

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

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.317 OF 2013**

Amin s/o Hiraji Tamboli,  
Age-30 years, Occu:Driver,  
R/o-Bhise-Wagholi,  
Tq. & Dist-Latur.

**...APPELLANT**

**VERSUS**

The State of Maharashtra

**...RESPONDENT**

...

Mr. V.P. Golewar Advocate appointed through  
Legal Aid for Appellant.

Mr. M.M. Nerlikar, A.P.P. for Respondent.

...

**CORAM: S.S. SHINDE AND  
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING JUDGMENT : 9TH NOVEMBER, 2017**

**DATE OF PRONOUNCING JUDGMENT: 21ST NOVEMBER, 2017**

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

1. This Appeal is directed against the  
Judgment and order dated 4th July 2013, passed by

the Sessions Judge, Latur in Sessions Case No.26 of 2012 thereby convicting accused/Appellant - Amin Hiraji Tamboli for the offence punishable under Section 302 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1000/- and in default to suffer rigorous imprisonment for two months.

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

A) At the material time, the accused-appellant was a driver on a truck bearing No.MH-17-T-9856, owned by Pandurang Bhawar, resident of village Dev-Daithan, Tq-Shrirampur, Dist-Ahmednagar, who was the transporter by occupation. On the said truck deceased Mahavir Prabhakar Waghmare was a cleaner.

B) On 22nd August 2011, the accused as a

driver, and the deceased, as a cleaner, on the truck bearing afore-stated number, left village Dev-Daithan, Tq-Shrirampur, Dist-Ahmednagar. On the same day, in the evening, the truck was loaded at Ahmednagar and then the accused and the deceased transported the goods to Solapur. At Solapur, the truck was unloaded and then it was taken to the Office of Hindustan Transport, at Solapur. At Solapur, the truck was loaded with cement bags, which were to be delivered at village Yedshi and village Kallam, in Osmanabad District.

C) It is alleged that after loading the truck with cement bags at Solapur, the accused and the deceased proceeded to village Yedshi, in Osmanabad District. On 25th August 2011, in the morning, the truck was partly unloaded by delivering the cement bags to Nanasaheb Pawar, who does the business of building materials, under the name and style "Yeshwant Traders" at Yedshi.

D) It is the further case of the prosecution that while the truck was being unloaded at Yedshi, the accused and the deceased went to country liquor shop. After some time, they returned back to the truck. Nanasaheb Pawar, to whom the bags of cement were delivered, issued an acknowledgement of the receipt of the cement bags to the accused. Thereafter, the accused and the deceased, in the said truck, left village Yedshi, Dist-Osmanabad, for the delivery of the remaining cement bags to a trader at village Kallam, Dist-Osmanabad.

E) It is alleged against the accused that he wanted to sell remaining cement bags, instead of its delivery to a trader at Kallam, Dist-Osmanabad and, as such, he took the truck loaded with cement bags to his native place village Bhise-Wagholi, Tq. & Dist-Latur. It is further alleged that the deceased Mahavir, who was a cleaner on the truck, objected the sale of the cement bags and, therefore, the accused apprehended that the

deceased would disclose his plan of selling of the cement bags to his employer and, as such he decided to kill the deceased.

F) It is further alleged that the accused took the truck, loaded with cement bags, to K.T. Weir, which is outside village Bhise-Wagholi and parked the said truck near the K.T. Weir. Thereafter, the accused in between 25th August 2011 and 26th August 2011, is alleged to have hit the deceased by iron rod on his head, as a result, the deceased sustained a depressed fracture over right parietal region. The deceased, after sustaining head injuries, died on the spot. The accused threw the dead body of the deceased in weir water with an intention to destroy or cause disappearance of the evidence of murder.

G) The prosecution has alleged that the accused, after causing death of the deceased, wanted to sell the cement bags but wheels of the

truck rooted into the mud or mire, and as such the accused could not move the truck to a suitable place for sale of cement bags.

H) The accused, after the incident, absconded. His employer, from 25th August onwards, contacted him on the cellphone, but the cellphone of the accused was switched off. In the meantime the office of Hindustan Transport, at Solapur, informed the employer of the accused that the accused did not deliver the cement bags at village Kallam, Dist-Osmanabad. Therefore, on 26th August 2011, the owner of the truck, Pandurang Bhawar, his two sons, namely Sunil and Sandip and their neighbour, namely Ashok Jadhav, went to village Kallam, Dist-Osmanabad, in order to meet the proprietor of Dnyaneshwar Traders, to whom the remaining cement bags were to be delivered. On enquiry with the proprietor of Dnyaneshwar Traders, they came to know that the truck, loaded with cement bags, did not come to his shop, as

such they all went to police station, Dhoki and Yermala, Dist-Osmanabad, and lodged the report that the truck driver/accused and the cleaner/deceased went missing.

I) As the accused is the resident of village Bhise-Wagholi, Tq. & Dist-Latur, the owner of the truck, his two sons and their neighbour went to village Bhise-Wagholi. In the evening of 26th August 2011, they reached village Bhise-Wagholi. At that time, they noticed religious function in the temple and, therefore, they went to the temple and disclosed the purpose of their visit to the villagers. One Yogiraj Sakhare, resident of village Bhise-Wagholi and the chairman of the committee constituted for dispute free village, informed them that one truck, loaded with cement bags, for past two days had been stationed near the K.T. Weir, at village Bhise-Wagholi. As such they all went to the K.T. Weir and they found the truck loaded with cement bags, stationed near the

K.T. Weir. The owner of the said truck identified the truck as belonged to him. While the truck was being inspected, they all noticed the dead body of a male person floating in the K.T. Weir. So they decided to report the incident to police station, Murud.

J) On 26th August 2011, Yogiraj Sakhare lodged the written report in police station Murud that the dead body of an unknown person was floating in the K.T. Weir. On 26th August 2011, in the evening the dead body was taken out by the police which was identified by Pandurang Bhawar, employer of the accused and deceased, and his two sons, to be that of Mahavir. The brother of deceased Mahavir was informed about the death of Mahavir.

K) On 27th August 2011, Jagannath Waghmare, brother of the deceased, in the noon reached police station, Murud. The dead body of the

deceased was shown to his brother, who identified the same to be of his brother Mahavir Waghmare. Then the autopsy was conducted.

L) Dr. Jakera Kelgaonkar who conducted the post-mortem over the dead body of the deceased, opined that the deceased died because of sudden cardio respiratory arrest due to head injury.

M) On the same day, Jagannath Waghmare, brother of the deceased, lodged the report against the accused that he committed murder of Mahavir. On the basis of the report, the offence punishable under Sections 302, 201 of the I.P. Code came to be registered against the accused. The Investigating Officer investigated the crime and on completion of investigation, submitted the charge-sheet for the offence punishable under Section 302, 201 of the I.P. Code, before the Court of C.J.M., Latur. The learned C.J.M., Latur committed the case to the Court of Sessions at

Latur, as the offence punishable under Section 302 of the I.P. Code is exclusively triable by the Court of Sessions.

N) The charge for the offence punishable under Sections 302, 201 of the I.P. Code was framed against the accused. The charge was read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted accused-appellant Amin s/o Hiraji Tamboli for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer imprisonment for life and to pay a fine, as afore-stated. Hence this Appeal by the accused Amin.

4. Mr. Golewar, learned counsel appearing

for the Appellant 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 the 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 there are 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 witnesses. 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 the accused, is not sufficient to convict the accused. Therefore, learned counsel prays that the Appeal may be allowed.

5. In the alternative, learned counsel for the Appellant-accused contended that keeping in view the single blow given on the head, and the nature of injury and the incident as alleged, it is clear that there was no intention on the part of the Appellant to commit murder. Therefore, it is submitted that, instead of life imprisonment, sentence may be brought down under Section 304 Part II of the I.P. Code.

6. On the other hand, learned A.P.P. appearing for the State, submitted that the case of the prosecution is based on the circumstantial evidence and the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt. He further submitted that after considering the entire evidence on record the trial Court has convicted the accused and the findings recorded are in consonance with the evidence brought on record.

He, therefore submitted that the Appeal may be dismissed.

7. To prove the fact that Mahavir died homicidal death, the prosecution has examined PW-4 Dr. Jakera Yahiyakhan Kelgaonkar. PW-4 Dr. Jakera deposed that on 27th August 2011 she was Medical Officer in Rural Hospital, at Murud, Dist-latur. On that day she herself and Dr. Shinde conducted the autopsy over the dead body of deceased Mahavir Waghmare after the receipt of the requisition from the police for conducting the post-mortem examination. The dead body was swollen and the clothes over the dead body were wet. On external examination of the dead body, contused lacerated wound over the right parietal region of the scalp, oblique in direction, size 6 X 2 X 0.5 cm., scalp deep was found. On palpation, depressed fracture underneath the above mentioned CLW was found. Further on removing the scalp, open fracture underneath contused lacerated wound (stated supra)

was found.

. PW-4 Dr. Jakera further deposed that on internal examination of the dead body, the depressed fracture over the right parietal region of size 5 X 2 cm. was found. The evidence of open fracture over the right parietal region obliquely directed, depth extending up-to brain matter was found. The brain covering was found torn at above mentioned site inside the brain. The brain matter was found congested and decomposed at the site of the above injury. The cause of death of the deceased was sudden cardio respiratory arrest due to head injury. She proved the post-mortem report Exhibit-34. She further deposed that the injury found over the skull of the deceased could be caused by hard and blunt object like iron rod. When iron rod Article-1 was shown to the witness, she stated that by the said iron rod the injury found over the scalp of the deceased was possible or could be caused.

. During the course of cross-examination, PW-4 Dr. Jakera stated that while examining the dead body, she did not find identification marks. She denied the suggestion that the injury which was found over the dead body of the deceased could be sustained by fall over the stones having edges. The dead body was black. She was unable to opine whether the deceased had a motion before his death, since in the abdomen the fluid and food contents were found. She further stated that since the cloths over the dead body of the deceased were not found stained, the deceased had no vomiting. She further stated that no smell of alcohol was found in stomach contents. 150 ml. food material was found in the stomach, which was not smelling of alcohol. While examining the dead body, she did not find that the deceased had ailment. The dead body might be under water for more than 24 hours. NO water was found in lungs. Not a single drop of water was found in the stomach. The decomposition

of the body had already began. She had not received the report of Chemical Analyzer in respect of viscera, therefore she was unable to opine whether the poisonous substance was found in the viscera. PW-4 denied the suggestion that cause of death of the deceased was asphyxia. The rigor mortis was found in the upper part of the body. The blood in veins was not found black. No foreign material was found during internal examination of the dead body. Nothing was found inside the palm of the deceased. Nothing abnormal was found in the heart. The lungs were found intact, without any injury and the water therein. The witness further stated that her opinion as to the cause of death of the deceased was based on the injury found over the scalp. For want of viscera report, she could not give the final opinion as to cause of death of deceased. PW-4 denied the suggestion that the deceased suffered the death by drowning.

8. Thus, from the perusal of the evidence of

PW-4 Dr. Jakera, it is crystal clear that the death of Mahavir was homicidal. PW-4 further stated that cause of death of Mahavir was sudden cardio respiratory arrest due to head injury. She specifically stated that no smell of alcohol was found in stomach contents. She further stated that no water was found in lungs and not a single drop of water was found in the stomach. Thus the possibility of deceased falling down in the water under the influence of alcohol and drowning accidentally, as contended by the learned counsel for the Appellant, is completely ruled out. Thus, we are of the opinion that the prosecution has proved that death of Mahavir was homicidal one.

9. Now we will discuss the evidence of other prosecution witnesses. The prosecution examined PW-1 Jagannath Prabhakar Waghmare, who is informant in this case. He deposed that the deceased Mahavir was his younger brother. The deceased at the material time, was a cleaner on a

truck, owned by one Pandurang Bhawar. The deceased was residing at Pimpri Chinchwad, Pune. At about 12 to 13 months back from the date of recording his evidence, in between 10.00 p.m. to 10.30 p.m. he received a telephone from Mr. Sharad Shinde, his relative, who told that he received a telephonic message from Murud police station that the dead body of Mahavir was found floating in the K.T. Weir at village Bhise-Wagholi. On the next day, the informant and his neighbour Shankar Gangadhar Swami went to Murud police station. The police took them to the Government Hospital at Murud and showed him a dead body of male and it was his younger brother Mahavir. He further deposed that cloths over the dead body of the Mahavir were found wet. The injury to the back of the skull was found. The blood was found oozing out from the said injury and through ears. He further deposed that after making inquiry, it was revealed to him that on truck, the accused and the deceased were working as a driver and cleaner

respectively. Further it was revealed that, at the time of incident, the cement bags were being transported from one place to another and on that truck the accused was driver and the deceased was cleaner. He further deposed that he lodged report in respect of death of Mahavir in Murud Police Station. He proved the report Exhibit-28.

. During the course of cross-examination, PW-1 Jagannath stated that on 26th August, 2011 in between 10.00 p.m. to 10.30 p.m. his relative Shankar Shinde told him on telephone about the floating of the dead body of Mahavir. On the next day at about 6.00 a.m., he himself and his neighbour left their village for Murud police station. He denied the suggestion that at the material time he was not knowing the occupation of the deceased. He stated that the deceased used to tell him that he was a cleaner on a truck owned by Mr. Sandip Bhawar. He was unable to state registration number of the truck on which the

deceased was working as a cleaner. He stated that when the dead body of Mahavir was shown to him, his neighbour and two police officers were present. He further stated that he did not know whether the deceased used to consume liquor. He denied the suggestion that the deceased under the influence of liquor slipped into the K.T. Weir and died accidentally.

. Thus, from careful perusal of the evidence of the informant PW-1 Jagannath, it is clear that he deposed about the information received by him about the death of his brother, and that he identified the dead body of his brother Mahavir. He further deposed that clothes over the dead body were wet. There was injury to the back of the skull and blood was oozing from the said injury and through ears of deceased.

10. The prosecution examined PW-2 Ashruba Goroba Bhise, panch to the spot panchnama Exhibit-

30. He deposed that on 27th August, 2011, in the noon the police had called him at K.T. Weir at village Bhise-Waghioli. One Dnyaneshwar Wankhede was also called at K.T. Weir. One Yogiraj Sakhare was present at K.T. Weir at village Bhise-Wagholi. One dead body of a male was found floating in the said Weir. One truck loaded with cement bags was found by the side of the K.T. Weir. The police prepared the panchnama of K.T. Weir and obtained their signatures. He proved spot panchnama Exhibit-30. This witness was cross-examined by the defence.

. Thus, it is clear from the perusal of the evidence of PW-2 Ashruba that he has proved the spot panchnama. He deposed that one dead body of a male was found floating in the K.T. Weir and one truck loaded with cement bags was found by the side of K.T. Weir.

11. The prosecution examined PW-3 Goroba

Ganpatrao Alte, witness to the inquest panchnama Exhibit-32. He deposed that on 27th August 2011, police had called him at K.T. Weir at village Bhise-Wagholi. One Dagdu Khose was also called at the said Weir. At the said Weir one dead body of a male was found. The dead body was found wet. One injury on the rear side of skull was found. The witness proved inquest panchnama Exhibit-32. During the course of cross-examination, he deposed that it was his first time to act as a panch to the inquest panchnama. He always put his signature in English. He denied that he had good relations with police. He denied the suggestion that he signed the inquest panchnama on the say of police.

12. The prosecution examined PW-5 Nanasaheb Tanaji Pawar. He deposed that at village Yedshi, Tq. & Dist-Osmanabad he was carrying on the business of building raw materials, under the name and style "Yeshwant Traders". As this witness turned hostile, the learned A.P.P. after seeking

permission from the trial Court, cross-examined this witness. During the course of cross-examination by the learned A.P.P., PW-5 Nanasaheb admitted that, on the relevant day, the cement bags were loaded in a truck bearing No. MH-17-T-9856. He further stated that on the said day, Bhimrao Taur, Chandrakant Lokhande and Baburao Pawar had unloaded the truck. During unloading of the truck, the cleaner and the driver working on the truck, had gone towards country liquor shop. He denied the suggestion that during unloading of the truck, the driver and the cleaner working on the truck came in front of his shop and that time there was exchange of words between them, over spending of money on food/lunch. He further stated that while issuing acknowledgement regarding the receipt of cement bags, he asked the driver about his name, who, in turn, told that he was a resident of village Bhise-Wagholi. He further stated that the driver told him that he would take the cement bags to Kallam, Dist-Osmanabad, for

delivery of cement bags. He denied various suggestions put to him. He further stated that accused before the Court was the same person who on the concerned day was a driver on a truck loaded with cement bags.

. During the course of cross-examination by the defence, PW-5 Nanasaheb denied various suggestions put to him. He stated that he identified the accused on the basis of his face features.

13. Upon perusal of entire evidence of PW-5 Nanasaheb, it is clear that though this witness turned hostile and did not support the prosecution case, the prosecution has brought on record, through the evidence of this witness that on the relevant day accused and deceased, the driver and cleaner working on the truck, came to the shop of this witness for unloading cement bags. PW-5 Nanasaheb specifically admitted that

during unloading of the truck, the cleaner and driver working on the truck had gone towards country liquor shop. Thus, evidence of this witness supports the case of the prosecution that under the influence of alcohol, there was quarrel between accused and deceased and their relations were strained. Through the evidence of PW-5 Nanasaheb, the prosecution has proved that deceased was last seen in the company of the accused.

14. The prosecution examined PW-6 Shivaji Sopan Dudhbhate, panch witness to the seizure panchnama of the clothes, which were found over the dead body of the deceased Mahavir. He proved seizure panchnama Exhibit-37.

15. The prosecution examined PW-7 Harishchandra Narsing Zadke, to prove the recovery of the iron rod, the weapon used in the crime, at the instance of the accused in pursuance of his

memorandum statement. But this witness turned hostile and did not support the prosecution case.

16. PW-8 Suresh Baburao Ustarge deposed that since last four years he was working as a Head Constable in Murud police station. On 27th August 2011, the inquiry of the accidental death of a unknown male person was assigned to him. Thereafter he himself and 10 to 15 persons went to K.T. Weir. In the weir water, the dead body of a male was found floating. He took out the dead body with the help of other persons, who were present there and prepared inquest panchnama Exhibit-32. Thereafter he drew the spot panchnama Exhibit-30. He further deposed that the dead body of Mahavir was sent for post-mortem examination. Then he obtained provisional certificate, as to the cause of the death of Mahavir, from the doctor. Further investigation was carried out by A.P.I. Mr. Kulkarni.

. During the course of cross-examination, PW-8 Suresh denied the suggestion that he prepared the spot panchnama in the police station. He denied the suggestion that he had not prepared the spot panchnama as per the actual position.

17. The prosecution examined PW-9 Yogiraj Ramrao Sakhare. He deposed that since 2010 he was the chairman of the committee constituted for dispute free village, at village Bhise-Wagholi, Tq. & Dist-Latur. On 26th August 2011, at about 4.00 p.m., 2 to 3 persons, who were resident of village Dev-daithan, Tq-Shrigonda, Dist-Ahmednagar, had come to village Bhise-Wagholi in search of a truck, loaded with cement bags. He told them that, one truck had been stationing near K.T. Weir. He took those persons to K.T. Weir. On reaching K.T. Weir, they noticed one truck stationed near the weir. It was loaded with cement bags. At the same time, they noticed a dead body of a male floating on the weir water. Thereafter

he went to Murud police station and lodged the report Exhibit-42, stating therein that the dead body of a male was found in the weir. This witness was thoroughly cross-examined by the defence but nothing contrary to his examination-in-chief was brought on record.

. Thus, through the evidence of this witness PW-9 Yogiraj, the prosecution has proved that dead body of Mahavir was recovered from the K.T. Weir water. The truck on which the deceased was working as cleaner, was stationed near the said K.T. Weir. Thus, evidence of this witness supports the prosecution case.

18. The prosecution examined PW-10 Sunil Pandurang Bhawar. He deposed that he knows the accused. The accused is the resident of village Bhise-Wagholi, Tq. & Dist-Latur. He himself, his brothers and father were residing jointly. His father was a transporter. His father possessed a

truck bearing registration No. MH-17-T-9856. He further deposed that he was aware of the affairs of transport business, carried on by his father. On the truck owned by his father, the accused was driver and the deceased Mahavir Waghmare was cleaner. About 15 days prior to the incident, the accused was employed as a driver on the said truck. On 22nd August, 2011 the truck was sent to Ahmednagar for loading. At that time, the accused was a driver on the said truck and the deceased was cleaner. The accused and the deceased with the truck had gone to Ahmednagar. At about 4.00 p.m. the accused on telephone informed that the truck was loaded and he would carry the goods to Solapur. On next day, at about 11.00 a.m., the accused, on telephone, informed that the truck had reached Solapur and it was unloaded. Thereafter the accused took the truck to the office of Hindusthan Transport at Solapur, for transportation of goods. Then the accused told him that he got an order of transportation of cement

bags to Yedshi and Kallam, Dist-Osmanabad. Thereafter the truck was loaded with cement bags and it left Solapur.

. PW-10 Sunil further deposed that on the next day, at about 12.00 noon, his father received a telephonic call from the office of Hindusthan Transport, Solapur that the truck did not reach to Yedshi and Kallam. Then they all contacted the accused on the cellphone, but the cellphone of the accused was out of range. On 24th August, 2011 the driver-accused informed that he delivered the cement bags at Yedshi and told that he would carry the cement bags to Kallam for its delivery. On 25th August, 2011 at about 4.00 p.m., the office of Hindusthan Transport, Solapur informed that the truck loaded with cement bags did not reach Kallam though the distance between Kallam and Yedshi is short. Then they contacted the accused on his telephone, but it was switched off. As the accused did not respond or react to their

telephone calls, on 26th August 2011 he himself, his brother, father and neighbour, namely, Ashok Jadhav went to Kallam. At Kallam they made inquiry with the proprietor of Dnyaneshwar Traders who told that the truck loaded with cement bags did not come to his shop. Thereafter they lodged the oral report in Dhoki and Yermala police station that the truck, driver and cleaner went missing. Then from the police station, they went in search of accused, cleaner and the truck, to village Bhise-Wagholi.

. PW-10 Sunil further deposed that at village Bhise-Wagholi, in the temple, a religious function was going on, and as such they went to the said temple for inquiry. On inquiry, the persons present at the temple told that one truck had been stationed near Masjid on Masla road. Thereafter those persons took the witness to the Masjid, situated on Masla road. Then, they noticed the truck owned by his father. The said truck was

found loaded with cement bags. The said truck was found at a short distance from the weir water. One dead body was found floating on the weir water. Thereafter they all went to Murud police station and the chairman of the Tantamukti committee lodged the report. Thereafter at about 9.00 p.m., he himself, police and others visited the K.T. Weir at Bhise-Wagholi. The police took out the dead body from the K.T. Weir. They all identified the dead body. It was of cleaner Mahavir Waghmare. There was injury over the skull of the deceased and the blood was oozing from the nostrils and both ears.

. During the course of cross-examination, PW-10 Sunil admitted that, at the material time, his father was looking after transport business and that time he was looking after the agricultural land. He further stated that he knew the accused since he was employed as a driver on the truck owned by his father. The accused at the

time of employment, had shown the driving licence possessed by him. He further stated that in the office of transport, there was noting of the name of the accused as a driver on the truck. He knows the names of the drivers who were employed on the truck, from the date of its purchase. The names of those drivers are - Namdeo Sathe, Sanjay Khanve and the accused Amin. He was unable to tell the names of the persons to whom they enquired at Bhise-Wagholi about the missing of the truck. But he stated that the Chairman of Tantamukti Committee was one of those persons. He denied various suggestions put to him.

19. PW-11 Anant Mahipatrao Kulkarni and PW-12 Aniruddha Sopan Kakade are the investigating officers. They deposed about the manner in which they have carried out the investigation of the crime.

20. To prove the chain of circumstances, the

prosecution has mainly relied upon the evidence of PW-9 Yogiraj and PW-10 Sunil. Upon careful perusal of the evidence of PW-9 Yogiraj and PW-10 Sunil, it is clear that they corroborated the evidence of each other and their evidence is consistent, reliable and trustworthy. Through the evidence of both these witnesses, the prosecution has proved the chain of circumstances that after loading the truck with cement bags at Solapur, the accused and deceased proceeded to village Yedshi and some of the cement bags were unloaded there. It is further proved by the prosecution that the accused wanted to sell remaining cement bags instead of its delivery to the trader at Kallam and therefore the accused took the truck loaded with cement bags, to his native place i.e. village Bhise-Wagholi. Deceased Mahvir, who was a cleaner on the said truck, objected the sale of the cement bags and therefore, the accused apprehended that the deceased would disclose his plan of selling the cement bags to his employer and as such accused

decided to kill the deceased. The prosecution has proved the chain of circumstance that the accused took the truck near the K.T. Weir and hit the deceased by iron rod on his head, as a result of which the deceased sustained head injuries and died on the spot. The prosecution has proved the further chain of circumstance that the accused thereafter, threw the dead body of Mahavir in the Weir water, as the dead body of the Mahavir was floating on the Weir water, as noticed by PW-9 and PW-10. As already observed, through the evidence of PW-5 Nanasaheb, the prosecution has established that deceased was 'last seen' in the company of the accused. After considering the entire evidence brought on record by the prosecution, we are of the opinion 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.

21. In para 38 of the Judgment, the trial Court has taken note of the circumstances relied upon by the prosecution. After considering the entire evidence brought on record, the trial Court has observed in para 78 of the Judgment, that the prosecution has proved all the circumstances, except the circumstance of recovery of iron pipe. Further in para 84 of the Judgment, the trial Court has observed that, the proved circumstances furnish a chain of evidence, showing that it was the accused only, who caused the death of the deceased. The said chain of evidence, at no point of time, suggests the innocence of the accused. On the other hand, the evidence furnished by proved circumstances show that in all human probability, the accused must have caused the death of Mahavir. The trial Court has further observed that it finds that the proved circumstances combinely furnish the evidence that it was the accused who alone caused the death of the deceased by giving him

blows by hard and blunt object on his head.

22. In the given facts and circumstances, and the evidence brought on record by the prosecution, the only possible view was guilt of the accused. Though there is no eye witness to the incident and the prosecution case is based on circumstantial evidence, the chain of circumstances has been established beyond reasonable doubt by the prosecution, and all the facts established are so consistent with the only hypothesis of the guilt of the accused.

23. In the light of discussion, herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and has rightly convicted the Appellant-accused. The conclusions reached by the trial

Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

24. The next question is, what offence is proved by the prosecution and whether the present case falls under any of the exceptions given in Section 300 of the I.P. Code, as alternatively argued by the learned counsel appearing for the Applicant. In this respect, it would be useful to refer to the recent pronouncement of the Supreme Court in the case of *Gandi Doddabasappa alias Gandhi Basavaraj vs. State of Karnataka*<sup>1</sup>. In Para-28 of the Judgment, the Supreme Court has observed that:

"The first exception, therefore, will have no application. The second exception will be attracted in cases where the accused, in the exercise in

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1 [2017(5) Mh.L.J.(Cri.)(S.C.)508]

good faith of the right of private defence, exceeds the power given to him by law and caused injuries resulting in death of the victim without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. Even this exception will have no application to the fact situation of the present case. The third exception will be attracted in case of a public servant or person aiding a public servant acting for the advancement of public justice. This exception has no application to the present case. The fourth exception is attracted when the crime is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or

unusual manner. Even this exception has no application to the fact situation of the present case. The fifth exception is attracted when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent. Significantly, the defence of the appellant as evinced from his statement under Section 313 of Criminal Procedure Code is of complete denial and being falsely implicated."

25. In the present case also the defence of the Appellant, as per his statement recorded under Section 313 of the Code of Criminal Procedure Code, is of total denial. Viewed from any angle, the present case does not fall under any of the exceptions enunciated under Section 300 of the I.P. Code. Thus, against the Appellant an offence under Section 302 of the I.P. Code is proved by

the prosecution. Therefore, the Judgment of the trial Court convicting the Appellant for the offence punishable under Section 302 of the I.P. Code and sentencing him to undergo imprisonment for life and to pay a fine, deserves no interference.

26. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed.

27. Since, Mr. V.P. Golewar, learned counsel is appointed to prosecute the cause of the Appellant - Amin Hiraji Tamboli, his fees and expenses are quantified at Rs.7500/- (Rupees Seven Thousand Five Hundred).

**[MANGESH S. PATIL, J.]**

**[S.S. SHINDE, J.]**