

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.81 OF 1999

- 1) Milind s/o Sahebrao Lahane,
Age-23 years, Occu: Labour,
R/o- Khairav, Dist-Buldhana,
At present: Ketki Apartment,
Osmanpura, Aurangabad.
(Name of Appellant No.1 deleted as
per Court' Order dated 24th March,
1999.
Appellant No.1 has filed separate
Appeal bearing Criminal Appeal
No.106 of 1999)

- 2) Sumanbai @ Kalpana w/o Prakash Lahane,
Age-22 years, Occu: Labour,
R/o- As above.

...APPELLANTS

VERSUS

The State of Maharashtra,
Through G.P., High Court of
Judicature of Bombay High Court,
at Aurangabad.

...RESPONDENT

...
Mr.A.K. Bhosale Advocate (appointed) for
Appellant No.2.
Mr.P.G. Borade, A.P.P. for Respondent - State.
...

WITH

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R/o- Khairav, Dist-Buldhana,
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VERSUS

The State of Maharashtra,
(Through G.P., High Court of
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...

Mr.A.S. Shejwal Advocate for Appellant.
Mr.P.G. Borade, A.P.P. for Respondent - State.

...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 06TH JUNE,2017.

DATE OF PRONOUNCING JUDGMENT: 29TH JUNE, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. As both these Criminal Appeals are arising out of one and the same Judgment and order passed by the trial Court, both the Appeals are being decided by this common Judgment.

2. Both these Appeals are directed against the Judgment and order dated 4th December, 1999, passed by the IInd Additional Sessions Judge, Aurangabad in Sessions Case No.246 of 1997 thereby convicting accused No.1 - Milind s/o Sahebrao Lahane and accused No.2 - Sumanbai @ Kalpana w/o Prakash Lahane for the offence punishable under Section 302 read with 34 of the Indian Penal Code (for short "I.P. Code") and sentencing them to suffer imprisonment for life and to pay fine of Rs.500-/ each, and in default, to suffer further imprisonment for six months.

3. The prosecution case, in brief, is as under:-

A) On 29th January, 1996, P.S.I. Mahendra Deshmukh was present in police chowki of Begampura, Aurangabad. At about 11.00 a.m. he received information through anonymous telephonic

call that, one dead body was lying near "Hanuman Tekdi". To verify the said information, he sent two police constables in the area of "Hanuman Tekdi". Two constables went near "Hanuman Tekdi". They found that the dead body of one male person was lying there. Accordingly, they gave information to P.S.I. Deshmukh City Chowk police station, Aurangabad. Constable Gawali filed written report in police station, on the basis of which A.D. No.3 of 1996 was registered, under Section 174 of the Code of Criminal Procedure.

B) Inquiry of A.D. No.3 of 1996 was handed over to head constable Nikalje. P.S.I. Deshmukh and head constable Nikalje visited the spot of incident. They observed that the dead body of male was lying on the ground. It was decomposed. There was no identification mark on the dead body. There was one black thread around the neck of the dead body. Said thread was having knot on the backside of the neck. Head constable Nikalje effected spot

panchnama on the spot in presence of panchas. He did inquest panchnama in presence of the panchas. At the time of preparing spot panchnama, they observed that one pair of slipper was lying on the spot. On 29th January, 1996 police observed that there was a white shirt and pant of white colour on the person of the dead body. There was one banian of white colour and underwear of blue colour. Police seized those clothes of the deceased, black thread (Kardoda) and pair of slipper under seizure panchnama in presence of panchas. Head constable Nikalje sent the dead body for postmortem examination to Government Hospital, Ghati at Aurangabad.

C) On 30th January, 1996 head constable Nikalje made inquiry from the medical officer about the cause of death. The medical officer directed the head constable to send the dead body to the department of Anatomy to ascertain the cause of death of the deceased. Viscera was

preserved for Chemical Analysis. Medical officer opined that " due to strangulation, death can be caused".

D) P.S.I. Deshmukh found that murder of unknown person was committed. He also found that to destroy proof, the dead body was thrown near "Hanuman Tekdi". Hence he filed report in City Chowk police station on 31st January, 1996 as per Exhibit 37. On the basis of his report, Crime No. I-21 of 1996 was registered under Section 302 of the I.P. Code. Further investigation was handed over to P.I. Lokhande (PW-20).

E) P.I. Lokhanded (PW-20) obtained document of inquiry of A.D. No.3 of 1996, which was done by head constable Nikalje. He found that head constable Nikalje had seized hair and soil mixed with blood from the spot. P.I. Lokhande received seized articles in his custody.

F) On 31st January, 1996 medical officer did not give exact cause of death of the deceased, as the dead body was decomposed. At the same time, medical officer did not deny the possibility of strangulation. P.I. Lokhande tried to find out relatives of the deceased. He tried to identify the name of the dead person. He took photographs of the dead body with the help of photographer. The photographs were sent to various police stations. Paper publication was also given about the dead body along with photograph. Pamphlets were also circulated. But no one turned up to give the information of the dead body of the deceased inspite of several efforts.

G) On 2nd February, 1996 P.I. Lokhande sent the dead body to Anatomy Department along with letter to ascertain age and cause of death of the deceased. P.I. Lokhande sent seized articles to Chemical Analyzer for analysis. He send viscera, hair of dead body, soil mixed with blood and

clothes of deceased to Chemical Analyzer, Aurangabad for analysis. On the request of P.I. Lokhande, medical officer of Anatomy Department had removed hair and teeth of the deceased and handed over to him. Those hair and teeth were sent to Chemical Analyzer, Aurangabad for analysis.

H) Dead body was lying with Anatomy Department. In the meantime, P.I. Lokhande was trying to find out the relatives of the deceased. On 11th March, 1996, he received report from Chemical Analyzer. Till 30th June, 1996 he did not receive report from Anatomy Department. So also till 30th June, 1996 no one identified dead body, therefore, P.I. Lokhande sent "A" summary to the Court of Chief Judicial Magistrate, Aurangabad.

I) On 10th June, 1997, PW-10 Bhagwan Lahane came to City Chowk police station. He told that his brother was missing. PW-10 Bhagwan Lahane further informed that till 10th June, 1997 he was

taking search of his brother Prakash Lahane. PW-10 Bhagwan Lahane gave information to police that his brother Prakash was murdered by his nephew, accused No.1 - Milind and his sister-in-law, accused No.2 - Sumanbai.

J) On getting this information from Bhagwan Lahane, P.I. Lokhande had shown photographs of dead body to him. P.I. Lokhande also showed clothes and slippers of the deceased by opening seal in presence of panchas to Bhagwan Lahane. Bhagwan Lahane identified that those clothes and slippers were of his brother Prakash. He identified photographs of the dead body of the deceased and stated that those photographs were of his brother.

K) P.I. Lokhande collected the information of the accused from Bhagwan Lahane. He called both the accused in the police station. On the very same day, P.I. Lokhande recorded statement of

Bhagwan Lahane and his father. With the permission of A.C.P., P.I. Lokhande reopened a summary. He arrested both the accused on 10th June, 1997.

L) On 11th June, 1997 P.I. Lokhande sent P.S.I. Karanje to the house of the accused to take search. During search, he seized two case papers. One case paper was of "Nagarparishad Hospital" of Cidco on which the name as Sumanbai was written. Case papers were showing treatment given to Sumanbai. During search, three photographs were seized from the house of accused. One photograph was of accused Milind, accused Sumanbai along with one son. Another photograph was of family and third photograph was of accused Sumanbai showing her pregnancy. P.S.I. Karanje seized all these articles under seizure memo at Exhibit 13. On 11th June, 1997 P.I. Lokhande received report of Anatomy Department. As per his request, dead body was handed over to Bhagwan Lahane and his father. On 11th June, 1997, P.I. Lokhande recorded the

statements of some witnesses.

M) P.I. Lokhande carried out further investigation. Blood samples of both the accused were collected. On 12th June, 1997 accused No.1 Milind, while in custody, stated that he was intending to make statement about the spot of incident and accordingly his statement was recorded in presence of panchas. After recording statement of accused No.1 Milind, P.I. Lokhande, panchas and accused No.1 Milind went to Gureganesh Nagar by Jeep. Accused No.1 Milind took them near hill and pointed out the spot of incident. At that place, panchnama was effected.

N) During the course of investigation, it was found that deceased Prakash Lahane was missing from the house and therefore complaint was filed with police station, Deulgaon Raja, Dist-Buldhana. P.I. Lokhande collected the said documents from police station, Deulgaon Raja. Further

investigation was carried out and statements of witnesses were recorded.

O) During the course of investigation, it was revealed that accused No.1 - Milind and accused No.2 - Sumanbai were having illicit relations. Both of them committed murder of Prakash Lahane i.e. husband of accused No.2 - Sumanbai near "Hanuman Tekdi", Begampura, Aurangabad. They tried to destroy the evidence of murder by throwing the dead body of Prakash Lahane in valley. After the murder of Prakash Lahane, accused No.1 - Milind and accused No.2 - Sumanbai cohabited with each other as husband and wife by stating false surname as Lokhande. After completing investigation, police filed charge-sheet against both the accused before the J.M.F.C. at Aurangabad. The J.M.F.C., Aurangabad has committed the case to the Court of Sessions, Aurangabad in due course.

P) A charge for an offence punishable under Sections 302 and 201 read with Section 34 of the I.P. Code was framed against both the accused and the same was explained to them. The accused persons pleaded not guilty and claimed to be tried, with the defence of total denial.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted accused No.1 and accused No.2 for the offence punishable under Section 302 read with Section 34 of the I.P. Code and sentenced them to suffer imprisonment for life and to pay a fine, as afore-stated. Hence these Appeals by both the accused.

5. Mr. Bhosale, learned counsel appearing for the accused Sumanbai @ Kalpana w/o Prakash Lahane, who is Appellant in Criminal Appeal No.81 of 1999 submitted that there was no eye witness to the incident and the case of the prosecution is

based on the circumstantial evidence only. There is no direct evidence against the accused. He further submitted that chain of circumstances on which reliance was placed by the prosecution has not been established beyond reasonable doubt by the prosecution. He further submitted that the entire prosecution case was based on the extra judicial confession of the accused in presence of the witnesses. He further submitted that there were several contradictions, omissions, discrepancies and improvements in the evidence of the prosecution witnesses in respect of various circumstances and therefore reliance could not be placed on the oral testimony of said witnesses. He further submitted that according to the prosecution case, on 29th January, 1996 police found dead body lying near Hanuman Tekdi and on 10th June, 1997 PW-10 Bhagwan identified the said dead body to be of his brother Prakash. He further submits that identification of dead body is not conclusive. He further submits that Prakash was

husband of Appellant Sumanbai and there was no motive for her to commit murder of her husband. He further submitted that the trial Court has not properly appreciated the evidence brought on record and came to the wrong conclusion.

6. Mr. Bhosale, learned counsel appearing for accused Sumanbai, submitted that when there is no other material available on record to establish guilt of the accused, conviction cannot be based on confession of the accused. In support of his submissions, he placed reliance on the case of Babubhai Udesinh Parmar vs. State of Gujarat¹. Mr. Bhosale, learned counsel further submitted that there is no direct evidence to connect accused with crime and there was no enmity between accused and deceased and therefore the sole circumstance that deceased was last seen in the company of accused is not sufficient to convict accused. In support of his submissions, he placed reliance on

¹ A.I.R. 2007 S.C. 420

the exposition of law in the case of Inderjit Singh and another vs. State of Punjab². In support of his submissions regarding appreciation of evidence when the case is based on the circumstantial evidence, Mr. Bhosale, learned counsel also placed reliance on the case of Niranjana Panja vs. State of West Bengal³, Shivaji Vasant Bagale vs. The State of Maharashtra⁴, State through C.B.I. vs. Mahender Singh Dahiya⁵, State of U.P. vs. Ram Balak and another⁶, Hukam Singh vs. State of Rajasthan⁷. In support of his submissions, Mr. Bhosale, learned counsel also placed reliance on the reported Judgment in the case of Sahadevan and another vs. State of T.N.⁸ and Samadhan Dhudake Koli vs. State of Maharashtra⁹.

7. Mr. Shejwal, learned counsel appearing

2 A.I.R. 1991 S.C. 1674

3 2010(4) Mh.L.J.(Cri.) 102

4 2012 ALL MR(Cri) 747

5 2011 ALL MR 9(Cri)1295(S.C.)

6 A.I.R.2008 S.C.(Supp)1128

7 2011 ALL SCR(O.C.C.) 44

8 A.I.R. 2012 S.C. 2435

9 2009 ALL MR(Cri)229(S.C.)

for accused Milind Sahebrao Lahane who is Appellant in Criminal Appeal No.106 of 1999 argued that deceased Prakash was uncle of accused Milind and there was no motive for accused Milind to kill his uncle. He submitted that at the relevant time accused Milind was taking education in the college at Aurangabad. He further submitted that the entire prosecution story that there were illicit relations between accused Milind and accused Sumanbai is false, and in fact accused Milind was nephew of accused Sumanbai. Mr. Shejwal, learned counsel invited our attention to the evidence of the prosecution witnesses and the findings recorded by the trial Court and submitted that the findings recorded by the trial Court are not in consonance with the evidence brought on record. He also submitted that entire prosecution case is based on the circumstantial evidence and the chain of circumstances has not been established beyond reasonable doubt by the prosecution and some links are missing. He further submitted that both the

accused never made any extra judicial confession before PW-10 Bhagwan Lahane. He submitted that PW-10 Bhagwan was influential person, serving in police department, and he was not intending to give share in the ancestral land to accused Milind and accused Sumanbai and therefore in order to grab all the ancestral property, he committed murder of Prakash and implicated both the accused in a false case. Mr. Shejwal, learned counsel, therefore submitted that the Appeal may be allowed.

8. The learned A.P.P. appearing for the State submitted that though the case of the prosecution is based on the circumstantial evidence, the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt by the prosecution. He further invites our attention to the evidence of PW-10 Bhagwan and PW-18 Venkat and submits that both the accused have made extra

judicial confession before these prosecution witnesses wherein they have clearly admitted that there were illicit relations between accused No.1 Milind and accused No.2 Sumanbai and they committed murder of Prakash. He further submits that after considering the entire evidence on record the trial Court has convicted both the accused and the findings recorded by the trial Court are in consonance with the evidence brought on record. He, therefore submits that both the Appeals may be dismissed.

9. To prove its case, the prosecution has examined as many as twenty witnesses. PW-1 Feroz Khan Sikandarkhan is a panch to the spot panchnama. He deposed that after recording statement of accused Milind, PW-1 himself, another panch, P.I. Lokhande, accused Milind and police staff went to Hanuman Tekdi by police Jeep. He further deposed that accused Milind pointed out the spot of incident and accordingly police

prepared spot panchnama Exhibit-31.

10. PW-2 Ravindra Hire, a Plumber and contractor, deposed that accused No.1 was serving with him. Accused told his name as Milind Lokhande and he was working with PW-2 Ravindra till September 1996. He further deposed that he engaged accused Milind as a watchman in Ketki Apartment. He further deposed that accused No.1 Milind was residing on the back-side of Ketki Apartment in tin-shed alongwith accused No.2. He further deposed that accused No.1 told him that accused No.2 was his wife. PW-3 Ramrao Yeshwant Maske deposed that accused Milind was residing in one room of his house as a tenant, along-with his wife and son. He further deposed that accused No.1 had taken one room from him on rent by stating his name as Milind Lokhande and accused stayed in his house as a tenant for about 2½ months.

11. PW-4 Rukhiya Begum w/o Abdul Gani deposed

that her own house is situated at Mukundwadi, Sanjay Nagar, Aurangabad. She further deposed that she know both the accused as they were her tenants for about two months. She further deposed that when accused Nos.1 and 2 had taken room on rent, they stated that they were husband and wife having one son.

12. PW-5 Mahindra Ramrao Deshmukh is a police officer. He deposed that at the relevant time he was attached to City Chowk Police Station as P.S.I. He deposed that on 29th January, 1996 he received one anonymous call through telephone informing that one dead body was lying near Hanuman Tekdi. Accordingly he sent two constables in the area of Hanuman Tekdi. He further deposed that police constable Gavali (PW-12) gave him information that dead body of one man was lying near Hanuman Tekdi. He further deposed that police constable Gavali filed written report on the basis of which Accidental Death bearing No.3 of 1996 was

registered under Section 174 of the Code of Criminal Procedure. He further deposed that he visited the spot of incident with head constable Nikalje. He further deposed about the manner in which investigation was carried out. He further deposed that after investigation he found that a murder was committed and to destroy the proof, dead body was thrown near Hanuman Tekdi and therefore he filed report in City Chowk Police Station on 31st January 1996 and on the basis of his report, offence was registered under Section 302 of the I.P. Code as Crime No.21 of 1996 and further investigation was handed over to Lokhande, Police Inspector of City Chowk Police Station.

13. PW-6 Rustum Sahebrao Gavane, deposed that in the year 1997 he was serving as a watchman on the work of Builder Dhontikar. He further deposed that one man having surname Lokhande was engaged as labour by his employer Mr. Dhontikar. PW-7 Kiran Dattatraya Kulkarni deposed that he

constructed Ketki Apartment at Mahavirnagar. He further deposed that he engaged accused Milind Lokhande as watchman on the recommendation of Ravindra Hire who was working with PW-7 Kiran as a plumber. He further deposed that accused Milind used to reside in the Apartment in the room of watchman, along with his wife. He further deposed that accused Milind stayed in the said room for about two months. He further deposed that while engaging as a watchman, accused told his name as Milind Lokhande.

14. PW-8 Yamunabai Baban Sarode deposed that her nephew with accused Nos.1 and 2 came to her house as they were intending to sell gold ornaments. She deposed that as per their request she took them to gold-smith Kishore, who purchased gold chain from accused Nos.1 and 2. PW-9 Kishore Uttamrao Udavant deposed that he purchased gold chain from both the accused.

15. PW-10 Bhagwan Vyankatrao Lahane deposed that deceased Prakash was his brother, accused No.1 Milind is his nephew i.e. son of his another brother Sahebrao, and accused No.2 Sumanbai is wife of Prakash. He deposed that since 12th January, 1998 he was serving as Home Dy.S.P. at Aurangabad. He further deposed that in the month of January, 1996 he came to know that accused Suman and his brother Prakash were missing from the house and while leaving the house they had taken with them clothes and other articles. He further deposed that his parents and he himself tried to search his brother Prakash and accused Sumanbai but he could not find them. He further deposed about the manner in which he and his family members taken search of accused No.1 Milind and accused No.2 Sumanbai and how he got the information about the whereabouts of both the accused at Ketki Apartment, Aurangabad.

. PW-10 Bhagwan Lahane further deposed that

at Ketki Apartment they reached near one tin-shed. In the said tin-shed he found accused Milind, accused Sumanbai and one small son. He deposed that he himself and his father made inquiry from both the accused about Prakash. He deposed that initially they gave evasive answers. He found that Sumanbai was pregnant of nine months. He further deposed that on enquiry it was revealed from both the accused that Sumanbai conceived pregnancy from accused Milind. He further deposed that they confessed about it before them and both the accused also confessed that they have committed murder of Prakash.

. PW-10 Bhagwan Lahane further deposed that accused Sumanbai confessed before him that on 25th January, 1996 she herself, accused Milind, Prakash and their small son had been to see Bibi Ka Makbara from Mukundwadi. After seeing Bibi Ka Makbara they went on back side near hill. He further deposed that accused Sumanbai further

confessed that at that place "Bhakri and Bhajiye" were given to Prakash for eating. In said Bhakri and Bhajiye there was thimet. Due to consumption of said thing, Prakash was having giddiness. He further deposed that she further informed that at the relevant time accused Sumanbai caught hands of Prakash, accused Milind had pressed neck of Prakash from backside and dashed him against the ground. He deposed that accused Sumanbai further informed that accused Milind sat on chest of Prakash. Prakash was having one thread around his waist. Accused Milind had broken said thread, accused Milind had tied neck of Prakash by means of said thread. Death of Prakash was caused due to throttling (strangulation). PW-10 Bhagwan Lahane further deposed that he came to know all those facts from accused Sumanbai. They left dead body of Prakash and came back.

16. PW-18 Venkat Yadavrao Lahane deposed that he was having three sons, namely, Sahebrao,

Bhagwan (PW-10) and Prakash (deceased). He deposed that accused Milind is son of Sahebrao, grand-son of PW-18. He further deposed that Prakash and his wife left his house before 2 to 2 and 1/2 years ago and while leaving the house they had taken with them household articles, clothes, cash and one gold chain. He further deposed that his son Prakash and daughter in law Sumanbai were missing. He further deposed about the manner in which he and his family members taken search of accused No.1 Milind and accused No.2 Sumanbai and how he got the information about the whereabouts of both the accused at Ketki Apartment, Aurangabad.

. About the extra judicial confession by both the accused, PW-18 Vyankat Lahane deposed that he himself, Bhagwan (PW-10) and wife of Bhagwan went to the room where both the accused were residing. He deposed that accused Milind and accused Sumanbai were present in the said house. He further deposed that on inquiry, accused Milind

as well as accused Suman told him tht they themselves, Prakash and Rahul (son of Prakash and Sumanbai) went to see "Bibi Ka Makbara". He deposed that accused told them that they themselves had given poison to Prakash through Bhajiye. He deposed that they also informed that by means of Kardoda (thread around stomach) they caused throttling of Prakash. Said Kardoda was around stomach of Prakash. He further deposed that accused Suman and accused Milind told them that Sumanbai was having pregnancy. He deposed that they also told that Sumanbai conceived pregnancy from accused Milind.

17. PW-11 Tejrao Kaduba Pongle was serving in Land Records Department. He deposed that as per the instructions of police, he drawn map of spot of incident, Exhibit-49. PW-12 Sheshrao Ramrao Gavali, police constable of City Chowk police station deposed that on receiving information that one dead body was lying at Hanuman Tekdi, he

visited the spot of incident at Hanuman Tekdi and thereafter filed Report Exhibit-51, on the basis of which A.D. No.3 of 1996 was registered. PW-13 Meerabai Manohar Nikalje deposed that accused No.1 Milind was residing in her room as tenant, along with one another tenant namely Vewal.

18. PW-14 Malhar Sambhaji Deshmukh, Special Executive Magistrate deposed that as per the instructions of police, he recorded confessional statement of accused No.2 - Sumanbai, Exhibit-57, as per her say. He deposed that accused Sumanbai voluntarily given the confessional statement. He further deposed that accused Suman made statement before him that she had not participated in the murder of her husband and she came to know about death of her husband when police had arrested her. He further deposed that she also made a statement that she did not know anything about murder of her husband. He further deposed that, accused Sumanbai made statement before him that she was having

daughter aged about one month, accused Sumanbai conceived that daughter from one Milind, she also stated that marriage between herself and Milind was not performed but they were residing together, Milind was her nephew. He further deposed that accused Sumanbai stated that her husband was not doing any work and her nephew Milind was maintaining them.

19. PW-15 Ashok Rambhau Vewal deposed that he is relative of accused No.1 Milind and he was residing with accused No.1 Milind in the tenanted room. PW-16 Sampat Yeduba Adhav, a labour, deposed that accused No.1 Milind was working with him as plumber on the construction site of stadium at Milind College, Aurangabad.

20. PW-17 Dr. Amrut Apparao Mahajan, Associate Professor, Anatomy Department at Government Medical College, Aurangabad, deposed that on 31st January, 1996 police requested him to

give report by examining dead body of Prakash. He deposed that he examined skull of dead body. He found that skull was broken at three places. Right parital bone was broken, right occipital bone was broken, right frontal bone was broken. There were three injuries to three bones of skull. He deposed that he observed that there was ossification of bone at juncture. He deposed that he found that skull of dead body was fractured and that was probable cause of death.

21. PW-19 Dr. Manohar Asaram Wakade deposed that on 29th January, 1996 he was attached to medical college hospital, Aurangabad as Medical Officer. He deposed that on 29th January, 1996 one unknown dead body of male person was produced before him by head constable Nikalje of City Chowk police station, Aurangabad for postmortem examination. He deposed that as per request of police, he himself and Dr. P.B. Kulkarni did postmortem examination of unknown dead body in

between 10.20 p.m. to 11.55 p.m. on 29th January, 1996. He deposed that he observed rigor mortis, he found that rigor mortis were passed off, false rigidity was present and accordingly he mentioned it in column No.11 of postmortem report. He deposed that he found that dead body was totally decomposed, he observed signs of decomposition and accordingly mentioned it in column No.12. He deposed that he observed magoots on all over the body. He found that skin and soft tissues over head, face and anterior part of neck were missing, edges of the skin around the depect were irregular, bones of the face and skull exposed, teeth were also exposed. He proved postmortem report Exhibit-23. He deposed that at the time of effecting postmortem, he was not sure about cause of death. He deposed that it may or may not be due to strangulation because interior parts of neck were missing.

22. PW-20 Uttam Sopanrao Lokhande was the

investigating officer. He deposed about the manner in which the investigation of the crime was carried out.

23. We have discussed the evidence of prosecution witnesses in detail. The evidence of PW-2 Ravindra, PW-3 Ramrao, PW-4 Rukhiya Begum, PW-6 Rustum, PW-7 Kiran, PW-13 Meerabai, PW-15 Ashok and PW-16 Sampat, is on the point of alleged illicit relationship between accused No.1 Milind and accused No.2 Sumanbai. They have deposed in their evidence to the effect that the accused Milind used to pose himself as Milind "Lokhande", though his surname is "Lahane". They deposed that accused Nos.1 and 2 used to tell these witnesses that they are husband and wife. Some of the witnesses stated that both the accused stayed in their houses as a tenant, and it is also stated by them that they are having one son. Therefore, evidence of all these witnesses if read conjointly, the prosecution is successful in

bringing on record that accused Nos.1 and 2 posed themselves as husband and wife and also they have one son. Admittedly, the prosecution has not brought on record any evidence in the nature of any document to suggest their relationship as husband and wife. There is no any scientific evidence brought on record that accused No.2 begotten son from accused No.1. It is significant to note, in the facts of the present case, that charge framed by the trial Court was for the offences punishable under Sections 302 and 201 read with Section 34 of the I.P. Code. Therefore, merely because the prosecution is successful to bring on record the evidence of the aforementioned witnesses, it has hardly any bearing on the charge framed by the trial Court.

24. Upon careful perusal of the findings recorded by the trial Court, it appears that as a main piece of evidence to base the conviction of the Appellants, the trial Court has relied upon

the extra judicial confessions of both the accused before PW-10 Bhagwan Lahane and PW-18 Venkat Lahane. While accepting the prosecution evidence in the nature of extra judicial confessions given by the accused before aforesaid two witnesses, it is concluded by the trial Court that the evidence in the nature of extra judicial confession needs no further corroboration. The trial Court has also observed that though the body of deceased Prakash was totally decomposed and was beyond recognition and medical officer was unable to give exact cause of death of deceased Prakash, nevertheless, concluded that, as the dead body was abandoned and it was highly decomposed, contradictory medical evidence might have come on record. The Trial Court further observed that medical evidence is nothing but the opinion and it is not sufficient to disbelieve the evidence of extra judicial confession. While convicting the Appellants, their subsequent conduct is also taken into consideration by the trial Court. So far alleged

illicit relationship between accused No.1 Milind and accused No.2 Sumanbaai, heavy reliance is placed upon the evidence of PW-14 Malhar Deshmukh, Special Judicial Magistrate, before whom statement of accused Sumanbai, under Section 164 of the Code of Criminal Procedure was recorded.

25. In our considered view, the conviction of the Appellants by the trial Court is based upon wrong appreciation of the evidence and also on misconception of facts and law. It has come in the evidence of PW-17 Dr. Amrut Mahajan and also another Doctor Manohar Wakade (PW-19) that it was not possible to give definite cause of death of Prakash. It is true that PW-17 Dr. Amrut opined probable cause of death as fracture of skull. However, while expressing final opinion it is stated by PW-19 Dr. Manohar Wakade that he was not sure about cause of death. He deposed that the death of Prakash may or may not be due to strangulation, because interior parts of neck were

missing.

26. In order to appreciate prosecution case that there was extra judicial confession given by both the accused before PW-10 Bhagwan Lahane and PW-18 Venkat Lahane, we have minutely perused the said confessional statements. It is alleged that in the said statements, the accused Sumanbai confessed that on 25th January, 1996 she herself, accused Milind, Prakash and their small son had been to see Bibi Ka Makbara from Mukundwadi. After seeing Bibi Ka Makbara they went on back side near hill. Accused Sumanbai further confessed that at that place "Bhakri and Bhajiye" were given to Prakash for eating. In said Bhakri and Bhajiye there was thimet. Due to consumption of said thing, Prakash was having giddiness. She further informed that at the relevant time accused Sumanbai caught hands of Prakash, accused Milind had pressed neck of Prakash from backside and dashed him against the ground. He deposed that

accused Sumanbai further informed that accused Milind sat on chest of Prakash, Prakash was having one thread around his waist. Accused Milind had broken said thread, accused Milind had tied neck of Prakash by means of said thread. Death of Prakash was caused due to throttling (strangulation). More or less, even the accused No.1 Milind confessed to the above effect before PW-10 Bhagwan and PW-18 Venkat. It appears that Sumanbai mentioned in her confession that in Bhakri and Bhajiye they mixed thimet, and Milind stated that some poison was mixed in Bhajiye and Bhakri. However, upon careful perusal of the medical evidence, nothing of that sort was detected from the contents of the stomach of deceased Prakash. In absence of detecting such thimet or poison from the contents of stomach of deceased Prakash, such alleged extra judicial confession cannot alone form the basis for the conviction of the Appellants. The findings recorded by the trial Court in Para 64-A of the

Judgment that, administration of poison might be in less quantity, therefore, in viscera poison might have not detected, and it is not necessary that viscera must show presence of poison, are the findings without any basis. Admittedly, there is no corroboration to the alleged extra judicial confessions given by the Appellants before PW-10 Bhagwan and PW-18 Venkat.

27. Though the prosecution placed heavy reliance upon the evidence of PW-14 Malhar Deshmukh, Special Judicial Magistrate, according to prosecution, before whom accused Sumanbai admitted her illicit relations with Milind, nevertheless the said statement was retracted by her before the Court and in her defence she stated that she had illicit relations with some Muslim person and a female child delivered by her after her arrest, was begotten from said Muslim person. It is true that the prosecution did examine PW-14 Malhar Deshmukh to prove that accused No.2

Sumanbai gave statement under Section 164 of the Code of Criminal Procedure, nevertheless, the said statement can be used only for the purpose of corroboration and nothing further. The Supreme Court in the case of Babubhai Udesinh Parmar vs. State of Gujarat, supra, after considering the facts of the said case, held that when there is no other material available on record to establish guilt of the accused, conviction cannot be based on confession of the accused. The Supreme Court in the case of Sahadevan and another vs. State of T.N., supra, in Par 12 of the Judgment, observed as under:-

"12. There is no doubt that in the present case, there is no eye-witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has

to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

28. According to the prosecution case, the accused resided in rented room for about six months, owned by PW-3 Ramrao and PW-4 Rukhiya Begum. The prosecution has also relied upon the evidence of PW-15 Ashok Vewal, who stated that in the month of January, 1996, on one day Prakash Lahane and his wife had been to their room. On

enquiry with Prakash and accused Sumanbai, they told him that Prakash was having eye problem, therefore they wanted to go to Mumbai to the house of elder brother of Prakash Lahane i.e. PW-10 Bhagwan. It is further revealed from the evidence of PW-15 Ashok that, in the evening hours accused Milind reached at the room. Accused Sumanbai and her husband Prakash demanded money from accused Milind. Accused Milind told that he had no money, however he suggested to take money from one relative residing at Mukundwadi. Thereafter both the accused went to Mukundwadi, and about 9.00 p.m. they came back to the said room. Thereafter Prakash and accused Sumanbai stayed in the said room. On next day at about 4.00 p.m. PW-15 Ashok observed that accused Sumanbai and Prakash Lahane were making preparation to go out. Accused Sumanbai told PW-15 Ashok that they were going to Mumbai. Accused Milind told that he would go to railway station along with Prakash Lahane and Sumanbai. After some time they all went out. At

about 6.00 to 6.30 p.m. accused Milind came back and informed the PW-15 Ashok that he boarded accused Suman, Prakash Lahane and small child in a train going to Mumbai. Thereafter accused Milind went to his native place to bring money from his grand father. After 15 days, accused Sumanbai came back along with small child. PW-15 Ashok made enquiry as to why she came alone, on which accused Sumanbai told that Prakash Lahane lost in Mumbai and she came back to give the said information to her father in law. Then she told to PW-15 Ashok that she will make arrangement of money and will go to her native place so as to inform the said fact to her father in law. The evidence of PW-15 Ashok has been treated by the prosecution to project the theory that deceased Prakash was last seen in the company of both the accused when accused Sumanbai, Prakash and their son left Aurangabad by train and thereafter Prakash (deceased) was never seen. It is the case of the prosecution that evasive answers were given by

accused Sumanbai and her conduct was also suspicious, and Prakash was last seen in the company of the accused and therefore accused should discharge the onus under Section 106 of the Evidence Act and explain whereabouts of Prakash or what happened to Prakash after they left for Mumbai. In our considered view, when Prakash was last seen in the company of accused, and then after 15 days Sumanbai with her son came at Aurangabad and at that time Prakash was not seen by PW-15 Ashok, the said time gap is so wide, and therefore said circumstance of 'last seen' cannot be relied upon. The Supreme Court in the case of Shyamal Ghosh vs. State of W.B.¹⁰, on the basis of the evidence in that case, in Para 74 of the Judgment, observed that reasonableness of the time gap is of some significance. If the time gap is very large, then it is not only difficult but may not even be proper for the Court to infer that the accused had been last seen alive with the deceased

¹⁰ (2012) 7 S.C.C. 646

and the former, thus, was responsible for commission of the offence.

. The Supreme Court in the case Rambraksh alias Jalim vs. State of Chhatisgarh¹¹ held that, it is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the

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accused.

. The Supreme Court in the case of Inderjit Singh and another vs. State of Punjab, supra, in Para-2 of the Judgment held that:-

"2. After giving our careful consideration, we are unable to agree with the Courts below. These circumstances are not sufficient to establish guilt of the accused. It is well settled that in a case pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No.1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the

accused. It is no doubt true that deceased's death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly sufficient to establish the guilt of the accused. The circumstance, i.e. the accused also had no enmity between the accused and the deceased and the witness would also show that the accused also had no enmity against the deceased. Therefore, this circumstance is neutral. However, now coming to the recovery of the gun, the High Court has acquitted him of that charge. The only relevant circumstance as pointed above is that the appellants and the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result, the convictions and sentences awarded by the Courts below are set aside. The appeal is allowed. The appellants be set at liberty."

29. It is to be noted here that the probable defence taken by accused Milind cannot be lost

sight of, regarding the property dispute. The defence taken by accused Milind is that his uncle Bhagwan (PW-10) was not ready to give share in the landed property to the father of Milind and therefore the quarrel took place on many occasions between Milind and Bhagwan and so also between Prakash (deceased) and Bhagwan (PW-10). Milind further stated that PW-10 Bhagwan has drove him out of the house and therefore since last 5-6 years he was staying at Aurangabad and was working for his livelihood. It is the defence of accused Milind that as he should not claim share in the ancestral landed property, he has been falsely implicated in this crime by PW-10 Bhagwan with an intention to grab whole property. The probable defence taken by accused No.2 Sumanbai is also identical. She stated in her defence that PW-10 Bhagwan was serving in police department and in the family his word was final. She stated that PW-10 Bhagwan was not ready to give any share in the ancestral landed property, to her husband

Prakash and therefore in order to grab the whole property, she has been falsely implicated in the present case.

30. It is significant to note that, identification of dead body is doubtful. The dead body was highly decomposed. As per the prosecution case dead body was identified by PW-10 Bhagwan and PW-10 Venkat, when they were shown photographs of dead body, slippers and clothes on the person of the dead body. Prosecution relied on the evidence of PW-10 Bhagwan wherein he deposed that he himself purchased those clothes and slippers for his brother Prakash (deceased). However no documentary evidence, either in the form of purchase receipt of said clothes and slippers or any other document, is brought on record by the prosecution to prove that those clothes were purchased by PW-10 Bhagwan. Therefore, in the facts of the present case, the identification of the dead body is highly doubtful.

31. In the light of detail discussion in foregoing paragraphs, in our considered view, in the first place it is doubtful that really extra-judicial confessional statement was made by the accused before PW-10 Bhagwan and PW-18 Venkat, and secondly even if it is assumed for the sake of argument that the said extra-judicial confessional statements were made, then the trial Court should not have based the conviction on such a weak piece of evidence as the said statements did not get any corroboration. The Supreme Court in the case of Sunil Rai alias Pauya and others vs. Union Territory, Chandigarh¹² has taken a view that such confessional statement is not a very strong piece of evidence and in any event it can be used only for corroboration. In the case of Pancho vs. State of Haryana¹³, the Supreme Court held that confession of co-accused or extra-judicial confession of co-accused is an extremely weak

12 (2011) 12 S.C.C. 258

13 (2011) 10 S.C.C. 165

basis to convict the accused.

32. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that both the Appellants are entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) Both the Criminal Appeals i.e. Criminal Appeal No.81 of 1999 and Criminal Appeal No.106 of 1999 are allowed.

(II) The impugned Judgment and order dated 4th December, 1999, passed by the IIInd Additional Sessions Judge, Aurangabad in Sessions Case No.246 of 1997, is quashed and set aside.

(III) Both the Appellants/accused i.e. Milind s/o Sahebrao Lahane and Sumanbai @ Kalpana w/o Prakash Lahane, are acquitted from all the offences with which they were charged. Fine amount if deposited as per impugned Judgment and

order be refunded to the Appellants.

(III) Their bail bonds shall stand cancelled.

(IV) It appears that this Court issued non-bailable warrant to secure presence of accused No.2 Sumanbai. However, since we have allowed the Appeals and set aside the impugned Judgment and order, the said interim order need not be acted upon.

(V) Since, Mr. A.K. Bhosale, the learned counsel is appointed to prosecute the cause of the Appellant - Sumanbai @ Kalpana w/o Prakash Lahane, his fees and expenses are quantified at Rs.7000/- (Rupees Seven Thousand).

(VI) Both the Criminal Appeals are disposed of, accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]