

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

Criminal Appeal No. 342 of 2001

Sidharth @ Siddya s/o Sitaram Jadhav
Age 24 years, Occupation : Labour,
R/o Warul, Taluka Mehkar,
District Buldhana, at present
Mill Chawl Amalner, Taluka Amalner,
District Jalgaon.

.. Appellant.

Versus

The State of Maharashtra.

.. Respondent.

Shri. V.B. Garud, Advocate, appointed for appellant.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for
respondent.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Judgment reserved on : 15 SEPTEMBER 2017

Judgment pronounced on : 03 OCTOBER 2017

JUDGMENT (Per T.V. Nalawade, J.) :

1) The appeal is filed against the judgment and order of Sessions Case No.35/1999 which was pending in the Court of the learned Additional Sessions Judge,

Amalner, District Jalgaon. The appellant is convicted for offence punishable under section 302 of the Indian Penal Code and he is sentenced to suffer imprisonment for life. Both the sides are heard.

2) In short, the facts leading to the institution of the present proceeding can be stated as follows.

Deceased Prakash Patil was a brother of the first informant. Prior to the date of incident, the deceased used to sell drinking water in railways. He was living with his brother and other relatives at village Bharwas, Tahsil Amalner. One Shankarlal Thakur was doing business of selling tea in railways. Present appellant Sidharth was resident of Mill Chawl Amalner and he was working with Shankarlal Thakur. He was appointed on daily wages and he was selling tea supplied by Shankarlal Thakur in railways everyday. He was expected to give account of the tea sold and hand over the money collected by him by selling the tea. As the appellant was not giving correct account and Shankarlal Thakur was not happy with his work, Shankarlal Thakur stopped giving him the work from 20-4-1999. Due to that the appellant had no work.

3) On 22-4-1999, the date of the incident, Shankarlal Thakur gave the aforesaid work to deceased Prakash Patil. On 22-4-1999 Prakash collected the tea and started selling the tea in railways by travelling in the railway upto some distance. Due to employment of the deceased by Shankarlal, the appellant became angry. Further, the appellant had given hand loan of Rs.25 to the deceased and so the appellant became more angry as he was thinking that he had helped Prakash but due to Prakash he had lost his job.

4) Rajendra @ Pintya, Rakesh Pardeshi and Vijay Thakur are the common friends of the deceased and the appellant.

5) On 22-4-1999 the appellant met Rajendra in Amalner at Shivpratap Chowk and said that he wanted to recover amount of Rs.25 given by him as hand loan from Prakash and Rajendra should remain in his company. Both, Rajendra and the appellant knew that Prakash was to return to Amalner by Hawara Express after selling tea. They kept waiting for the deceased near a garden situated

by the side of the railway station. The deceased arrived at railway station but as he was carrying the tea pot, for handing over the tea pot he went to Shankarlal Thakur. From Shankarlal deceased returned to Rajendra and present appellant. The appellant gave invitation to the deceased for dinner and when they were proceeding towards the residential locality, the appellant said that they can collect contribution and consume liquor. Deceased Prakash and the appellant purchased country liquor in one shop and they consumed the liquor in the shop itself. Rajendra was in their company.

6) After consuming liquor, the appellant said to Prakash that he had credit account in a canteen situated at railway station and so they can have dinner in that canteen. He took the deceased and Rajendra through open space of Tamboli Gin (Mill) by saying that they can go to the canteen by that way. When they were present in open space, the appellant picked up quarrel with Prakash by questioning him as to why he had accepted the job of Shankarlal when he was working with Shankarlal. Then he asked Prakash to return Rs.25 which was given by the

appellant to him as hand loan. The deceased said that he was not having that much amount with him and he would return the amount within one or two days. Then all of a sudden the appellant took out a knife from the pocket of his pant and started giving blows on the person of Prakash. He gave many blows on neck, chest and abdomen. Rajendra tried to intervene but Rajendra noticed that he was not in a position to control the appellant and so out of fear he ran away. On the way to his house there is a tailoring shop of his friend Rakesh Pardeshi and he met Rakesh. He narrated the incident to Rakesh. The incident took place at about 11.15 p.m. to 11.30 p.m. of 22-4-1999.

7) After learning about the incident, Rakesh Pardeshi took Rajendra to their common friend Vijay who was sleeping in his house. They narrated the incident to Vijay. When they were having discussion over the incident on road, the appellant reached there. He questioned Rajendra by asking him as to why he had run away from the place of incident. Then he told that he had finished Prakash by assaulting him with knife and Prakash was

lying on the same spot. After learning about the entire incident from the present appellant, Vijay left for his house.

8) Rajendra, appellant and Rakesh Pardeshi then went to tailoring shop of Rakesh Pardeshi. There the appellant said to Rajendra that, Rajendra should come with him on next morning and if he was not ready to come then he would implicate Rajendra in the case of murder of Prakash. He gave threats by saying that the punishment provided for one murder or two murders is the same.

9) Due to the aforesaid threats given, Rajendra remained in the company of the appellant and on the night between 22-4-1999 and 23-4-1999 they stayed in the shop of Rakesh Pardeshi. On 23-4-1999 by Bhusawal passenger train the appellant took Rajendra to Bhusawal and then to Shegaon, Mehkar etc. Rajendra remained in the company of the appellant for 4 to 5 days. Due to fear, Rajendra did not leave his company. On 4-5-1999 at about 8.00 a.m. when appellant and Rajendra were present in the house of Sidharth Jadhav in Warul, Tahsil Mehkar, Rajendra noticed

that the appellant was still sleeping and so he took the chance and left the company of the appellant.

10) Rajendra went to Shegaon where his brother-in-law Mohan Shivaji lives. He narrated the incident to Mohan Shivaji. He told that he knew the place where the appellant can be found. On 5-5-1999 Rajendra, one social worker Kalabai and Mohan Shivaji went to Police Station Shegaon at 9.30 a.m. and they narrated the incident to Police Sub Inspector of that police station. The Police Sub Inspector gave three constables and they were taken to Warul by Rajendra to show where the appellant was hiding. Police took Sidharth, appellant in their custody at Warul. This information was given to concerned police station, Amalner Police Station. On 6-5-1999 Amalner police took the appellant in custody and they brought Rajendra and the appellant to Amalner .

11) On 23-4-1999 in the morning time the dead body of Prakash was noticed on the aforesaid spot and on the same day brother of Prakash gave report that some unknown person had committed murder of Prakash. On

23-4-1999 the investigation was started by Murlidhar Patil (PW-14) and he took steps like preparing inquest panchanama, spot panchanama in the presence of panch witnesses and referring the dead body of Prakash for post mortem examination. It transpired to him that Prakash was working with Shankarlal Thakur and so he recorded statement of Shankarlal Thakur on 23-4-1999 itself. On 23-4-1999 itself Shankarlal Thakur expressed suspicion against present appellant and so the search was started for tracing the appellant. He could not be traced as he had left the station. On 6-5-1999, after receipt of information from Shegaon police, a team of police constables was sent to Shegaon police station by the investigating officer and the accused was brought to Amalner. On 7-5-1999 the clothes of the appellant were taken over under panchanama. During the course of investigation the appellant gave statement under section 27 of the Evidence Act and on that basis the weapon, knife came to be recovered from one water tank.

12) During the course of investigation, statements of other witnesses who include relatives of the deceased

and also Rakesh, Vijay and Rajendra came to be recorded. Charge-sheet came to be filed for the aforesaid offence.

13) Charge was framed by the trial Court for aforesaid offence. The prosecution examined in all 14 witnesses. The accused pleaded not guilty and took the defence of total denial. The prosecution gave both, direct and circumstantial evidence. The trial Court has believed that evidence.

14) This Court is discussing the points which are raised by the learned counsel of the appellant at appropriate places. The appellant, accused did not dispute that Prakash died homicidal death. For proving the inquest panchanama, prosecution examined panch witness Narendrasing Thakur (PW-3). Bleeding injuries were found on the neck, chest, abdomen, mostly on front portion of the dead body. The inquest panchanama is at Exhibit 16. The tenor of the cross-examination of this witness shows that the defence tried to test his veracity but not much could be brought on record to create probability that this witness had any adverse interest against the accused.

15) Dr. Patil (PW-8) conducted post mortem examination on the dead body on 23-4-1999 between 4.30 and 5.30 p.m. The dead body was brought to the municipal hospital Amalner at about 4.15 pm by police. The post mortem report is duly proved in the evidence of Dr. Patil as Exhibit 29. Dr. Patil found following ante mortem surface injuries on the dead body.

(1) Spindle shaped vertical incised wound on right side of neck near about 1" lateral to laryngeal prominence of size 1/2" x 1/4" x 1" cutting the muscles and vessels underneath.

(2) Spindle shaped oblique incised wound on right side neck 1" below injury No.1 of size about 1/2"x1/4"x1".

(3) Transverse spindle shaped incised wound on neck, just above upper end of sternum and on right side of size about 1/2" x 1/4" x 1/2".

(4) Oblique spindle shaped incised wound on left side of neck near and lateral to laryngeal prominence of size about 1/2"x1/4"x1/2".

(5) Stab wound on left side of chest near and below medial end of clavicle of size about 1/2" x 1/2" x going

deep in to chest cavity and cutting apical lobe of left lung, below the external wound lung is cut of size about 1/2" x 1/2 x 1".

(6) Stab wound on left side of chest about 4" below mid clavicular line between 3rd and 4th rib cutting partly forth rib at side of external wound and cutting pleura and lung of size about 1.1/4"x1" x deep in to upper lobe of left lung, lung is also seen cut through and through in the line of external injury of size about 1"x1"x through and through lung tissue.

(7) Spindle shaped incised stab wound on left side of chest in a line of anterior axillary fold about 2" lateral breast of size about 1/2"x1/4" deep in to lung tissue cutting pleura and left lung in a direction of external wound lung is seen cut about 1/2" x 1/4" x 1".

(8) Stab wound on right side of chest between 5th and 6th rib 1/2" below mammary region of size about 1/2"x1/4"x going deep in to lung tissue, pleura and lung underneath is seen cut in a line of external wound of size about 1/2"x1/8" through and through lung tissue.

(9) Spindle shape oblique stab wound on right side of chest, below 9th rib 6" below mammary region of size about 3/4" x 1/4" x going oblique in to liver. Liver is seen cut in a line of external injury of size about 1/2"x1/8"x3/4".

(10) Stab wound on right side of chest $1/2''$ away from injury No.9 of size about $1/2'' \times 1/4'' \times$ going obliquely in to liver tissue cutting partly rib below liver is also seen clean cut in a line of external injury of size about $1/2'' \times 1/8'' \times 1''$.

(11) Oblique stab wound on right side of chest $1''$ above costal margin and below and lateral to injury No.9 and 10th going oblique into liver of size about $1.1/4'' \times 1/4'' \times$ cutting the liver is same line of size about $3/4'' \times 1/8'' \times 1.1/2''$, rib underneath is also seen clear cut partly.

(12) Stab wound on right hypochondriac region of abdomen, below costal margin of size about $1'' \times 1/2'' \times$ deep in to liver tissue cutting peritoneum of size about $3/4''$ in length on cut wound on liver of size about $1/2'' \times 1/10'' \times 3/4''$.

(13) Stab wound on right side of abdomen $2''$ below lower end of sternum and $1.1/2''$ away from mid line of size about $1'' \times 1/4''$ going deep in to abdominal cavity, cutting pleura underneath for about $1/4''$ in length.

(14) Transverse stab wound on left side of abdomen on lateral end near costal margin of size about $1/2'' \times 1/4'' \times$ going deep in to abdomen, cutting spleen underneath of size about $1/2'' \times 1/10'' \times 1/2''$.

All the aforesaid injuries show that there were injuries over neck, chest and pleura was cut at many places. Internal injuries show due to aforesaid surface wounds, larynx and trachea were cut and trachea was filled with blood and blood clots. The right lung had clear cut at many places and on the left side clear cut injuries at three places. There were three cuts on peritoneum. Cavity was filled with blood and blood clots. Liver had clean cut injuries at 4 places. Dr. Patil (PW 8) has given opinion that the death took place due to shock and haemorrhage caused by stab injuries to both lungs, spleen and multiple stab injuries to the liver.

16) Dr. Patil (PW 8) has given evidence that aforesaid injuries can be caused by hard and sharp weapon like knife. Dr. Patil has given opinion that these injuries are sufficient to cause death in ordinary course of nature. Thus, there is sufficient evidence to prove that it is homicide.

17) Rajendra (PW 2) is main witness of the prosecution as he is the only eye witness. He has deposed that the deceased was known to him and he knows the

accused also. He has deposed that he was selling tea in railway between Amalner and Nandurbar after boarding trains at Amalner. For some days due to illness he had not left the station but he knew that on 22-4-1999 the deceased had boarded the train for selling the tea.

18) Rajendra (PW 2) has deposed that at 8.00 p.m. on 22-4-1999 the accused met him at Shivpratap Chowk, Amalner which is situated at a distance of 200 feet from Amalner Railway Station. He has deposed that accused said to him that accused wanted to recover amount of Rs.25/- which was due from the deceased Prakash to him. He has deposed that on the request made by accused, he went to railway station Amalner. He has deposed that at about 9.00 p.m. a train arrived at Amalner and from that train Prakash alighted and he came out of railway station. He has deposed that from there first Prakash went to his employer Shankarlal Thakur (PW 10) to give account of the sale of tea of that day. He has deposed that at 9.30 pm when he and the accused were present at Shivpratap Chowk the deceased came there.

19) Rajendra (PW 2) has deposed that the accused gave offer of dinner to the deceased and it was accepted by the deceased. He has deposed that he, accused and the deceased then started towards town as the meal was to be taken towards that side. He has deposed that when they had crossed about half distance, the accused said to the deceased that they would take liquor provided that the deceased was ready to give his own contribution for purchasing the liquor. Rajendra (PW 2) has deposed that the deceased agreed to it and then they went to liquor shop situated near Poonam hotel. He has deposed that only the accused and deceased consumed liquor there and then they left the said shop. He has deposed that contribution for purchasing liquor was given by the deceased.

20) Rajendra (PW 2) has deposed that the accused then said that he had credit account in railway canteen Amalner and so they can take dinner there. He has deposed that by saying so he took the deceased and him towards railway station and they started going through open space situated behind the building of State Bank of

India. He has deposed that after reaching the open space the accused started demanding amount of Rs.25/- which was due to him from the deceased. He has deposed that the deceased said that at that time he was not having the amount and he would return the amount within 2 to 3 days. He has deposed that the accused then questioned the deceased as to why he had accepted the work from which he was removed (by Shankarlal Thakur). Rajendra (PW 2) has deposed that the accused took knife from the pocket of his pant and he started assaulting the deceased with the knife. He has deposed that the blows were given by knife on stomach (abdomen), chest and other parts. He has deposed that to save the deceased he tried to control the accused but he could not control the accused. He has deposed that he got frightened and so he left the place. According to him, the incident of assault took place between 11.00 p.m. and 11.30 p.m. of 22-4-1999.

21) Rajendra (PW 2) has deposed that from the place of the incident he went to the tailoring shop of his friend Rakesh Pardeshi (PW 7). According to him, when he disclosed the incident to Rakesh, Rakesh closed the shop

and then they went to their common friend Vijay Thakur (PW 9). Rajendra (PW 2) has deposed that when he, Vijay and Rakesh were discussing about the incident on road, they expressed that the incident needs to be disclosed to somebody, but the accused came there. It was at Shivpratap Chowk and the time given is 00.00 hours of the night.

22) Rajendra (PW 2) has deposed that the accused said that they should not disclose the incident to anybody. Rajendra (PW 2) has deposed that Vijay then left for his house. He has deposed that, he, accused and Rakesh went to the tailoring shop of Rakesh and there they stayed on that night. He has deposed that in the tailoring shop accused asked him to come with him to Bhusawal by Bhusawal train. He has deposed that he initially declined to give company to the accused but when the accused gave threats that he will be implicated in the case of murder of Prakash and when he said that punishment for one or two murders is the same, he agreed to give company to the accused.

23) Rajendra (PW 2) has given evidence that due to fear created in his mind by the accused he went along with the accused first to Bhusawal and then to Shegaon, Mehkar and then to Warul, Tahsil Mehkar, District Buldhana. He has deposed that they stayed for 2 to 3 days at Warul and then they went to Jalna. He has deposed that then they again returned to Warul. He has deposed that in Warul on 4-5-1999 in early morning when he noticed that the accused was sleeping, he left the company of the accused and from there he went to Shegaon. He has deposed that at Shegaon he disclosed the incident to his relative Mohan Shivaji and also maternal aunt Kalabai. He has deposed that Mohan and Kalabai advised him to go to police and disclose the incident and so all of them went to Shegaon police on 5-5-1999. He has deposed that when he disclosed the incident to police, three constables were given with him and along with three constables he went to Warul and he showed the accused to them. He has deposed that police took accused in their custody at Warul. He has deposed that on 6-5-1999 Amalner police came to Shegaon police station and they took the accused to Amalner police station. In the evidence he has

identified the accused and also the weapon. It is not disputed that the accused was known to him from prior to the date of the incident.

24) In the cross-examination of Rajendra (PW 2) some omissions in the police statement in relation to the evidence given in Court are brought on the record. Those omissions are with regard to minute particulars and they are not that material if the entire evidence as a whole is considered. To challenge the evidence of Rajendra (PW 2), learned counsel for the appellant, accused argued on the following grounds :

(i) From the date of the incident i.e. from 22-4-1999 till 5-5-1999 witness Rajendra did not disclose the incident to police and he preferred to avoid police. He avoided to go to the relatives of the deceased to disclose the incident when the deceased was his friend.

(ii) In view of the nature of evidence, the disclosure made by Rajendra and the circumstance that he remained away from police till 5-5-1999, Rajendra

could have been made accused by using section 34 of Indian Penal Code; and,

(iii) Shegaon police must have recorded the information given by Rajendra but that record is not produced.

Learned counsel submitted that due to these circumstances, the evidence given by Rajendra cannot be believed and it cannot be taken as a base for conviction in such a serious case. It is true that there are aforesaid circumstances. Due to these circumstances close scrutiny of the evidence of Rajendra (PW 2) is necessary. His police statement was recorded on 7-5-1999. Evidence of this witness however shows that he had disclosed the incident to his friends like Rakesh and Vijay immediately after the incident. Let us see other evidence to ascertain whether Rajendra (PW 2) can be believed or not.

25) Evidence of Bhalerao (PW 1), brother of the deceased, who gave report, shows that on 23-4-1999 when he gave FIR he had not mentioned the name of the accused. However, in Exhibit 12 and in the evidence he

expressed suspicion that after seeing the dead body that the incident had probably taken place due to some business rivalry. Bhalerao gave report at about 11.05 a.m. when he had seen the dead body at about 10.00 a.m.

26) Vijay Thakur (PW 9) has deposed that due to business of sale of the tea in railways he knew the deceased and he also knows the accused. He has given evidence that he knows Rajendra (PW 2). He has deposed that on 22-4-1999 at about 11.45 p.m. when he was sleeping in his house, Rajendra (PW 2) and Rakesh Pardeshi (PW 7) came to his house and they informed that the accused had assaulted the deceased and by using knife he had killed the deceased near Tamboli Gin (Mill). He has deposed that the information about the incident was given by Rajendra (PW 2) who had witnessed the incident. He has deposed that when he was in the company of PW 2 and PW 7 on the road, the accused came there.

27) Vijay (PW 9) has deposed that he advised the accused to disclose the incident to some respectable

persons but the accused said that they should not disclose the incident to anybody. He has deposed that when he asked the accused about the blood stains which must have come on his clothes, the accused said that to hide the stains, he had put his shirt within his pant. He has deposed that the accused informed him that his hands were stained with blood and he had washed it. He has deposed that, after this conversation he returned to his house and he went to bed. He has deposed that only on the next day i.e. on 23-4-1999 when people were talking that they had seen the dead body he went to the spot. Some omissions in his police statement recorded on 24-4-1999 in relation to the substantive evidence are pointed out to this witness, but they are on minute details. If the evidence of this witness is considered as a whole, it can be said that those minute details are not sufficient to discard his evidence.

28) Rakesh (PW 7) has deposed that when he was in his tailoring shop at 11.30 p.m. Rajendra (PW 2) came there. He has deposed that Rajendra disclosed to him that the accused had murdered Prakash. He has deposed that

after learning about the incident he and Rajendra went to Vijay (PW 9) and they informed Vijay about the incident. He has deposed that when they were present on the road, accused came there and the accused admitted that he had committed murder of Prakash. He also has deposed that the accused told them that they should not disclose the incident to anybody. His evidence also shows that on the night between 22-4-1999 and 23-4-1999 the accused, Rajendra and he stayed in his shop. He has deposed that after 5.30 a.m. on 23-4-1999 the accused and Rajendra left his shop. One improvement is brought on the record. In the police statement he had stated that first Rajendra left and then the accused left the shop. He has also given evidence that on 23-4-1999 he went to the spot to see the dead body. His police statement was recorded on 24-4-1999.

29) The evidence of PW 7 and PW 9 shows that they learnt first time about the incident from PW 2 Rajendra. Their evidence shows that the accused confessed about the crime on the same night when these three witnesses were standing on the road. The evidence on record is

sufficient to prove that they were friends of each other. Due to these circumstances, their evidence that the accused confessed the crime and the accused decided to take with him Rajendra cannot be looked with doubt. The circumstance that Rakesh (PW 7) gave police statement on 24-4-1999 cannot make much in favour of the accused as it can be said that only after recording statement of Shankarlal (PW 10) the police realised that probably only friends of the deceased had clue about the incident. The circumstance that the accused had taken Rajendra (PW 2) with him but prior to that the incident was disclosed by Rajendra to PW 7 and PW 9, witnesses, need to be kept in mind while considering the contention that the statements were not given to police by Rajendra, PW 7 and PW 9 immediately after the incident.

30) To the aforesaid two witnesses like Vijay and Rakesh it is suggested that there was some business rivalry between them. The evidence shows that nobody had taken licence from the railways to sell tea in the railways. The witnesses have admitted that due to business of selling tea some cases were filed against them

and some incidents had taken place. However, these circumstances have not created reasonable doubt about the evidence given by these witnesses. They had not given reports against each other. These circumstances show that they were friends of each other and prior to the date of the incident there was no enmity between the deceased and the accused. Thus, their versions are consistent with each other and the disclosure made by Rajendra to Rakesh and Vijay shows that his conduct was natural and his evidence has general corroboration of the evidence of these two witnesses.

31) Shankarlal (PW 10) is in the business of selling tea in trains. He appoints persons like accused and the deceased and on the basis of sale made, he makes payment to them. Prior to 20-4-1999 the accused was working for him. Evidence is given by Shankarlal that, as accused was not giving correct and proper account of the business, he had stopped giving him the work and that was done 4 to 5 days prior to the date of the incident. He has given evidence that he had then given the work to the deceased and the deceased was in his company for selling

the tea on 22-4-1999.

32) Shankarlal (PW 10) has given evidence that on the date of the incident i.e. on 22-4-1999 for some time the deceased was in his company and he had asked to the deceased to stay on railway and return by Ahmadabad - Hawara Express. He has deposed that the deceased returned by that train in the night and he had come to him to give account of the business. His evidence shows that after giving account and handing over the amount, the deceased had left his residential place. The evidence of this witness shows that on 23-4-1999 the deceased did not come to him and he made inquiry to find him out for some time but as deceased could not be traced he went for selling the tea. His evidence shows that he returned in the noon time and after that police approached him.

33) In the evidence of Shankarlal it is brought on the record by defence that Vijay Thakur (PW 9) is son of his brother and Vijay was also in the business of selling tea in the train. This circumstance explains as to how this witness suspected against the accused when he learnt

about the murder of Prakash. This evidence indicates as to how police got the clue about the incident and against the accused on 23-4-1999.

34) The case of the prosecution and the evidence of the witnesses like Rakesh, Vijay and the investigating officer show that police approached the witnesses like Rakesh and Vijay on 24-4-1999 and then they learnt about the entire incident and then search was made even for Rajendra (PW 2). This evidence is certainly relevant under section 6 of the Evidence Act as the inference is available about the disclosure of the incident by Rajendra (PW 2) to these witnesses at least on 22-4-1999 and the evidence can be used as conduct of the witnesses and it can be used under section 8 of the Evidence Act.

35) In the evidence of Narendrasing (PW 3) the prosecution has proved the spot panchanama as Exhibit 15. The spot panchanama was prepared between 12.30 hours and 13.30 hours on 23-4-1999. The earth mixed with human blood was collected from the spot. At the distance of 10 feet from the spot there is foot path on one

side and the spot is situated at the corner of two walls of the mill. No houses were situated in the vicinity of this spot. Narendrasing lives in this ward though not in the vicinity and so he knew this place. He had contested the election to the local body from this ward. But due to these circumstances the evidence of this witness cannot be looked with doubt. Nothing is brought on the record to create probability that he has enmity with the accused.

36) Narendrasing (PW 3) has given evidence also on other circumstances like recovery of weapon on the basis of statement given by accused under section 27 of the Evidence Act. This circumstance is discussed in detail at later place. The evidence on spot panchanama given by him and the investigating officer shows that it is consistent with the evidence given by PW 2, PW 7 and PW 9. It gives necessary corroboration to the evidence of PW 2.

37) Evidence of Narendrasing (PW 3) shows that on 8-5-1999 accused gave statement under section 27 of the Evidence Act and he showed readiness to produce the

weapon which was concealed by him in a water tank. Memorandum is at Exhibit 17. There is evidence of investigating officer (PW 14) also on Exhibit 17. The evidence of Narendrasing and the investigating officer shows that the accused took them and the panch witnesses to the water tank which was not in use and from the water tank he produced a knife, Article 9, before police. It can be said that after arrest of the accused, discovery of the weapon was made immediately. Discovery panchanama is also proved in the evidence of this witness.

38) Pandurang (PW 4) has given evidence to prove the seizure of clothes of the accused taken from him on 7-5-1999. According to him, one owner of laundry produced a pant which was handed over by the accused. Panchanama is at Exhibit 20 and it is consistent with the oral evidence of the panch. Pandurang (PW 4) is also examined to prove the seizure of the shirt of the accused. On 7-5-1999 accused produced shirt and it came to be seized under panchanama Exhibit 21.

39) Narayan (PW 11), laundry owner, has given evidence that early in the morning of 23-4-1999 the accused had handed over a pant to him and he had returned clothes of accused which were given by accused in the past for washing and these clothes were used by the accused when he removed the pant from his person.

40) Raju (PW 5) is examined to prove the panchanama of seizure of clothes. The clothes were seized on 23-4-1999. These are articles 4 to 6. This panchanama Exhibit 23 is proved in the evidence of Raju (PW 5) and the evidence of investigating officer (PW 14).

41) Prakash Sonar (PW 6) hotel owner has given evidence that on 22-4-1999 at 10.00 p.m. the accused, the deceased and Rajendra (PW 2) had came to his liquor shop and he had seen these persons together. However in the cross-examination he has deposed that prior to the date of the incident and till the date of deposition he had not seen the accused. In view of this admission there is no need to discuss this evidence more. His evidence cannot be used in support of the case of the prosecution.

42) Similarly, there is no evidence from Rajendra (PW 2) that before they proceeded to Bhusawal by train the accused had handed over his clothes to the laundry owner and he had changed the pant by accepting the pant given by the laundry owner. Due to this circumstance, not much importance can be given to the evidence of recovery of pant of the accused. Due to other circumstance like C.A. report the evidence on seizure of shirt of accused is also of no use to prosecution.

43) Prithwiraj (PW 13), police constable, has given evidence that with covering letters he handed over seven articles to the CA Office on 19-5-1999. The covering letters are at Exhibits 34 to 36.

44) Jagannath (PW 13), Surveyor, prepared the map of the scene of the offence. The map is at Exhibit 44. The map is consistent with the spot described in the spot panchanama which is already discussed. In the map the place where the human blood was found is shown. It can be said that complete description of the spot upto the open space and the foot path etc. is not there in the map.

However, from the spot shown in the spot panchanama and in the map it can be said that in the night time no other person could have witnessed the incident and only Rajendra (PW 2) could have witnessed the incident.

45) Evidence of Murlidhar (PW 14) P.S.I. who made investigation shows that he came to know about the murder only after registration of F.I.R. (Exhibit 12) given by the brother of the deceased. He has given evidence that he prepared inquest panchanama (Exhibit 16) and he made further investigation. He has deposed that he had tried to trace the accused. According to this witness, the accused had motive for the crime. Thus, the accused was wanted according to him on 23-4-1999 but the accused could not be traced till 6-5-1999. This circumstance can be considered as a circumstance of abscondance which is relevant under Section 8 of Evidence Act.

46) Evidence of Murlidhar (PW 14) shows that after recording of the statement of Shankarlal (PW 10) police realized that the accused had the motive as the deceased had taken his place and the deceased was given

the work which the accused was doing in the past with Shankarlal. There is evidence of PW 7 and PW 9 also on motive which is relevant under section 8 of Evidence Act.

47) Murlidhar (PW 14) has given evidence on the recovery of the clothes of the accused and also the recovery of the weapon. This evidence has the corroboration of independent evidence of panch witnesses.

48) In the evidence of PW 14 the omissions in the police statements of PW 2, PW 7 and PW 9 which were pointed out to them during their cross-examination by defence counsel are proved and already necessary observations are made with regard to those circumstances. These omissions cannot be called as contradictions and they have not created reasonable doubt against the case of the prosecution. Due to these omissions the evidence of these three witnesses cannot be discarded.

49) CA Report at Exhibit 46 is in respect of clothes of the deceased. Human blood was detected on these clothes. CA Report at Exhibit 47 is in respect of earth sample collected from the spot of offence. Human blood was detected in the earth sample. CA report at Exhibit 48 is in respect of weapon knife and human blood was detected on this weapon but the blood group could not be determined. No blood was detected on the clothes of the accused and necessary observations are made in that regard already. The circumstance of discovery of weapon on the basis of statement given by the accused under section 27 of the Evidence Act is certainly an incriminating circumstance and the accused has not offered any explanation to this circumstance. The evidence on the recovery and seizure of clothes of the accused is however of no use to prosecution. That part can be discarded.

50) The evidence discussed shows that even when Rajendra (PW 2) was not available, the police had realised that it is the accused who had murdered Prakash. This circumstance is relevant under section 8 of the Evidence

Act and there is evidence of Shankarlal (PW 10) on the doubt expressed by him against the accused. That must have been done on the basis of disclosure made to him by his relative Rakesh (PW 7). There is the circumstance that the accused was absconding immediately after the crime and he could be traced only on the basis of information supplied by Rajendra. There is also evidence of statement under section 27 of Evidence Act given by the accused to police and recovery of the weapon having blood. There is also the evidence in the nature of extra judicial confession given by the accused to PW 7 and PW 9. The medical evidence is also consistent with the evidence given by Rajendra (PW 2). Thus, the direct evidence has corroboration of circumstantial evidence and evidence is sufficient to prove the offence of murder against the accused beyond all reasonable doubt. This Court sees no reason to interfere in the decision of the trial Court against the accused.

51) Record of information which Rajendra (PW 2) must have supplied to Shegaon police is not produced. But that circumstance cannot go to the root of the matter. The

circumstance that due to Rajendra, accused was traced has removed the suspicion created by that circumstance.

52) Learned counsel for the appellant placed reliance on the following reported cases in support of his submissions :

- (1) **Jackaran Singh v. State of Punjab (AIR 1995 SC 2345);**
- (2) **Haribhau Ganpati Bhalerao v. State of Maharashtra (2002 ALL MR (Cri) 305);**
- (3) **Hari Deoram Mali v. State of Maharashtra (1999 ALL MR (Cri) 671;**
- (4) **Tukaram Namdeo Yede v. The State of Maharashtra (2016 ALL MR (Cri) 4108);**
- (5) **Nilkanth Govindrao Rahamatkar v. The State of Maharashtra (2017) ALL MR (Cri) 234);**
- (6) **Vikram Babasaheb Jadhav v. State of Maharashtra (2012 ALL MR (Cri) 2548);**
- (7) **Abdul Sattar Babu Shaikh v. The State of Maharashtra (1998) ALL MR (Cri) 460);**
- (8) **Lahu Kamlakar Patil v. State of Maharashtra (2013 Cri. L.J. 603).**

The aforesaid reported cases are on appreciation of evidence and on the evidence given on recording of the statement made under section 27 of the Evidence Act.

Some cases are in respect of proper procedure which needs to be followed at the time of seizure of weapon and sending the weapon to CA office etc. Some cases are on appreciation of evidence of eye witnesses. Facts and circumstances of each criminal case are always different. In view of the nature of evidence brought on record in the present matter this Court sees no reason to discard the evidence which is mentioned above. In the present case there is evidence of independent panch witnesses on the statement given under section 27 of the Evidence Act and in addition to that there is evidence of the investigating officer (PW 14). Due to this evidence no doubt is there about authenticity of the statement given by the accused under section 27 of the Evidence Act. Though there is no signature of the accused on the memorandum, in view of the nature of the evidence, the evidence cannot be discarded. Reliance is placed by the learned Additional Public Prosecutor on the case reported as **2017 ALL MR (Cri) 1316 (S.C.) (Kishore Bhadke v. State of Maharashtra)**; and **2001 Cr.L.J. 4355 (Manohar Amrut Satpudke vs. The State of Maharashtra)**. The law laid down shows that statement recorded under section 27 of

the accused does not require signature of the accused. Provision of section 162(2) of the Criminal Procedure Code also shows that signature of person giving statement to police is not to be obtained.

53) The discussion made above shows that satisfactory explanation is given in respect of delay caused in recording of the police statement of Rajendra and the circumstances which were argued as the ground of attack against the evidence are explained in the evidence. There is no reason to interfere in the decision given by the trial Court. So, the appeal stands dismissed. The accused to surrender to bail bonds for undergoing the sentence.

54) Learned counsel Shri. V.B. Garud was appointed for the appellant. His fees is quantified at Rs. 5000/- (Rupees Five Thousand).

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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