabai was conscious and he inquired with her about the incident and deceased – Hausabai stated that, the Appellants and Juvenile – Suresh came to her house and Appellant No.1 – Sakharabai asked her as to why she gave food to Shivaji [husband of Appellant No.1 - Sakharabai] and she was abused and assaulted by knife. In his further evidence, he deposed that, the deceased – Hausabai was admitted to the Civil Hospital as an indoor patient for about a month and she died in the Hospital. The cross-examination of this PW – 8 [Bhimrao Mahadev Mallav] goes to show that, his said evidence in respect of oral Dying Declaration by the

deceased – Hausabai to him was an omission. In Paragraph No.8 of his cross-examination, the said omissions are brought on record by the defence. The said omission in respect of oral Dying Declaration is proved by the defence through PW – 16 [Suhas Laxman Jagtap], the Investigating Officer, who recorded his statement. From this evidence on record, it is clearly brought on record that, the evidence of PW – 8 [Bhimrao Mahadev Mallav] in respect of the oral Dying Declaration was an improvement and for the first time, he deposed before the learned Trial Court in respect of the oral Dying Declaration. Therefore, under such circumstances, the evidence of PW – 8 [Bhimrao Mahadev Mallav] in respect of oral Dying Declaration by the deceased – Hausabai is required to be seen with serious doubt and the said evidence is liable to be discarded.

14. As regards the written Dying Declarations, the evidence of PW – 7 [Anil Atmaram Devade], the Police Officer, who was posted with Taluka Police Station, Solapur, shows that, on 12.12.2020, PW – 16 [Suhas Laxman Jagtap], the Investigating Officer, directed him to go to the Civil Hospital, Solapur to record the statement of the injured. Accordingly, he went to the Hospital, inquired about the fitness of the patient – Hausabai and after the Medical Officer informed him that, the patient was fit to give the statement, he recorded the statement below Exhibit

– 31, which formed the basis to register Crime No.753/2020 for the offences punishable under Sections 307, 452, 504 and 506 r/w Section 34 of IPC, wherein the deceased – Hausabai stated of assault by both the Appellants and other accused persons with knife on account of her relations with the husband of Appellant No.1 – Sakharabai. He deposed that, the thumb impression of deceased - Hausabai was taken on her statement. The evidence of PW – 6 [Dr. Tejas Tapan Mhatre] shows that, he was the Medical Officer and attached to the Civil Hospital, Solapur on 12.12.2020. On that day, around 03:00 p.m., the patient – Hausabai stated the history of assault by stabbing and she was admitted. The police recorded her statement in his presence and he gave endorsement that, the patient was conscious, oriented and in a position to give statement and his endorsement was at Exhibit – 28 on the statement.

15. The evidence of PW – 7 [Anil Atmaram Devade] and PW – 6 [Dr. Tejas Tapan Mhatre] is inconsistent on the point of presence of third person at the time of recoding the statement of deceased – Hausabai. In his cross-examination, PW – 7 [Anil Atmaram Devade] deposed that, the deceased – Hausabai was alone in the Ward and he denied the suggestion that, the statement of deceased – Hausabai was tutored at the instances of the persons, who were present near her; whereas, the evidence of PW – 6 [Dr. Tejas Tapan Mhatre] shows that, the statement

of deceased – Hausabai was recorded in the Ward where three (03) to four (04) relatives of the deceased – Hausbai were present when the statement was recorded. The suggestion is given in the cross-examination that, the said Dying Declaration below Exhibit – 31 was tutored. The evidence of PW – 8 [Bhimrao Mahadev Mallav] shows that, it has clearly come in his cross-examination that, when the police came to the Civil Hospital, he and other relatives were near the bed of Hausabai. Suggestion is given in his cross-examination that, his signature was taken on the statement of deceased - Hausabai in the Police Station. It has come in his cross-examination that, after two (02) to three (03) days, the police came to the Hospital to record the statement of deceased - Hausabai.

16. Undisputedly, the Exhibit – 31, i.e. Dying Declaration, bears the name and signature of PW - 8 [Bhimrao Mahadev Mallav], who is the son of deceased – Hausabai. The said Exhibit – 31 clearly states that, the said statement was read over by PW – 8 - [Bhimrao Mahadev Mallav] to the deceased and she stated the same to be true. This evidence on record clearly establishes that, when the statement of deceased – Hausabai below Exhibit – 31 was recorded in the Hospital Ward, there was presence of PW – 8 [Bhimrao Mahadev Mallav] and other relatives. As seen above, the suggestions of tutoring are given to the witnesses. In

light of the above, the Dying Declaration below Exhibit – 31 cannot be treated as voluntary statement by the deceased – Hausabai, as the evidence on record depicts the surrounding circumstances to suggest the strong possibility of tutoring. The evidence on record do not establish that, the said Dying Declaration was voluntary.

17. Another aspect is in respect of fitness of the deceased – Hausabai to give statement. Though PW – 6 [Dr. Tejas Tapan Mhatre] deposed that, he gave endorsement that, the patient was conscious, oriented and in a position to give the statement, he admits that, when the patient is brought to the Hospital in the causality ward, the case papers are prepared with the history. The evidence of PW – 16 [Suhas Laxman Jagtap], the Investigating Officer, shows that, he had not collected the medical papers regarding the physical condition of deceased – Hausabai before recording her statement. According to PW – 8 [Bhimrao Mahadev Mallav], when the police came to the Civil Hospital, firstly, the deceased – Hausbai was not in a position to give statement and oxygen cap (mask) was put to her mouth and nose for about 10 – 15 days. Further, the evidence of PW- 6 [Dr. Tejas Tapan Mhatre] goes to show that, due to heavy bleeding, blood pressure of the patient may go down and due to assault on the stomach, heavy bleeding had taken place, and therefore, it was possible that, the patient may go in Coma.

This evidence clearly goes to show that, there is no clear, cogent and trustworthy evidence on record to show that, the deceased – Hausabai was in conscious and in a fit condition to give the statement. Absence of the clear evidence in respect of fitness of deceased – Hausabai to give the statement, the above discussed evidence on record in respect of Exhibit – 31 - Dying Declaration is required to be seen with doubt and cannot form the basis to prove the charge.

18. The evidence of PW – 16 [Suhas Laxman Jagtap], the Investigating Officer, goes to show that, on 29.12.2020, he recorded the supplementary statement of the deceased – Hausabai, wherein, she stated of assault by three (03) accused persons and denied the presence of the accused – Chayabai. His evidence nowhere shows as to whether the fitness of deceased – Hausabai was ascertain from the Medical Officer before recording the said supplementary statement. There is no evidence of the Medical Officer in respect of the said supplementary statement dated 29.12.2020. In the cross-examination, PW – 16 [Suhas Laxman Jagtap] admitted that, after the admission of Hausabai to the Hospital till her death, he did not record her statement. The fact remains that, the accused - Chayabai, who is named as the accused in the Dying Declaration Exhibit – 31, is exonerated. This evidence clearly brings on record inconsistency in the two (02) statements dated

12.12.2020 and 29.12.2020. The first statement below Exhibit – 31 is against both the Appellants and two more accused persons; whereas in the second statement as deposed by PW – 16 [Suhas Laxman Jagtap] the deceased - Hausabai completely exonerates the accused – Chayabai. This becomes another reason to see the Dying Declarations with serious doubt. With this evidence on record, the evidence in respect of the Dying Declarations in any event cannot form the basis to prove the charge.

19. The other evidence brought on record by the Prosecution is the discovery of *Saree* at the instance of Appellant No.2 – Anita Vijay Bhoi pursuant to her statement. On this point, the Prosecution relied on the evidence of PW – 1 [Prasad Vitthal Survase], who deposed that, on 25.12.2020, he was called to the Taluka Police Station, wherein, Appellant No.2 – Anita Vijay Bhoi stated to produce the *Saree* and memorandum statement at Exhibit - 15 was accordingly prepared, and thereafter Appellant No.2 – Anita Vijay Bhoi led them to one place and removed the *Saree* from the sugarcane crop. According to this witness, there were blood stains on the said *Saree* and the same was seized under the Panchnama below Exhibit – 16. This evidence of PW – 1 [Prasad Vitthal Survase] receives serious dent, in the cross-examination, wherein it has come that, on inquiry with the Police, they told that, one *Saree* was to be seized and the *Saree* was lying inside the sugarcane

crop, which was an open place. Suggestions are given that, this evidence in respect of discovery under Section 27 of the Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act'] was false. This evidence of PW – 1 [Prasad Vitthal Survase] finds no corroboration from the evidence of PW – 16 [Suhas Laxman Jagtap] as to the place from where the *Saree* was seized. The evidence of PW – 16 [Suhas Laxman Jagtap] shows that, on 25.12.2020, Appellant No.2 – Anita Vijay Bhoi produced one *Saree* as per her statement. The evidence of PW – 1 [Prasad Vitthal Survase] and PW – 16 [Suhas Laxman Jagtap] do not establish that, the seizer of *Saree* was pursuant to the voluntary statement by Appellant No.2 – Anita Vijay Bhoi during the course of investigation. Further, the CA report below Exhibit – 67 though show human blood on *Saree* at Exhibits – E and H at Serial Nos.5 and 8, respectively, the CA report at Exhibit – 71 in respect of blood of the deceased – Hausabai shows that, the blood group could not be determined as the results was inconclusive. The CA report below Exhibit – 69 in respect of blood group of Appellant No.1 - Sakhrabai Shivaji Mallav shows that, her blood group was 'A', and therefore human blood of group – 'A' on the *Saree* below Exhibit – E at Serial No.5 cannot be treated as incriminating circumstance. Therefore, the seizure of *Saree* will not be relevant.

20. As regards the evidence of PW – 4 [Hirabai Sanjay Tupsundar] shows that, the Police produced the clothes before her, which were seized under the Panchnama below Exhibit – 23. In cross-examination, she admitted that, the Panchnama was already written and she was asked by the Police to put her thumb impression and the Panchnama was not read over to her. Similarly, the evidence of PW – 16 [Suhas Laxman Jagtap] do not show that, the seizure of the clothes of Appellant No.1 - Sakhrabai Shivaji Mallav was pursuant to her statement under Section 27 of the Evidence Act. As regards the Article – Knife, which was seized from the spot of incident show the human blood of 'A' group. As the analysis of blood group of the deceased – Hausabai was inconclusive, the same cannot be termed as incriminating circumstance.

21. The other evidence brought on record by the Prosecution is of no assistance for the Prosecution and takes the case no further. The evidence of PW – 3 [Sachin Suresh Gaikwad], PW – 5 [Ritesh Pandurang Mallav], PW – 9 [Suraj Tanaji Patil], PW – 10 [Samadhan Nagnath Lavate], PW – 11 [Jayashri Prabhakar Mallav], PW – 12 [Sukeshini Tukaram Mallav] and PW – 13 [Mangesh Suresh Mallav] shows that, they did not support the case of Prosecution and though cross-examined by the learned APP, nothing material came on record in support of the Prosecution's case. The evidence of PW – 14 [Kiran Vijay Pawar] shows that, he had carried the muddemal to the Laboratory.

22. The re-appreciation of the evidence on record leads us to record the finding that, the Prosecution has failed to establish the charge against the Appellants. The evidence on record do not conclusively establish the charge against the Appellants. As discussed above, the evidence in the nature of Dying Declarations is liable to be discarded for the reasons discussed above. The other corroborative evidence do not take the Prosecution's case any further. The motive, by itself, does not prove the case of the Prosecution. In light of the above discussion, the conviction and sentence recorded by the learned Trial Court against the Appellants are liable to be set aside, and the Appellants are entitled for acquittal. Hence, the following order :

ORDER

- [a] The Criminal Appeal is allowed.
- [b] The Judgment and Order dated 21.02.2023, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.89/2021, convicting and sentencing the Appellants for the offence punishable under Sections 302, 307, 452, 504 and 506 r/w Section 34 of IPC is quashed and set aside.
- [c] The Appellants stands acquitted for the offence punishable under Sections 302, 307, 452, 504 and 506 r/w Section 34 of IPC.
- [d] The Appellant No.1 - Sakhrabai Shivaji Mallav is behind the bars. She be released, if not required in any other offence.

- [e] The Appellant No.2 - Anita Vijay Bhoi is on bail. Her bail bond stands cancelled.
- [f] The muddemal be dealt with as per the operative order of the Judgment passed by the learned Trial Court.
- [g] In view of disposal of Appeal, pending application, if any, stands disposed of accordingly.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]