

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

CRIMINAL APPEAL NO. 803 OF 2024

Suresh @ Balasaheb Bapurao Satpute ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

**INTERIM APPLICATION NO. 2947 OF 2024
IN
CRIMINAL APPEAL NO. 803 OF 2024**

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Mr. Satyavrat Joshi a/w. Nawaz Dordi for Appellant.
Ms. Kranti T. Hiwrale, APP for State/Respondent.
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**CORAM : SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ.**

DATE : 9 & 10 JULY 2026

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 05.07.2024 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.281 of 2020. The Appellant was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer R.I. for life and to pay a fine of Rs.Three lakhs and in default of payment of fine to suffer S.I. for six months. He was granted set off for the period he had

undergone in jail. Out of the fine amount recovered, an amount of Rs. Two lakhs was directed to be paid to the complainant.

2. Learned counsel for the Appellant has added the complainant as a party respondent. The office note shows that the complainant was served.

3. Heard Mr. Satyavrat Joshi, learned counsel for the Appellant and Ms. Kranti Hiwrale, learned APP for the State.

4. The prosecution case, in brief, is that the Appellant was introduced to one Vilasrao by one Shendge. The Appellant had a plot of land at village Walne. Vilasrao was interested in purchasing that plot. They entered into a transaction in the year 2018. It is the case of the prosecution that, on 07.11.2019 the Appellant called Vilas and told him that they needed to go to the Appellant's plot for measurement of the plot. Both of them left Pune in the morning on 07.11.2019. According to the prosecution case, when they were at the spot i.e. the plot of the Appellant, the Appellant inflicted blows with a knife on the chest and abdomen of Vilas; who succumbed to the injuries. The dead body was thrown nearby.

The Appellant changed his clothes and concealed the weapon and his clothes at some other place. He called and told Shendge that something had happened and Shendge should switch off his mobile phone. Since Vilas did not return home till late in the night, Vilas's wife tried to contact on his phone, but the phone was switched off. She called Shendge, but he did not have any information. On the next day morning, she went to Deccan police station and lodged a complaint that Vilasrao was missing since 07.11.2019. On 09.11.2019 Vilasrao's dead body was discovered in the plot of the Appellant. Vilasrao's wife and son were taken to the spot. They identified the dead body. Vilasrao's wife lodged the FIR which was registered vide C.R.No.473 of 2019 at Paud police station. The Appellant was arrested on 09.11.2019 itself. The investigation was carried out, the spot panchanama and other panchanamas were conducted and the dead body was sent for the postmortem examination. The Appellant's clothes and the weapon were recovered at his instance. The statements of various witnesses were recorded. Shendge's statement was recorded U/s.164 of the Cr.P.C. and at the conclusion of the investigation the

charge-sheet was filed. The case was committed to the Court of Session.

5. During trial, the prosecution examined fifteen witnesses including the wife and the son of the deceased, the aforementioned Shendge, the Medical Officer and the panchas. Two witnesses were examined on the theory of 'last seen together' but they turned hostile. The prosecution also examined the Nodal Officer of the telephone number used by the deceased, and finally the investigating officers were examined.

6. The defence of the Appellant was specific. He filed a written statement U/s.313 of the Cr.P.C. He stated in that statement that, he himself, the deceased Vilasrao and the witness Santosh Shendge were in the business of sale and purchase of land. They were knowing each other. The Appellant had a plot at Gat No.98/2 at village Walne, admeasuring 13 gunthas. A transaction was entered into between the Appellant and the deceased. The Appellant had taken Rs. One lakh as earnest money and the balance amount was to be paid by Vilasrao. The

transaction was entered into through a notarised document on 03.12.2018, but the time for executing the sale deed was not decided. It was only decided that the sale deed would be executed after the measurements were carried out. Accordingly, the Appellant had made an application for measurement in the year 2019, but the measurement could not take place. There was no dispute between himself and the deceased. Their relations were good. They used to contact each other telephonically on some occasions. They used to discuss other transactions. The deceased and Shendge used to enquire with the Appellant regarding any other available plots and the Appellant also similarly used to enquire with those two. On 07.11.2019, around 9:00a.m. he had called the deceased on the mobile phone. That was because the deceased himself had asked him about availability of any plot. The Appellant telephonically told him on 07.11.2019 that there was no plot available for purchasing. The Appellant has further stated in his statement that he did not personally meet the deceased. After that, the Appellant went to his village Walne. He went to his house. He met his relatives at another village and he returned to

Pune. In the evening at around 5:00p.m. he had called Shendge on his phone to enquire whether any land was available for purchase. However, the voice was not audible and the call did not go further. After that on 09.11.2019, he was arrested by the police. They removed his Voter ID card and other documents. According to the Appellant, the deceased was in the business of transaction of lands and was also giving money on interest. Therefore, he was on inimical terms with others. Somebody else had committed his murder and threw the dead body in the Appellant's agricultural field and, therefore, the police had arrested him on suspicion, and because of the same reason, the wife and the son of the deceased had deposed against him.

7. Learned Trial Judge disbelieved the defence. He relied on various circumstances. He referred to the fact that the dead body was found in the agricultural field of the Appellant, the recovery of weapon and clothes at his instance and the past transaction. Learned Judge also relied on the narration given by Shendge in his statement recorded U/s.164 of the Cr.P.C., wherein, he had mentioned that the Appellant had called him in the evening

and had told him that something had happened and Shendge should switch off his mobile phone. Learned Judge relied on these circumstances to reach his conclusion that the Appellant had committed this offence.

8. The FIR in this case was lodged by PW-1 Vidya Sabne. She was the wife of the deceased. Her evidence is important. She deposed that her husband Vilasrao was looking after the finance for the people who wanted loan from the banks. Shendge was his friend. The Appellant wanted to sell his agricultural land at village Walne. Shendge had informed PW-1 Vidya's husband regarding the same. The talks of this transaction were going on for about one and a half year. PW-1 herself, her husband, the Appellant and one more person had gone to the said land. It was admeasuring 13 guntha and the Gat number was 298/2. Since P.W.1 and the deceased liked the land, they had decided to purchase it. The agreement was executed on 03.12.2018. PW-1 and the deceased were to purchase that land for Rs.9,10,000/-, out of which, Rs.One lakh was paid in cash. Rs. Four lakhs were paid to the Appellant through cheque. The balance amount was to be paid after one or

two years from the transaction. Accordingly, the agreement was executed on 03.12.2018. It was a notarized document. It is produced on record at Exhibit-34.

9. PW-1 further deposed that, at 9:00a.m. on 07.11.2019 the Appellant had made a phone call to her husband and had told him that they had to attend the measurement of the land. The Appellant told her husband that he did not have a vehicle and requested PW-1's husband to take him on his motorcycle from Chandani chowk. Accordingly, PW-1's husband (the deceased Vilasrao) left the house on his motorcycle at about 9:15a.m. PW-1 made a phone call to him at around 12:00p.m. At that time, Vilasrao told her that he and the Appellant were at the said plot, but nobody had reached for measurement. At about 2:00p.m. her son Prathamesh sent a message on Vilasrao's mobile phone informing him about the requirement of fees for his course. At that time, her husband had told her son that there was an issue with the network of his mobile phone. At about 5:00p.m., PW-1 again called her husband. This time the call was connected for some time, but then the phone was switched off. After that, she tried

many times to contact her husband, but his phone was unavailable. It was switched off. PW-1 then called Santosh Shendge at about 12:30a.m. He informed her that the Appellant had called him at about 5:00p.m. and had told him to switch off his mobile phone. On 08.11.2019 at about 6:00a.m. she again called Santosh and told him that the deceased had not returned home. He advised PW-1 to go to Deccan police station and give a complaint. Accordingly, she went to Deccan police station and gave her complaint regarding the missing of her husband. The complaint is produced on record at Exhibit-35. An N.C. was registered on that basis. She further deposed that, on 09.11.2019, at about 11:00a.m., she went to make an enquiry at Deccan police station. At around 12:30p.m. the police officers from Paud police station called Deccan police station and informed them that a dead body was found in Gat No.298/2 at village Walne. The police took PW-1 and her son to the village Walne at the spot. She noticed that their motorcycle was parked on the road near that spot. The dead body of her husband was lying near the compound. There were incised wounds on the chest and stomach. There was blood seen at

the spot. Her husband's mobile phone, the spectacles and the cover of the spectacles were lying at that spot. The police conducted the spot panchanama. She added that the Appellant's voter ID card was also found at the spot. The police took the photographs. After that the dead body was sent for postmortem examination. On 09.11.2019 itself she gave her FIR at Paud police station. It is produced on record at Exhibit-37. She produced the documents showing the payment of Rs. four lakhs to the Appellant. She identified the mobile phone and the other articles. She also identified the Appellant's voter ID card produced in the Court.

She was cross-examined by the learned Advocate on behalf of the Appellant. In the cross-examination, she stated that she got married with the deceased in the year 1997. Her husband was handling loan transactions through banks. Her husband used to operate the said work from home. He did not have an office. She did not know with which banks he was associated with. She accepted that her husband was acting as an agent in sale and purchase of the lands. Her husband never used to discuss the transactions with her. He was not telling her every time when he used to go out. Her son

was studying in Garware college. His college timing was between 8:00a.m. to 12:00p.m. She herself was an agriculturist. Her husband did not have any agricultural land. She did not have any 7/12 extract in her name showing the ownership of an agricultural land. The Gat No.298/2 was an agricultural land. She was not aware whether that plot was an agricultural land or whether it was converted to a non agricultural land. She further deposed that, before that transaction, her husband had not entered into the transaction of land in her name. PW-8 Santosh had brought the proposal of this transaction to her husband. He was knowing her husband since a long time. PW-8 Santosh had introduced the Appellant to the deceased. Her husband knew about the residence of the Appellant. They knew that the Appellant was a Sarpanch and was residing at Bawdhan. She had noted the Appellant's mobile phone number on a piece of paper. She admitted that PW-8 Santosh was not present when the agreement for that land was executed. They did not know how much commission the Appellant paid to Santosh for this transaction. She denied the suggestion that the deceased was to take monetary dues from many people and

because of that there was dispute with many people. She admitted that after execution of the document regarding agreement for sale, she had not given any notice for executing the sale deed. She had not lodged any complaint against the Appellant to the police and she had not lodged any civil suit. She herself had not gone to the concerned office requesting for measurement. She stated that the Appellant's plot at village Walne was surrounded by other houses. It was an open piece of land. There was only a compound. Anybody could enter and leave that land.

In her cross-examination, she further stated that she had called the Appellant on 07.11.2019 in the night. She had called him at around 5:30p.m., as well. She admitted that, when she had gone to the plot, the police had not brought the dog squad. She denied the suggestion that she was deposing false.

10. In this context, her complaint regarding the missing of her husband is important which is brought on record at Exhibit-35. In that complaint, there is a reference to the transaction regarding the Appellant's land. The complaint further mentions that on

07.11.2019 at about 9:00a.m. the deceased had left the house telling her that he was going to the village Walne for the measurement of the land. At about 12:00p.m. when she called him, he informed her that he and the Appellant had reached the plot at village Walne, and that the concerned officers for the measurement had not yet reached. After that there was no contact between PW-1 and the deceased. His mobile phone was switched off. She had given the registration number of her two wheeler. This is the complaint lodged by her. There is no expression of suspicion against the Appellant in this complaint. It was lodged at 1:00p.m. on 08.11.2019 as per the entry in the police station diary. There is no reference to her call to Santosh Shendge or to her call to the Appellant.

11. The FIR lodged by her at Paud police station is produced on record at Exhibit-37. The FIR was lodged at 9:55p.m. on 09.11.2019. Her FIR sufficiently corroborates her deposition. However, there is one significant aspect about this FIR. This FIR mentions that the mobile phone and the spectacles were found at the spot, but there is no reference to the Appellant's voter ID card

having been found at the spot. This fact is important in the context of the case. This is to be read in the background of the fact that the spot panchanama was conducted on 10.11.2019 and the FIR was lodged on 09.11.2019 after the first informant had seen the spot of the incident and the dead body.

12. PW-2 Prathamesh Sabne was the son of the deceased. He has corroborated the evidence of PW-1 Vidya. He had sent a message to his father at 02.05p.m. on 07.11.2019 asking for fees of Rs.650/- for his coding course. His father had sent a reply to his message by informing him that there was no network on his mobile phone. He then deposed about the enquiries they made with PW-8 Santosh and then about the lodging of the complaint regarding his father not having returned home. He further deposed that on 09.11.2019 at about 12:30p.m. they had gone to the spot i.e. the field of the Appellant. He had seen their motorcycle. He had seen the dead body. He had seen his father's mobile phone and spectacles. But again, significantly there is no reference to the Appellant's voter ID card.

In the cross-examination, he deposed that his father used to discuss about his transactions with PW-2. He accepted that, after they had lodged the complaint about his father having gone missing, they had not gone to the village Walne. They had not gone to the house of the Appellant. He could not tell whether they had lodged the FIR after holding discussion with his relatives.

13. PW-3 Gulab Bhingare is an important witness. He was a pancha for the inquest panchanama and the spot panchanama. He was called by the police from the Tahsildar's office Paud on 09.11.2019. They conducted the inquest panchanama. It is produced on record at Exhibit-47. This panchanama was conducted on 09.11.2019. He deposed that he was again called by Paud police on the next day. They went to the spot at village Walne at 8:30a.m. on 10.11.2019. The spot panchanama was conducted. The police seized the motorcycle and spectacles belonging to the deceased and the blood stained earth from the spot of the incident. They also seized the Appellant's voter ID card. The spot panchanama produced at Exhibit-48 shows that it was conducted between 9:00a.m. to 10:00a.m. on 10.11.2019.

14. PW-4 Dr. Sunil Patil had conducted the postmortem examination on 09.11.2019 between 11:05p.m. to 11:55p.m. He deposed that the dead body was totally decomposed. Maggots had formed. Bulging of eye was also seen. Peeling of the skin was present all over the body. Rigor mortis had passed off. He found the following injuries:

- i) CLW over the chest below neck in center at chest measuring 1 x 1cm. Three CLWs of such type were found.
- ii) CLW of 5 x 1cm and 2cm deep over right breast on chest underline ribs seen.
- iii) CLW over left breast and underline bone seen admeasuring 9 x 1.5cm.
- iv) Four CLW over left side of abdomen of size 2cm.
- v) CLW over umbilicus over abdomen measuring 5 x 3cm, intestine coming out from it.
- vi) Skin peeling present over forehead, both hands, legs and back.

15. The fracture was noticed below the injury Nos.2 and 3. The cause of the death was mentioned as "Cardio respiratory arrest due to asphyxia due to shock due to multiple grievous injuries over body". The postmortem notes are produced on record at Exhibit-52. He deposed that, as per the postmortem the

deceased had died about 48 hours before the postmortem examination. This statement is important. Though it is not mentioned in the postmortem notes, but according to him, the deceased had died about 48 hours before the postmortem examination. The postmortem examination was conducted on 09.11.2019 at 11:05p.m. Therefore, as per his deposition, the murder was committed 48 hours before that time i.e. around 11:00p.m. on 07.11.2019 or before that.

In the cross-examination, he accepted that, from the postmortem examination he could not form an opinion about the exact time of death, but on the basis of the fact that rigor mortis had completely passed off and maggots had formed, he had opined that the death was caused prior to 48 hours. He accepted that the presence or absence of rigor mortis would depend on the condition of the atmosphere.

16. PW-5 Devanand Suravase was a pancha for seizure of clothes of the deceased. That panchanama is produced on record at Exhibit-55.

17. PW-6 Rahul Nalawade was an important pancha. He was examined to prove the recovery of weapon and clothes at the instance of the Appellant. However, he was declared hostile as he did not support the prosecution case in his examination in chief. He deposed that, he was called to Paud police station on 12.11.2019. He went there at about 9:30a.m. The Appellant was present in the police station. The appellant asked them to accompany him for the panchanama. He had not stated about the place where he was leading them. The Appellant took them to Walne village. The Appellant led them at some distance. PW-6 stated that he waited near the vehicle. The Appellant and the police went ahead. He did not know what happened after that. He further deposed that the Appellant took out the clothes and something and gave those articles to the police. The police then wrote down something and took his signature. He had signed on the say of the police. He had not read what they had written. He accepted his signatures on those documents. He was declared hostile.

In the cross-examination conducted by the learned APP,

he denied the suggestion that the Appellant had told the police that he would take out the clothes and the weapon. He denied the suggestions that the Appellant led the police and panchas to Gat No.298/2 at village Walne, and then he took out the clothes and a knife from the bushes. In short, he did not support the prosecution on this important aspect. The memorandum panchanama is produced on record at Exhibit-57 and it was subsequently proved through the evidence of the investigating officer.

18. PW-7 API Balasaheb Makad had taken down the complaint given by PW-1 Vidya on 08.11.2019 regarding the missing of her husband (the deceased). He then informed about it to the control room and handed over the investigation to PSI Mete.

In the cross-examination, he admitted that he himself did not go to the house of the Appellant for the investigation.

19. PW-8 Santosh Shendge is another important witness. He deposed that he was knowing the deceased. According to him, the deceased was handling loan transactions. The deceased was having loan transaction with the Appellant. According to him, the

Appellant was working as an estate agent. The deceased and the Appellant had entered into the transaction regarding the land at village Walne. PW-8 was not aware of the details. On 07.11.2019, in the evening, the Appellant called him telephonically between 5:00p.m. to 6:00p.m. He could not hear the conversation properly; therefore, he had switched off his phone. After that, at about 12:30a.m. in the night, PW-1 Vidya called him and enquired about the deceased. He informed her that the deceased was not with him. He also told her that the Appellant had called him on his phone. On the next morning, he met PW-1 Vidya and PW-2 Prathamesh. He went to Deccan police station with them. PW-1 Vidya gave a complaint about missing of her husband. Subsequently, he came to know about the murder of the deceased. He admitted that, when the police recorded his statement, he had not told the police that the Appellant had called him telephonically and had told him to switch off his mobile phone. His statement was recorded U/s.164 of the Cr.P.C. He accepted that his statement was recorded as per his say. It is produced on record at Exhibit-65.

In the cross-examination, he admitted that he was not

aware as to with whom and where the deceased had gone on 07.11.2019. His statement recorded U/s.164 of the Cr.PC. is produced on record at Exhibit-65. The learned Judge has relied on some averments from this statement. In particular, the learned Judge relied on the statement that he had informed PW-1 Vidya that the Appellant called him at 5:00p.m. and that he had asked him to switch off PW-8's mobile phone.

20. PW-9 Kisan Pakire was examined to support the 'last seen together' theory. However, he did not support the prosecution case and he was declared hostile. He deposed that on 07.11.2019, when he was sitting near his house after lunch at village Walne, he had seen a two wheeler going towards the nearby field. There were two persons on that motorcycle. Both of them were unknown to him. He deposed that he did not know the Appellant.

In the cross-examination conducted by the learned APP, he accepted that the Appellant's land was in the village Walne. He denied that he had given different narration in his police statement. That particular portion of the narration was proved

through the evidence of the investigating officer and it was marked at Exhibit-113. The said portion mentions that on 07.11.2019 at about 2:00p.m. he had seen the Appellant and one unknown person going towards the Appellant's field on a motorcycle and at around 4:00p.m. he had seen the Appellant going back walking from in front of his house.

21. PW-15 Amit Kulkarni was another witness examined on the point of theory of 'last seen together'. He also did not support the prosecution case. He deposed that he was a receptionist at a hotel at Mulshi. He did not depose in support of the prosecution case. But in the cross-examination he admitted that, in the morning at around 11:00a.m. on 07.11.2019 the Appellant and one unknown person had come to his hotel on a two wheeler. They had some food and they went towards the village Walne. He added that he himself had not seen the Appellant in the hotel, but others had seen them.

22. PW-9 Kisan and PW-15 Amit were important witnesses, but they had turned hostile. More significantly, they did not know

the deceased and they were not shown the photograph of the deceased to confirm that they had seen the Appellant going with the deceased towards his field in the village Walne.

23. PW-10 PSI Balaji Mete was attached to Deccan police station. He investigated the complaint regarding the missing of the deceased which was lodged on 08.11.2019. He went to Paud police station and sought help. He had gone to village Walne at about 8:30p.m. on 08.11.2019. His investigation revealed that the Appellant had gone to the village with one person; however, this evidence is hearsay. He did not depose anything regarding his personal knowledge. He accepted that he had not gone to the spot which was the subject matter of the transaction between the deceased and the Appellant.

24. PW-11 Ganesh Salunkhe had carried the articles to the Forensic Science Laboratory on 26.11.2019.

25. PW-12 Police Constable Manoj Mane claimed to have special knowledge regarding the phone records in the nature of CDR and SDR. He had used one software on a laptop to analyse

the record of the phone numbers of the deceased and the Appellant. As per his analysis, the deceased and the Appellant had their last telephonic conversation at 10:12a.m. on 07.11.2019. In the morning, the location of the Appellant's phone was at Bawdhan. After 12:00p.m. the Appellant's mobile location was at Mulshi. At 4:49p.m. the location was at Mulshi Khurd. The last call on the mobile phone was at about 8:16p.m. on 07.11.2019.

26. PW-13 Dattaram Angre was the Nodal Officer working with Vodaphone IDEA company. He produced the CDRs of the mobile phone of the Appellant and the deceased. The phone number of the Appellant was 9881092581 and that of the deceased was 9764589924. The location of the phone of the deceased was at village Walne on 07.11.2019 at about 2:30p.m. up to 4:20p.m.

27. PW-14 PSI Shrikant Jadhav was the investigating officer. He deposed about the investigation carried out by him from 09.11.2019 on receiving the information from a secret informant about the discovery of the dead body. He went to the village Walne

at Gat No.298. He called the wife and son of the deceased for identification. The dead body was sent for the postmortem examination. The statement of the deceased's wife was recorded and the FIR was registered vide CR No.473 of 2019 at Paud police station. He supervised the inquest panchanama. He arrested the Appellant on 09.11.2019. He conducted the spot panchanama on 10.11.2019. He recorded the statements of the witnesses on 11.11.2019. The Appellant showed willingness to show the clothes and knife which he had concealed. The Appellant led them near Walne village and took out the clothes, a pair of shoe and a knife from the bushes. The panchanama was conducted. It is produced at Exhibit-57. He collected other documents. He identified the articles, and in particular, the voter ID card of the Appellant produced in the Court. He got the statement of the witnesses recorded U/s.164 of the Cr.P.C.

In the cross-examination, he admitted that after going to the spot of the incident and after the dead body was seen, he had returned to the police station, but while going back to the police station he had not given any written instructions to anybody

to keep the spot of the incident safe and secured. He had not arranged for the test identification parade. He admitted that the place from where the knife and the clothes were recovered was not a closed place and anybody could access that place. He could not give the details regarding the ownership of the land from where those articles were seized. He accepted that the said place was visible from the nearby small road.

28. Besides this ocular evidence, the prosecution produced the CA report on record which shows that the clothes of the deceased showed presence of blood of 'A' group. The clothes allegedly recovered at the instance of the Appellant showed presence of human blood, but the blood group was inconclusive. Similarly, the knife and the knife cover showed presence of human blood, but the blood group was inconclusive.

This, in short, is the evidence led by the prosecution.

SUBMISSIONS MADE BY MR. SATYAVRAT JOSHI, LEARNED COUNSEL FOR THE APPELLANT

29. The case is based purely on the circumstantial evidence. The prosecution has not proved any of the circumstances beyond

reasonable doubt. There is no formation of complete chain of the circumstances. There was no motive for the Appellant to commit this murder. The theory of 'last seen together' is not proved by the prosecution. The concerned two witnesses PW-9 Kisan and PW-15 Amit have turned hostile. In any case, they were not knowing the deceased and, therefore, they would not be in a position to say that the Appellant had travelled with none other than the deceased. Even assuming that the Appellant and the deceased had travelled together to the agricultural field of the Appellant at village Walne, the time till the deceased was at the spot was only up to around 4:00p.m. on 07.11.2019. The medical evidence shows that, according to the Doctor, the death could have occurred any time before 48 hours from conducting the postmortem examination at around 11:00p.m. on 09.11.2019. That would mean that the death could have occurred any time before 11:00p.m. on 07.11.2019. Thus, the gap between 4:00p.m. to 11:00p.m. is a long gap and, therefore, it cannot be said that it was only the Appellant who could have committed the offence. Learned counsel submitted that, it does not stand to reason that

the Appellant would commit the murder of the deceased in his own field. According to the prosecution case, he had taken care to conceal his clothes and weapon. In that case, it was highly improbable that he would have left the dead body in his own field to invite a strong suspicion against himself. He submitted that the recovery of the weapon and clothes at the instance of the Appellant is not beyond reasonable doubt. The police officer has admitted that the place was open and accessible to all. There is nothing to show that the Appellant could have changed his clothes and could have concealed his clothes near the spot of the incident. He submitted that, finding of voter ID card belonging to the Appellant is not an incriminating circumstance. In fact, it is a very suspicious circumstance against the prosecution case. Neither the FIR nor any contemporaneous document referred to the Appellant's voter ID card having been found at the spot. The FIR does not refer to the voter ID card of the Appellant, though, it was lodged after the dead body and the other articles were discovered. The FIR referred to the mobile phone and spectacles of the deceased, but it did not refer to the Voter ID card of the Appellant.

The spot panchanama was conducted on the next day. The spot was unattended and, therefore, it was easy to plant any article at the spot. The learned Judge erred in relying on certain parts of the statement made by the witness PW-8 Santosh regarding the Appellant's phone call telling him to switch off his mobile phone. Shri. Joshi submitted that the said witness PW-8 Santosh in his deposition before the Court has not stated that the Appellant had called him and asked him to switch off his phone. It was mentioned in the statement recorded U/s.164 of the Cr.PC., but it cannot be used as a substantive piece of evidence. Use of such statement is limited and it can only be used for corroboration U/s.157 of the Evidence Act. The learned Judge erred in relying on that portion of the statement of PW-8 Santosh recorded U/s.164 of the Cr.PC., though, he had not mentioned about it in his substantive deposition before the Court.

SUBMISSIONS OF MS. KRANTI HIWRALE, LEARNED APP FOR THE STATE:

30. Learned APP submitted that the motive can develop at the spot. There was monetary transaction between the Appellant

and the deceased and the offence could be a result of that transaction. The Appellant's name is mentioned in the complaint lodged on 08.11.2019 regarding the missing of the deceased Vilasrao from 07.11.2019. She relied on the circumstance of finding of the Voter ID card of the Appellant near the dead body. She submitted that the learned Judge has correctly relied on the fact that the dead body was found in the agricultural field of the Appellant. As per the record and the evidence given by PW-1 Vidya and PW-2 Prathamesh, the Appellant and the deceased had left together on a motorcycle from Pune to go to the Appellant's field at village Walne. Therefore, the Appellant was a natural suspect. After his arrest, the murder weapon and the blood stained clothes were recovered at his instance. The Appellant's clothes and weapon were found with stains of human blood. This is another circumstance against him. She submitted that, PW-8 Santosh has stated in his statement U/s.164 of the Cr.P.C. that the Appellant had called him and had told him that something had happened and that he should switch off his mobile phone. This is another circumstance against him. The tower location of the mobile phone

shows that the deceased and the Appellant were together at the Appellant's agricultural field.

31. Learned APP relied on the 'last seen together' theory. She submitted that, though the witnesses PW-9 Kisan and PW-15 Amit have turned hostile, their cross-examination conducted by the learned APP, and in particular, contrary portions from the police statements show that the Appellant and the deceased had been together at the spot of the incident up to 4:00p.m. on 07.11.2019.

REASONS AND CONCLUSION

32. We have considered these submissions. Broadly, the prosecution case rests on certain circumstances.

1) MOTIVE

If there is direct evidence, the motive pales in comparison. However, when the case is based on circumstantial evidence, in some cases, the motive assumes importance. From the evidence on record, this is a case where motive assumes importance and, therefore, the prosecution needed to prove as to

why the Appellant could have committed this offence. In short, the prosecution was required to establish the motive in the background of circumstantial evidence in this particular case. The transaction between the Appellant and the deceased is deposed by PW-1 Vidya and PW-2 Prathamesh i.e. the wife and the son of the deceased. In their entire deposition when they described about the transaction between the Appellant and the deceased, there is not a single reference to any dispute between the Appellant and the deceased. Their evidence does not show that there was any dispute regarding the area of the land or consideration of the transaction or whether the deceased had not paid the balance amount of the transaction. There is absolutely nothing to show that there was even a slight dispute between the Appellant and the deceased. There is absolutely nothing to show that the Appellant had any reason to be on inimical terms with the deceased. Therefore, in this case, motive assumes importance and the absence thereof certainly helps the defence.

2) **'LAST SEEN TOGETHER' THEORY**

To establish this circumstance, the prosecution has examined PW-9 Kisan and PW-15 Amit. Both of them have turned hostile. Therefore, they are unreliable witnesses. Even otherwise, they had merely stated before the police that the Appellant and one unknown person had come together and had gone to the agricultural field of the Appellant. Even, as per the prosecution case, PW-9 Kisan and PW-15 Amit were not knowing the deceased and, therefore, even if the prosecution case is accepted that the Appellant had come to his field with an unknown person, then it was incumbent upon the prosecution to have proved that the unknown person was none other than the deceased. During the investigation and subsequently thereto the prosecution has not led any evidence to show that the person who was seen by PW-9 Kisan and PW-15 Amit was none other than the deceased. Therefore, the prosecution has not examined any witness who had seen the Appellant with the deceased on 07.11.2019.

The prosecution tried to establish their presence

together at the field of the Appellant on the basis of CDR and the tower location, which according to the prosecution case, shows that both the mobile phones were showing the same location at the Appellant's field. In that context, we find force in the submission of learned counsel for the Appellant that, even assuming that both of them were together till 4:00p.m. on 07.11.2019, still the prosecution has to establish that there was no time gap for anyone else to approach the deceased and commit his murder. As per medical evidence the death could have occurred any time before 11:00p.m. on 07.11.2019. Thus, there is a long time gap from 4:00p.m. to 11:00p.m. when this incident could have occurred. Therefore, even the circumstance relating to the 'last seen together' theory is not proved beyond reasonable doubt by the prosecution.

3) FINDING OF VOTER ID CARD BELONGING TO THE APPELLANT NEAR THE DEAD BODY

33. The prosecution relied on the circumstance of finding of Voter ID card of the Appellant near the dead body of the deceased. In this context, as discussed earlier, it must be noted that the dead

body was discovered on 09.11.2019 at around 11:00a.m. PW-1 Vidya and PW-2 Prathamesh were taken to the spot of the incident. At that time, whatever was seen by PW-1 Vidya was reflected in the FIR. The FIR specifically mentions that the deceased's motorcycle, mobile phone and spectacles were found near the dead body. There is no reference to the Appellant's Voter ID card. The said ID card could have been incriminating if it was really found near the spot. It ought to have been mentioned in the FIR. Even giving concession to the fact that PW-1 Vidya could not mention everything in FIR, still there is another circumstance which raises doubt about finding of the voter ID card near the dead body.

The dead body was discovered on 09.11.2019 in the morning. The police and the witnesses had gone to the spot around in the afternoon, but nothing was seized from the spot on that particular date. In fact, the spot panchanama was conducted at 9:00a.m. on the next day i.e. on 10.11.2019. The Investigating Officer's evidence shows that he had not taken any precaution to guard the spot of the offence and to preserve the spot of the

incident without being disturbed. Therefore, the benefit of doubt must be given to the Appellant, if his voter ID card was seized on the next day from the spot, when the police had already visited the spot on the earlier date. This has to be seen with the fact that there is no contemporaneous record maintained on 09.11.2019 to indicate that the Appellant's voter ID card was found at the spot of the incident. Therefore, this circumstance also does not help the prosecution case.

4) SUSPICION AGAINST THE APPELLANT

34. According to PW-1 Vidya, the deceased had left in the morning on 07.11.2019 and he had told PW-1 Vidya that he was going with the Appellant to the Appellant's field. In that case, if the deceased had not returned after that, it was naturally expected that the family members of the deceased i.e. PW-1 Vidya and PW-2 Prathamesh would go to the spot i.e. to the field of the Appellant and make enquiries regarding the same with the neighbours. The said field had other houses nearby. In this case, neither the family members of the deceased, nor the police had gone to the

Appellant's field till late night on 08.11.2019. At that time, only officer of Deccan police station had gone there, but he had not even visited the Appellant's agricultural field. All this raises suspicion against the prosecution case

35. The role of PW-8 Santosh is equally suspicious. The learned Judge has relied on his statement recorded U/s.164 of the Cr.P.C. The learned Judge has committed an error in his approach. PW-8 Santosh had not stated anything in his deposition regarding the alleged telephone calls made by the Appellant in the late evening on 07.11.2019 telling him to switch off his mobile phone because something had happened in the field. There is complete silence regarding this fact in the deposition of PW-8 Santosh. The statement U/s.164 of the Cr.P.C. at the highest could be used for corroborating the evidence led by PW-8 Santosh. It cannot take place of what was deposed before the court. If there was any contradiction between his deposition and his statement recorded U/s.164 of the Cr.P.C. it was the duty of the prosecution to have invited PW-8 Santosh's attention to that contrary portion from the statement U/s.164 of the Cr.P.C. and then seek his explanation, and

if necessary to get that portion proved through the evidence of the learned Magistrate who had recorded that statement. In this case, neither of these steps was taken. The trial Court could have relied only the deposition given by PW-8 Santosh. Therefore, even that circumstance is not helpful to the prosecution.

5) RECOVERY OF WEAPON AND BLOOD STAINED CLOTHES

36. The last circumstance relied upon by the prosecution is regarding the recovery of weapon and clothes at the instance of the Appellant. Though, the CA report shows presence of human blood on those articles, the blood group is inconclusive. The pancha to this recovery had turned hostile. He did not support the prosecution case. Therefore, only the Investigating Officer's evidence in this behalf would be important. The I.O. has categorically admitted that the place from where those articles were recovered was an open place and it was accessible to all. Therefore, this recovery loses its significance. As a result, even this circumstance is not proved by the prosecution against the Appellant beyond reasonable doubt.

37. The effect of the above discussion is that the prosecution has not proved any of these circumstances against the Appellant beyond reasonable doubt. They have not formed a complete chain of circumstances to point unerringly to the guilt of the Appellant. This is a case where benefit of doubt will have to be given to the Appellant. Therefore, the Appeal succeeds.

38. Hence, the following order:

ORDER

- i) The Appeal is allowed.
- ii) The Judgment and order dated 05.07.2024 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.281 of 2020 convicting and sentencing the Appellant is set aside.
- iii) The Appellant is acquitted from all the charges.
- iv) He is in custody. He shall be released forthwith if not required in any other case.
- v) Before being released, he shall execute a bond in the sum of Rs.15000/- for his appearance, in case an Appeal is preferred. This bond shall be executed in consonance with Section 481 of the

Bharatiya Nagarik Suraksha Sanhita, 2023.

vi) The Appeal is disposed of.

vii) With disposal of the Appeal, the connected interim application is also disposed of.

(ASHISH S. CHAVAN, J.)

(SARANG V. KOTWAL, J.)