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

CRIMINAL APPEAL NO.991 OF 2024
WITH
CRI-INTERIM APPLICATION NO.3657 OF 2024

Pintya @ Sachin Laxman Dupate,
Convict No.C – 8144,
Adult, Aged 41 years,
Address : Boudha Wasti,
Atake, Taluka - Karad, Dist. - Satara.
[Presently lodged at Kolhapur Central Prison] … Appellant

VERSUS

The State of Maharashtra,
Through Karad Taluka Police Station,
Taluka Karad, District - Satara. … Respondent

Appearance :

Mr. Satyajeet M. Mirajkar, Advocate for the Appellant

Dr. Ashvini A. Takalkar, APP for the Respondent - State

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

Reserved on : 10th September, 2026
Pronounced on : 1st October, 2026

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

1. This is an Appeal under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred to as 'BNSS'] against the Judgment and Order dated 09.07.2024, passed by the learned Extra Jt. District @ Sessions Judge, Karad [hereinafter referred to as 'the learned

Trial Court'], in Sessions Case No.51/2021, convicting and sentencing the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'the IPC']. The operative order of the Judgment is reproduced below :

> *"1) Accused No.1 Pintya @ Sachin Laxman Dupate is hereby convicted, vide section 235 (2) of Criminal Procedure Code of the offence punishable under sections 302 of Indian Penal Code, 1860 and sentenced to suffer R.I. for life and to pay fine of Rs. 1000/- (One Thousand Rupees only) in default to suffer R.I. for three (3) months.*
>
> *2) Accused Nos.1 is hereby acquitted for the offences punishable under Sections 201, 504, 506 of I.PC.*
>
> *3) Accused No.2 is hereby acquitted for the offences punishable under Sections 302, 201, 504, 506 of 1.PC.*
>
> *4) Bail-bonds of accused No 2 to stand cancelled.*
>
> *5) Seized muddemal property Nos. 1 to 7 and 9 to 15 being worthless be destroyed after appeal period is over. Seized muddemal property No.8 i.e. motorcycle bearing registration No.10 MH-11/Q-5769 be returned to its registered owner, if already returned, then said bond stand cancelled after appeal period is over*
>
> *6) Copy of this judgment be given to accused with free of cost.*
>
> *7) Accused No.1 is made aware that he has right of appeal against his conviction and sentence before Hon'ble High Court, Bombay."*

2. The case of Prosecution, as revealed from the police report, is that, Ajay Dupate [hereinafter referred to as 'Deceased'] was the brother of Informant – Nagesh Dupate. They were resident of Atake, Taluka – Karad, District – Satara. They were residing together. The Deceased was working as a Driver on the JCB. The Appellant and his father, i.e. acquitted Accused No.2 – Laxman Dupate, were suspecting

the relations between the Deceased and the wife of Appellant and a report in that regard was given by acquitted Accused No.2 – Laxman Dupate against the Deceased to the Karad Police Station one (01) year prior to the date of incident. The Appellant had sent his wife to her parental house. The Appellant had asked the Informant to warn the Deceased or else, he will cause grievous hurt to the Deceased. On 18.03.2021, the Deceased left the house in between 7:30 a.m. and 7:45 a.m. for going to attend his work. After some time, the nephew of Informant by named Ganesh came home and informed that, the Deceased was assaulted by the Appellant and acquitted Accused No.2 – Laxman Dupate. The Informant immediately went to the spot and saw that, the Deceased was in injured condition and was held by his cousin brother – Bharat Dupate. The parents of the Appellant were seen pulling the Appellant to take him home and the Appellant was holding a wooden log. The Deceased was in an unconscious state and blood was oozing from his head. The Informant with the help of his cousin brother – Bharat Dupate and others removed the Deceased to the Hospital for treatment. The Deceased was hospitalized in the Krishna Charitable Hospital at Karad. The Informant went to the Karad Taluka Police Station and lodged the report against the Appellant and Crime No.155/2021 came to be registered for the offence punishable under Section 307 of IPC.

3. The police went to the Hospital and to the spot of incident. The spot panchnama was done. The clothes of the Deceased came to be seized. The statements of witnesses were recorded. The Appellant came to be arrested. The clothes of the Appellant were seized. The wooden log came to be seized pursuant to the information disclosed by the Appellant. The Accused No.2 – Laxman Dupate came to be arrested and his clothes were seized. The statement of the Deceased could not be recorded as he was not found fit and conscious to give statement. On 21.03.2021, the Deceased succumbed to the injuries during the treatment. The Inquest was done and the dead body was referred for postmortem. The postmortem was conducted and the dead body was handed over to the relatives for the last rites. The offence punishable under Section 302 of IPC came to be included in the crime along with other Sections of IPC. After completion of investigation, the charge-sheet came to be filed against the Appellant and acquitted Accused No.2 – Laxman Dupate.

4. As the offence punishable under Section 302 of IPC is exclusively triable by the Court of Sessions, the learned Magistrate passed the committal order. The learned Trial Court framed the charge for the offence punishable under Sections 302, 201, 504 and 506 r/w Section 34 of IPC against the Appellant and acquitted Accused No.2 – Laxman

Dupate below Exhibit – 8. The Appellant and acquitted Accused No.2 – Laxman Dupate pleaded not guilty and claimed to be tried. To prove the charge, the Prosecution examined in all eighteen (18) witnesses and brought on record the relevant documents, such as report / FIR, panchnamas, medical papers of the Deceased, photographs taken during the course of investigation, postmortem report, reports of the Chemical Anaylser (CA) etc. in the evidence of the witnesses. After filing the evidence closure pursis by the Prosecution, the statements of the Appellant and acquitted Accused No.2 – Laxman Dupate came to be recorded under Section 313(1)(b) of Cr.PC. The Appellant and acquitted Accused No.2 – Laxman Dupate stated that, they wanted to examine the defence witness and examined two (02) witnesses as defence witness. After hearing both the sides and on appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order convicting the Appellant and acquitting Accused No.2 – Laxman Dupate as seen from the operative order referred above.

5. Heard the learned Counsel for the Appellant and the learned APP for the Respondent – State. Scrutinized the evidence on record.

[A] It is submitted by the learned Counsel for the Appellant that, the case largely hinges on the testimony of a minor girl who is examined as the eyewitness. There are discrepancies in the testimony of the minor

witness and other witnesses examined by the Prosecution. There was delay in recording the statement of the minor witness. On the sole testimony of the minor witness, the learned Trial Court acquitted Accused No.2 – Laxman Dupate and convicted the Appellant. The evidence of Defence Witness No.2 goes to show that, the minor witness was with her at the time of incident, and therefore the evidence of the minor witness that, she witnessed the incident gets falsified. The evidence on record do not prove the guilt of the Appellant beyond reasonable doubt and the learned Trial Court committed an error in convicting and sentencing the Appellant on the sole testimony of the minor witness. He submitted that, the Appeal be allowed and the conviction and sentence be set aside.

[B] It is submitted by the learned APP that, the minor witness who saw the incident, was examined by the Prosecution and she withstood the cross-examination. The evidence of the minor witness remained unshaken in the cross-examination. The minor witness gave the detail account of the incident. The evidence of the father of minor witness shows that, he also witnessed the incident after he was informed about the incident by the minor witness. The medical evidence on record proved that, the death was homicidal. There is corroborative evidence in the nature of blood stained clothes of the Appellant, which support the

case of Prosecution. The learned Trial Court has rightly passed the impugned Judgment and Order and no interference is warranted in the same and Appeal be dismissed. In support of her submissions, she relied on the following Judgments:

[a] In **State of U.P. Vs. Hari Mohan and Others; AIR 2001 SC 142**, wherein, it is observed that, *the defective investigation cannot be made a basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against the accused persons.*

[b] In **Suryanarayana Vs. State of Karnataka; 2001 (1) Supreme 1**, wherein, it is observed that, *the evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.*

6. The witnesses examined by the Prosecution can be catogarized as the Informant, eyewitnesses, panch witnesses, doctors and police witnesses. The Prosecution's case rests on the testimony of the eyewitnesses and other corroborative evidence. When the charge is for the offence punishable under Section 302 of IPC, it becomes necessary for the Prosecution to prove that, the death is homicidal.

7. To prove the homicidal death of Ajay Dupate, the Prosecution relied on the evidence of the Informant, other witnesses and medical evidence. The evidence of PW – 1 [Nagesh Dupate] shows that, he is the brother of Deceased. In the morning of 18.03.2021, after the Deceased left the house for work, he was informed by his nephew Ganesh Dupate that, the Deceased was assaulted and so he reached on the spot of incident. He saw the Deceased in an unconscious state having injury in the head and blood oozing from the injury. He along with the help of cousin brother – Bharat Dupate [PW – 10] and others shifted the Deceased to the Krishna Charitable Hospital. The evidence of PW – 10 [Bharat Dupate] shows that, he is the cousin brother of the Deceased and of PW – 1 [Nagesh Dupate]. He resides in the neighbourhood of the Deceased. In the morning of 18.03.2021, he came to know from his daughter – Pranita Dupate that, the Deceased was assaulted and so he reached on the spot of incident. He saw the Deceased in an injured

condition with injury on his head. He with the help of others removed the Deceased to the Krishna Hospital for treatment.

8. The evidence of PW – 5 [Dr. Priyanka Yashvantrao Hendre] shows that, she was Casualty Medical Officer in Krishna Hospital, Karad. At about 07:45 a.m. on 18.03.2021, injured – Ajay Dupate [Deceased] was brought by his relatives to the Hospital with the history of assault. The Deceased was having head injury and nasal bleed with history of loss of consciousness. She recommended CT scan and shifted the Deceased to the I.C.U. The CT scan showed *subdural hemorrhage along right fronto-temporo-parietal region with midline shift of about 12 mm.* She issued injury certificate below Exhibit – 37. She found the following injuries on the patient : *"1. CLW over occipital region measuring size 4 x 3 x 3 c.m. 2. CLW over occipital region measuring 10 x 2 x 2 c.m. 3. CLW over lower lip size measuring 2 x 1 x 1 c.m.*"

9. The evidence of PW – 13 [Dr. Burhanuddin K/ Bhindarwala] shows that, he was attached to the Krishna Hospital, Karad in the General Surgery Department. The injured – Ajay Dupate [Deceased] was admitted for treatment. He was unfit for giving the statement. The evidence of PW – 8 [Dr. Parth Saradhi Reddy] shows that, he was posted in the Neurosurgery Department in the Krishna Hospital, Karad. On 18.03.2021, the patient – Ajay Dupate [Deceased] was admitted for

treatment. The CT scan was done. The patient was treated. He also found the above referred injuries on the patient. Injury Nos.1 and 2 were grievous in nature and Injury No.3 was simple in nature. On 21.03.2021, the patient was on ventilator and inotropic support and at about 4:15 p.m., the injured – Ajay Dupate [Deceased] was declared dead.

10. The evidence of PW – 9 [Dr. Sheela Ashok Khairmode] shows that, she was the Medical Officer at Sub-District Hospital, Karad. On 23.03.2021, she was on duty. The dead body of Ajay Dupate [Deceased] was brought with Inquest panchnama by the police for postmortem. The medical papers from the Krishna Hospital disclosed the history of assault. She performed the postmortem and found the following external and internal injuries mentioned in Column Nos.17 and 19, respectively in the postmortem report :

> *"i. Curvilinear surgically stitched wound present over right fronto temporo parietal region extending to posterior of pinna of right ear of size 32 cm. In length with 53 stitches in situ S/O Craniotomy.*
>
> *ii. Contusion present over left axillary region of size 4 cm X 1 cm, reddish in colour;*
>
> *iii. Contusion present over left lumbar region of size 4 cm X 2 cm reddish in colour;*
>
> *AND*
>
> *i. Underscalp haematoma present right fronto temporo parietal region of size 5cm X 6 cm, with corresponding subgaleal haemorrhage.*

ii. *Menninges 1. subdural haemorrhage present over right fronto temporo parietal of zie 6 cm X 5 cm, dark in colour.*

iii. *Subarachnoid haemorrhage present over right fronto temporo parietal region of size 6 cm X 5 cm, dark red in colour.*

iv. *Brain-intact and oedematous.*

v. *Tonsillar herniation present."*

10.1 PW – 9 [Dr. Sheela Ashok Khairmode] further deposed that, the aforesaid injuries were ante-mortem in nature and were sufficient in the ordinary course of nature to cause death. She opined the cause of death as '*Cranio cerebal injury as a result of hard and blunt impact on head due to assault (unnatural)'*. She prepared the postmortem report below Exhibit – 59.

11. The cross-examination of the aforesaid witnesses examined by the Prosecution goes to show that, the injuries found on the Deceased and cause of death is not seriously disputed. The cross-examination of the aforesaid witnesses could not create any dent in the evidence in respect of the injuries on Deceased and the cause of death. The evidence of Medical Officers / Doctors finds corroboration from the medical papers and postmortem report [Exhibit - 59]. Thus, on the basis of evidence on record, it is clear that, the Prosecution successfully established that, the death of Ajay Dupate was homicidal.

12. The evidence of PW – 1 [Nagesh Dupate] shows that, in the morning of 18.03.2021, his nephew – Ganesh Dupate came to his house and informed that, the Deceased was assaulted by the Appellant and acquitted Accused No.2 – Laxman Dupate near the temple with the wooden log. Thereafter, he reached on the spot of incident and found the Deceased in an injured condition. His evidence shows that, he is not the eyewitness to the actual incident. PW – 10 [Bharat Dupate] does not speak of presence of PW – 1 [Nagesh Dupate] at the spot of incident. His evidence in respect of assault on the Deceased by the Appellant and the acquitted Accused No.2 – Laxman Dupate is hearsay. Undisputedly, the Prosecution did not examine the Ganesh Dupate, who informed PW – 1 [Nagesh Dupate] about the incident. After admitting the Deceased to the Hospital, PW – 1 [Nagesh Dupate] lodged the report with the police and set the criminal law in motion.

13. The evidence of PW – 10 [Bharat Dupate], who is the cousin brother of the Deceased and residing nearby, shows that, on 18.03.2021 in the morning, when he was at his house, his daughter – Pranita Dupate [PW – 14] came home and informed him of assault on the Deceased by the Appellant and acquitted Accused No.2 – Laxman Dupate and so he went to the spot of incident. When he reached the spot of incident, he noticed the Appellant and acquitted Accused No.2 – Laxman Dupate

were assaulting the Deceased. The Appellant was having stick in his hand and acquitted Accused No.2 – Laxman Dupate was having *Gola* [iron ball]. He deposed that, he caught hold the Deceased and put the cloth on the injury of Deceased. The Deceased was removed to the Hospital by him with the help of others. His evidence shows that, after admitting the Deceased in the Krishna Hospital, the police came in the hospital. The police inquired with him and recorded his statement. The said statement of PW – 10 [Bharat Dupate] being first in point of time was the first information in respect of the incident. The said statement is not brought on record by the Prosecution. Why the same is not treated as First Information Report is best known to the Prosecution. Thus, it can be presumed that, the said statement of PW – 10 [Bharat Dupate] was not favorable the Prosecution.

14. The evidence of PW – 1 [Nagesh Dupate] and PW – 10 [Bharat Dupate] shows that, from the spot, the Deceased was removed and admitted to the Krishna Hospital, Karad. The evidence of Doctors from the Krishna Hospital examined by the Prosecution shows that, the relatives had given the history of assault. Their evidence nowhere shows that, the relatives had given the names of assaulters. The copies of the medical case papers of the Deceased below Exhibit – 49 brought on record in the evidence of PW – 8 [Dr. Parth Saradhi Reddy] shows that,

the history of assault was given by the brother of the Deceased as "*patient had argument with some persons followed by fight*". The said history is reflected from the copy of the head injury proforma and summary sheet, which are part and parcel of Exhibit – 49. The said medical documents which were prepared at the relevant point of time nowhere mentions the names of assaulters. It is strange that, when PW – 1 [Nagesh Dupate] and PW – 10 [Bharat Dupate], who are the full blood brother and cousin brother, respectively, of the Deceased, who admitted the Deceased to the Hospital, gave the history of assault as '*argument with some person and fight*'. When according to them, they were knowing the names of the assaulters from the nephew – Ganesh Dupate and daughter – Pranita Dupate, it is strange that, they did not named the assaulters while giving the history of assault at the time of admitting the Deceased in the Hospital. When both the said witnesses had knowledge of the assaulters, nothing prevented them to name the assaulters at that initial point of time when the history of assault was narrated to the Hospital. Under such circumstance, the evidence of PW – 10 [Bharat Dupate] that, after reaching the spot of incident, he witnessed the actual incident of assault is required to be seen with serious doubt.

15. The evidence of PW – 1 [Nagesh Dupate] goes to show that, he went to the Taluka Karad Police Station and lodged the report in respect of the incident. The said report is at Exhibit – 20. The evidence of PW – 15 [Ashok Bhapkar] shows that, from September – 2017 to November – 2021, he was attached to Karad Police Station as the Police Sub-inspector and Crime No.155/2021 was marked to him for the investigation. The report below Exhibit – 20 and FIR format below Exhibit – 21 goes to show that, the report was lodged at 13.13 p.m. on 18.03.2021 in respect of the incident of assault on the Deceased. In the said report only, the Appellant came to be named as assaulter. Further, it is clear from the evidence of PW – 1 [Nagesh Dupate] that, the relations between their family and the family of the Appellant were not cordial. His evidence shows that, since childhood, he had the knowledge that, there was dispute between both the families, i.e. the family of Deceased and the family of Appellant. This evidence clearly goes to show that, both the sides were at loggerheads. The evidence of PW – 1 [Nagesh Dupate] goes to show that, after a period of six (06) hours, the Appellant came to be named as the assaulter. In normal circumstance, the said period of five (05) hours in reporting the incident along with the name of the assaulter to the police would not have been fatal. However, in light of the evidence of PW – 1 [Nagesh Dupate] and PW – 10 [Bharat Dupate] who had the knowledge of the assaulters, and did

not named the assaulters in the alleged history of the assault and the statement of PW – 10 [Bharat Dupate], which was recorded by the police after the Deceased was hospitalized and was not treated as FIR, and enmity between both the sides, naming the Appellant as the assaulter after a period of six (06) hours is required to be seen with doubt.

16. There is no dispute that, the Appellant came to be arrested on 18.03.2021 after the crime was registered on the report lodged by PW – 1 [Nagesh Dupate]. According to the Prosecution, the wooden log Article – P1 was seized at the instance of the Appellant pursuant to his voluntary statement under Section 27 of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act']. For this, the Prosecution relied on the evidence of PW – 3 [Dadasaheb Bhimrao Kasne], who deposed that, in March – 2021, the police called him in the police station and stated to show the wooden log and the Memorandum Exhibit – 31 came to be prepared, and the wooden log which was burnt at one side was seized from one tin-shed. PW – 15 [Ashok S. Bhapkar], the Investigating Officer also deposed that, the said Article – P1 was seized at the instance of the Appellant from the place shown to him. Nowhere the evidence of the said two (02) witness goes to show that, there was blood on the said wooden log. There is nothing to show that, the said

wooden log was sent for the Chemical Analysis for examination as there is no reference of the wooden log in the articles which were referred for examination vide Exhibit – 85. The CA report below Exhibit – 102 nowhere refers to the wooden log as the article received and examined. Under such circumstances, the said discovery and recovery of the wooden log will not be relevant.

17. The other evidence is in respect of blood stained clothes of the Appellant. The CA report below Exhibit – 102 shows that, human blood of group 'B' was found on the full shirt and full pant marked as C1 and C2, respectively. The CA report at Exhibit – 101 goes to show that, the blood of the Deceased was of group 'B'. There is inconsistency in the evidence of panch witness and Investigating Officer in respect of seizure of the said clothes. The evidence of panch witness PW – 6 – Amol shows that, on 18.03.2021, he was called by the police and at that point of time, the Appellant made available one white shirt and blackish pant. On the contrary, according to PW – 15 [Ashok Bhapkar], Investigating Officer, on 18.03.2021, the clothes which were on the person of the Appellant, i.e. white shirt and blackish pant came to be seized by giving him another clothes. Apart from the said inconsistency, there is no CA report in respect of the blood group of the Appellant. The learned Trial Court as seen from the observations in Paragraph

No.63 of the impugned Judgment, completely discarded the evidence in respect of recovery of the wooden log and clothes of the Appellant by observing that, it was highly suspicious and doubtful. The said Paragraph No.63 is reproduced below :

> *"63. According to prosecution, clothes on the person of accused were seized in Karad Taluka Police Station in between 5.30 p.m. and 6.10 p.m. on 18/03/2021 i.e. on the day of incident. It is further according to prosecution that on the very day i.e. on - 18/03/2021 in between 4.27 p.m. and 4.42 p.m. accused gave disclosure statement in presence of I.O. and panch witnesses in connection with recovery of muddemal weapon wooden stick at Baudh Vasti, Atake. It is stated that at the time of disclosure statement while in police station, photographs were taken. Prosecution has referred photographs Exh. P-26/5 and Exh. 26/6. Similarly prosecution has referred photographs Exh. P-26/7 and 26/8 stating those are the photographs of the spot at Atake where accused showed muddemal weapon. In photographs exh. P 26/5,7, and 8 it is seen that yellow colour full sleeve shirt and blue colour jeans pants were clothes on the person of accused. These photographs are earlier point of time of the clothes seizure panchanama exh. P-45. If the seizure panchanama and photographs are read together, it is evident that at the time of disclosure statement i.e. 4.27 p.m. yellow colour full sleeve shirt and blue colour jeans were on the person of accused. In the circumstance, necessarily at 5.30 p.m. very clothes should have been seized from the person of accused. But there seems the clothes seized under panchanama Exh. P-45 are yellow colour full sleeve shirt and blackish colour full pant. This evidence, therefore, seems to be highly suspicious and doubtful. Same is the thing so far recovery of crime weapon. As per disclosure statement, it seems to have been taken place at the place of Baudh Vasti, Atake, whereas evidence and photographs show, accused gave disclosure statement while in police station. In the circumstance recovery of crime weapon as well as recovery of cloths stated to be that of accused, cannot be relied upon."*

17.1 In the light of the above discussion, the evidence in respect of blood stained clothes of the Appellant will not be of any assistance to the Prosecution.

18. What remains is the evidence of PW – 14 [Pranita Dupate], who is the daughter of PW – 10 [Bharat Dupate] and the cousin-niece of the Deceased. She is examined by the Prosecution as an eyewitness to the incident. It appears that, the statement of this witness was recorded by the police after a period of two (02) days. However, nothing has come in the evidence in respect of delay. Her evidence goes to show that, at the time of incident, she was 11 years old. She deposed that, on 18.03.2021, she was cycling near the Naik Baba Temple near her house and she saw the Appellant and acquitted Accused No.2 – Laxman Dupate assaulting the Deceased. She deposed that, acquitted Accused No.2 – Laxman Dupate kicked the two-wheeler on which the Deceased was travelling and the Appellant assaulted the Deceased with wooden log on the head and acquitted Accused No.2 – Laxman Dupate assaulted the Deceased with an iron ball. She went to her house and informed the incident to her father PW – 10 [Bharat Dupate]. She was subjected to cross-examination. Her cross-examination shows that, when question was put to her, as to what was the day on 18.03.2021, she deposed that, it was Thursday. To the question as to what time she got up on 18.03.2021, she deposed that, she woke up at 05:00 a.m. To the question as to what she was doing from 05:00 a.m. to 07:00 a.m., she deposed that, she was cycling. To the question as to what was the length of the stick, which was in the hand of the Appellant, she deposed that, it was five [05] feet.

To the question as to whether the said wooden stick was stained with blood, she deposed in the affirmative.

19. The date of the deposition of PW – 14 [Pranita Dupate] is 08.09.2023. She deposed before the Court after a period of two (02) years and five (05) months from the date of the incident. Surprisingly, she remembered the day of incident as Thursday, she knew the length of the stick used in the assault. It appears improbable that, the child of her age will remember each and every detail such as the date of incident, the length of the stick used in the assault and the weekday of the incident after a period of more than two (02) years. It does not appear to be natural. Though it has come in her evidence that, Vilas uncle was taking bath under the tap in the vicinity of spot of incident, the evidence of PW – 12 [Vilas Dupate] shows that, his evidence in respect of assault by the Appellant and acquitted Accused No.2 – Laxman Dupate was hearsay. The evidence of PW – 14 [Pranita Dupate] creates reasonable doubt as to whether she actually witnessed the incident. It has come in her evidence that, her parents were present when her statement was recorded by the police. Suggestions are given that, she did not witnessed the incident and she was tutored. The manner in which the said child witness deposed, creates a doubt in the mind of Court about her being the eye-witness to the incident and it

would be highly unsafe to maintain the conviction solely on her evidence. Undisputedly, on the basis of the evidence of PW – 14 [Pranita Dupate], the Accused No.2 – Laxman Dupate has been acquitted and the Appellant is convicted. Admittedly, there is no Appeal against the acquittal. Thus, the evidence of PW – 14 [Pranita Dupate] cannot form the basis to prove the charge. Thus, it is not possible to uphold the conviction on the sole testimony of PW – 14 [Pranita Dupate].

20. There cannot be any dispute in respect of the settled legal position as reiterated in the aforesaid decisions relied by the learned APP. However, the said Judgments are of no assistance to the Prosecution in light of the above discussion. The re-appreciation of the evidence on record leads to the only conclusion that, the Prosecution failed to prove the charge beyond reasonable doubt. Thus, the impugned Judgment and order requires interference, and the Appellant is entitled for acquittal. Hence, the following order :

ORDER

[a] The Criminal Appeal is allowed.

[b] The conviction and sentence awarded by the learned Trial Court against the Appellant for the offence punishable under Section 302 of IPC, is quashed and set aside.

[c] The Appellant stands acquitted for the offence punishable under Sections 302 of IPC.

[d] The Appellant is behind the bars. He be released, if not required in any other offence.

[e] The Record and Proceedings be sent back to the learned Trial Court.

[f] In view of disposal of Appeal, pending application, if any, stands disposed of accordingly.

[Neeraj P. Dhote, J.] **[Sharmila U. Deshmukh, J.]**