

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

**CRIMINAL APPEAL NO.813 OF 2013**

|                                         |                       |
|-----------------------------------------|-----------------------|
| Sohel Shoukat Jamadar                   | ]                     |
| Age : 21 Years,                         | ]                     |
| Resident of Nandre, Tal. Miraj,         | ]                     |
| District Sangli                         | ] .... Appellant /    |
| (At present in Sangole District Prison) | ] (Org. Accused No.1) |
| <b><i>Versus</i></b>                    |                       |
| The State of Maharashtra                | ] .... Respondent     |

***ALONG WITH***  
**CRIMINAL APPEAL NO.1248 OF 2013**

|                                       |                       |
|---------------------------------------|-----------------------|
| Khalid @ Tipu Kamruddin Mujawar       | ]                     |
| Age : 22 Years, Occu.: Worker,        | ]                     |
| R/o. Nandre, Tal. Miraj, Dist. Sangli | ]                     |
| (Presently lodged at Central Prison,  | ] .... Appellant /    |
| Kolhapur)                             | ] (Org. Accused No.2) |
| <b><i>Versus</i></b>                  |                       |
| State of Maharashtra                  | ]                     |
| (Through Tasgaon Police Station,      | ]                     |
| C.R. No.74/2011)                      | ] .... Respondent     |

***ALONG WITH***  
**CRIMINAL APPEAL NO.142 OF 2014**

|                                   |                       |
|-----------------------------------|-----------------------|
| Rafiq Kasam Naikwadi              | ]                     |
| Prisoner No.C/5948,               | ] .... Appellant /    |
| Kolhapur Central Prison, Kolhapur | ] (Org. Accused No.3) |
| <b><i>Versus</i></b>              |                       |
| The State of Maharashtra          | ] .... Respondent     |

Mr. Rajaram V. Bansode for the Appellant-Original Accused No.1 in Criminal Appeal No.813 of 2013.

Mr. Mahindra B. Deshmukh for the Appellant-Original Accused No.2 in Criminal Appeal No.1248 of 2013.

Ms. Payoshi Roy, i/by Dr. Yug Mohit Chaudhary, for the Appellant-Original Accused No.3 in Criminal Appeal No.142 of 2014.

Mr. Arfan Sait, A.P.P., for the Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI &  
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

**RESERVED ON : 13<sup>TH</sup> SEPTEMBER, 2017.**

**PRONOUNCED ON : 20<sup>TH</sup> SEPTEMBER, 2017.**

**JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]**

1. These three separate Appeals are preferred by original Accused Nos.1, 2 and 3, challenging the Judgment and Order dated 10<sup>th</sup> July 2013 of Sessions Judge, Sangli in Sessions Case No.141 of 2011. By the said Judgment and Order, these Appellants are convicted for the offence punishable under Sections 302 and 201, read with Section 34, of Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.5,000/-, each; in default, to suffer R.I. for one year on the first

count and R.I. for five years and to pay fine of Rs.10,000/-, each; in default, to suffer R.I. for one month.

2. Factual matrix of the prosecution case can be depicted as follows :-

Deceased Sagar was the younger brother of PW-8 Santosh. After taking education of '*D.Pharmacy*', he has started assisting his brother in agricultural work. He was in love with PW-12 Ayesha Mulla. Accused No.1-Sohel has also taken a fancy for Ayesha and was trying to woo her, so as to dissuade her from her love-affair with Sagar. On that count, just fifteen days prior to the incident, Accused Nos.1, 2 and 3 had raised quarrel with Sagar. PW-8 Santosh and PW-16 Vijay Kinikar had intervened in the quarrel and separated Sagar; however, Accused had left the spot giving threatening to Sagar that he will not remain alive.

3. In this backdrop, the incident took place on 12<sup>th</sup> June 2011. On that day, at about 6 pm, Sagar left the house and thereafter he did not return. His brother Santosh thought that Sagar might have gone to his friend or relative, as he frequently

used to do. Therefore, though he made enquiry, he did not lodge any missing complaint with Police. The dead-body of Sagar was found four days thereafter on 16<sup>th</sup> June 2011 in the early morning at *Bandh* near the first turn of the Village Kavathe Ekand. PW-8 Santosh went to the spot and found that dead-body of Sagar was kept inside one cement pipe below the road, which was reserved for flowing of the water. He also noticed one footwear (*chappal*) of Sagar lying on the road and the blood stains, two broken teeth and two broken buttons at the spot. One Axe stained with blood was also lying by the side of the said pipe. He pulled out body of Sagar by holding the legs and found that there were various injuries on the face and neck. He immediately suspected that his brother Sagar was killed by the Appellants herein on account of his love-affair with Ayesha. Hence, he went to Tasgaon Police Station and lodged complaint against all the three Appellants.

4. On his complaint (Exhibit-50), P.S.O. at Tasgaon Police Station registered C.R. No.74/2011 and investigation started. The said investigation was taken over by PW-21 API Waghmare. He went to the spot and after conducting Inquest Panchanama, sent

dead-body of Sagar to the Rural Hospital, Tasgaon, for postmortem examination. PW-17 Dr. Prakash Hankare conducted the autopsy and found that the cause of the death was on account of "*head injury*". PW-21 API Waghmare then conducted the Spot Panchnama (Exhibit-28) and from the spot, he collected various articles, like, the *chappal*, two buttons of shirt, two broken teeth, the axe and the identity card of Accused No.1-Sohel, which was lying in the shrubs. On the same day, he recorded the statements of two witnesses and arrested all the three Accused under various Panchanamas (Exhibits "117", "118" and "119").

5. During the course of investigation, Accused No.1-Sohel gave a disclosing statement and at his instance, the motor-cycle of the deceased, which was found thrown in the *Well*, came to be recovered under Panchanama (Exhibit-42). Thereafter, at the instance of Accused No.2-Khalid @ Tipu, the pieces of his burnt T-Shirt and the ash came to be seized under Panchanama (Exhibit-34). At the instance of Accused No.3-Rafiq, his blood-stained clothes were seized under Panchanama (Exhibit-39). The valet of the deceased containing Driving License and also mobile phones were seized at the instance of Accused No.1-Sohel in pursuance of

his Memorandum Panchanama (Exhibit-47) and Seizure Panchanama (Exhibit-48).

6. In the course of further investigation, the mobile phone of Accused No.2-Khalid was produced by his father Kamruddin. It also came to be seized under Panchanama. The Call Detail Records of mobile phones of Accused Nos.1, 2 and the Deceased were called for from the relevant Internet Companies. The seized muddemal articles were sent to the Chemical Analyzer. The Postmortem Report (Exhibit-76) was collected. On receipt of the C.A. Certificates and conclusion of the investigation, the Investigating Officer PW-21 API Waghmare filed the Charge-Sheet against all the three Accused in the Court of Judicial Magistrate, First Class, Tasgaon.

7. On committal of the case to the Sessions Court at Sangli, the Trial Court framed 'Charge' against the Appellants vide Exhibit-5. The 'Charge' was read over and explained to the Accused. The Appellants pleaded not guilty and claimed trial, raising the defence of denial and false implication.

8. In support of its case, the Prosecution has examined in all twenty-one witnesses and on appreciation of their evidence, the learned Trial Court was pleased to hold guilt of all the three Appellants as proved beyond reasonable doubt and convicted and sentenced them as aforesaid.

9. In these Appeals, we have heard learned counsel for the Appellants and learned A.P.P. for the Respondent-State.

10. Learned counsel for the Appellants have challenged the Judgment of the Trial Court on the count that it is based on surmises, conjectures and assumptions. According to learned counsel for the Appellants, this is a case based on circumstantial evidence alone and in such a case, to prove the guilt of the Accused beyond reasonable doubt, each of the circumstance relied upon by the Prosecution is required to be proved beyond reasonable doubt and there should be a chain of circumstances, which should consistently point to the guilt of the Accused alone and should be inconsistent with his innocence. Here in the case, according to learned counsel for the Appellants, the Prosecution

has failed to establish this chain of circumstances with the help of cogent, firm and reliable evidence; the Trial Court has, therefore, committed an error in holding guilt of the Appellants to be proved beyond reasonable doubt.

11. Per contra, learned A.P.P., has supported the impugned Judgment and Order of the Trial Court by submitting that, each of the incriminating circumstance relied upon by the Prosecution in the present case is clinching and it is firmly and cogently established by the Prosecution. The circumstances, thus, established by the Prosecution are of a conclusive nature and tendency and they exclude every other hypothesis, but the one proposed to be proved by the Prosecution, that of the Appellants alone and none else are the authors of the ghastly crime proved in the case.

12. In the backdrop of these rival submissions advanced by learned counsel for the Appellants and learned A.P.P. and after giving our anxious consideration to the evidence on record, we are of the considered view that, this is a case, though based on

circumstantial evidence alone, the Prosecution has succeeded in proving the guilt of the Appellants beyond all reasonable doubts. The circumstances which are alleged and proved by the Prosecution against the Appellants can be stated as follows :-

- (A) Motive;
- (B) Deceased last seen in the company of the Appellants;
- (C) Homicidal death;
- (D) Extra-judicial confession of the Appellants;
- (E) Recovery of incriminating articles; and
- (F) Call Detail Records.

13.        **(A) MOTIVE**

For proving the first circumstance of 'motive', the Prosecution is relying on the evidence of PW-8 Santosh, PW-12 Ayesha and PW-16 Vijay Kinikar. It is the case of Prosecution, as deposed by these witnesses, that Sagar and Ayesha were in love with each other. Accused No.1-Sohel was not approving the said relationship. He has also, thereafter, taken fancy for Ayesha and hence he was trying to dissuade Ayesha from her relationship with Sagar. The evidence of PW-12 Ayesha in this respect is of utmost relevance. She has categorically deposed that in the year

2011, she was taking education in Second Year of B.E. She was knowing Sagar and had a love-affair with him. According to her evidence, she had good love-affair with Sagar for about one year and till his death, she was in love with him. On 9<sup>th</sup> May 2011, which was her birth-day, she has become major and, hence, both of them had decided to marry with each other. However, the atmosphere in their house was not proper. Hence, they had not got married.

14. It is her further evidence that she was knowing Accused No.1-Sohel also. PW-10 Akshay Patil, who was residing near her house, has introduced her to Accused No.1-Sohel. Accused No.1-Sohel has given her a friendship band in the presence of PW-10 Akshay Patil. Thereafter, on 28<sup>th</sup> September 2011, there was birth-day of Accused No.1-Sohel and hence, at the insistence of PW-10 Akshay Patil, she, along with Akshay, Accused No.1-Sohel and Accused No.3-Rafiq, went to the Multiplex at Sangli for watching the movie "*Wanted*". Then, in the month of October, 2011, she had again gone with Akshay, Accused No.1-Sohel and Accused No.3-Rafiq to Multiplex at Sangli to watch the movie "*Mr. and Mrs. Khanna*".

15. As per her evidence, Sagar was not happy about her friendship with Accused No.1-Sohel and was calling upon her not to talk with Sohel, as he was defaming her in the locality and in the community. On that count, before Diwali, there was some exchange of hot words between her and Sagar. Sagar even suggested her that they should consume poison and commit suicide. It is her evidence that Accused No.1-Sohel was only her friend, but she was having love-affair with Sagar alone and, therefore, on 9<sup>th</sup> May 2011, just few days or a month before the incident, they had decided to get married, but due to atmosphere in the house, they could not do so.

16. According to her evidence, from 6<sup>th</sup> June 2011, she joined Mahabal Company for training. She used to come to Sangli Stand by bus from Village Nandre, where she, Accused and Sagar were residing. From Sangli Bus Stand, Sagar used to carry her on his motor-cycle to Mahabal Company. In the evening also, Sagar used to pick-up her from the said Company and drop her at S.T. Stand, Sangli at 4:30 p.m.

17. It is deposed by Ayesha that, on the day of the incident

also, as usual, Sagar left her at the Company, carrying her from Sangli Bus Stand on his motor-cycle. At 12:40 pm, she received call from Sagar, informing her that one person came to meet him and he has to talk about Soheli. Thereafter, Sagar contacted her on phone on two to three times. At about 3:15 pm, when she came out of the Company, Sagar came there on *Bike* of PW-5 Nilesh Mahajan. Then, she and Sagar, along with Nilesh, went to the field at Kupwad Road. Three of them discussed about Soheli. Sagar again told her that Soheli was defaming her and, hence, he will beat Soheli and seek apology from him. As per her evidence, then she herself and Sagar went on the motor-cycle to Ganapati Mandir of Haripur. They were there for about one hour. Thereafter Sagar left her at Sangli S.T. Stand. Then she went to her house. At 7:45 pm, she received one call from Sagar enquiring whether she has reached home safely and about the atmosphere at home. Thereafter, at about 10 p.m., she tried to contact Sagar, but his mobile was switched off. On the next day also, she tried to contact him on phone, but could not succeed.

18. This witness, Ayesha, is cross-examined at length on behalf of the Appellants. However, nothing useful is elicited

through her cross-examination to disbelieve her. Conversely, her cross-examination goes to show that she and Sagar were deeply in love with each other. They used to meet each other at secluded places. They were coming to Sangli for meeting. Once, they even met in Anandi Lodge in Sangli. In her cross-examination, it is again brought out that her parents were of the view that she should marry a boy from Muslim community. It is her evidence that she had disclosed to her parents about her relations with Sagar only after his death, when Police came to make inquiry with her. It is her evidence that, even the mobile was given to her by Sagar. Thus, her evidence sufficiently proves her relations with deceased Sagar and the fact that, as Sagar belonged to Jain community, whereas she was from Muslim community, Accused No.1-Sohel was not approving the said relationship and he was trying to woo or win her. This relationship between Sagar and Ayesha was also known to PW-8 Santosh, PW-5 Nilesh and PW-16 Vijay Kinikar.

19. The evidence of Ayesha further establishes that, both, Sagar and Accused No.1-Sohel were having grudge against each

other. Sagar was having a suspicion or feeling that Accused No.1-Sohel was defaming Ayesha and, hence, on account of this, just few days before the incident, a quarrel had taken place between Sagar and the Appellants. PW-16 Vijay Kinikar is the witness examined by the Prosecution to prove this incident of quarrel. He was knowing about the love-affair between Sagar and Ayesha. He was also knowing that Accused No.1-Sohel has taken a fancy for Ayesha. According to his evidence, just fifteen days prior to the incident, after taking dinner at about 10 p.m., when he went near Darga in front of the office of Bhagyalaxmi, these three Accused were quarreling with the Deceased and the subject of the quarrel was the love-affair of Ayesha and Sagar. Then, he himself, PW-8 Santosh and Amol intervened in the quarrel and separated them. When he was leaving the spot, he heard Appellants giving threats to Sagar that they will kill him. This evidence of PW-16 Vijay Kinikar is also corroborated by the evidence of PW-8 Santosh, who was also present there and had tried to intervene in the quarrel to separate Sagar from the Appellants. He has also deposed about the presence of PW-16 Vijay Kinikar at the relevant time. Thus, in our considered opinion, in this case, the

'motive' and 'genesis' of the incident is sufficiently proved on record by the Prosecution.

20. (B) DECEASED LAST SEEN IN THE COMPANY  
OF THE APPELLANTS

The second circumstance on which the Prosecution is relying upon is of the Deceased last seen in the company of the Appellants. In this respect, the Prosecution is relying on the evidence of PW-14 Vijay Patil, who has seen Accused No.2-Khalid and deceased Sagar together near Varad Pan Shop at 8 p.m. on the date of incident. This witness is of the same village and, therefore, knowing Deceased and Appellants. He was also knowing about the love-affair of Sagar and Ayesha and about the quarrel that took place between Sagar and Accused persons, just fifteen days prior to the incident.

21. According to his evidence, on 12<sup>th</sup> June 2011, at about 8 pm, when he was in front of Varad Pan Shop, along with his friends Satish Herle and Ramgonda Patil, Sagar came there on black colour '*Pulsar*' motor-cycle for taking *mava*. After purchasing the *mava*, he came to talk with this witness and his

friends. At that time, Accused No.2-Khalid also came there. Accused No.2-Khalid asked Sagar to arrange the dinner and he will pay for the dinner. Sagar told him that they will go tomorrow or day after tomorrow. However, Accused No.2-Khalid insisted that they will go on that day only and then he forced Sagar to sit on his motor-cycle. Then Accused No.2-Khalid sat on his motor-cycle as pillion rider. This witness saw that both of them proceeded towards Vasagade Road on their motor-cycle. According to his evidence, that was the last time he has seen the Deceased.

22. In his cross-examination, it is brought on record that Sagar always used to visit the said Pan Shop. Hence, there was nothing abnormal on that day in Sagar coming there. The only material brought out in his cross-examination is that, till 18<sup>th</sup> June 2011 , when his statement was recorded, he did not disclose this fact to anybody and, hence, there is delay of two days in recording of his statement. However, his cross-examination goes to prove that, after the homicidal death of Sagar, there was heavy Police *bandobast* in the village. PW-15 Sunil Chougule has also deposed that there was fifteen days' curfew imposed in the village,

as there were riots after this incident between the two communities of '*Hindu*' and '*Muslim*'. Therefore, the delay of these two days in recording of his statement can hardly become fatal, considering these facts.

23. Then there is evidence of PW-11 Nandkumar Patil, who has seen the Deceased and Accused No.2-Khalid leaving the Beer-Bar at 10 pm on that day. He is running this Beer-Bar under the name and style as "*Hotel Sargam*" at Khotwadi. According to his evidence, on 12<sup>th</sup> June 2011, at about 8:30 p.m., Accused No.2-Khalid came to the Bar along with deceased Sagar. They were sitting on the table in front of the counter. Accused No.2-Khalid was facing towards him and was talking on mobile. It is his evidence that, as Deceased and Accused persons always used to visit his hotel/permit room, he was knowing them. According to him, they ordered liquor, which was served to them. Accused No.2-Khalid paid the bill of Rs.320/- and they left his Dhaba at 10 pm. On the next day, in the evening, Accused No.2-Khalid alone came in front of his Dhaba for about fifteen minutes and then left.

24. The evidence of this witness thus supports the

evidence of PW-14 Vijay Patil, who has deposed about Accused No.2-Khalid and deceased Sagar leaving Varad Pan Shop on the motor-cycle of the Deceased at about 8 pm, in order to go for dinner.

25. Further, there is evidence of PW-15 Sunil Chougule, who was also the resident of the same village and, therefore, knowing the Deceased and the Accused persons. He is dealing in the business of purchase of vegetables from Sangli and selling those in Weekly Bazars of different villages. He owned an auto-rickshaw bearing No.MH-10-AQ-2011 for carrying vegetables. According to his evidence, on 12<sup>th</sup> June, 2011, he had been to Bazar of Kavathe-Ekand in his auto-rickshaw. After selling vegetables there, he was returning in his auto-rickshaw at about 10 pm. He was coming from Shirgaon and then proceeding to Nandre. While coming from Kavathe, at first turn, he saw Accused No.1-Sohel and Accused No.3-Rafiq standing there at the right side with one motor-cycle parked nearby. He saw them in the light of his auto-rickshaw. Both of them were sitting on their motor-cycle. It is his evidence that the spot of incident, where the dead-body was found, was just at the distance of 5 to 6 ft. from the spot

where Accused No.1-Sohel and Accused No.3-Rafiq were standing on that night.

26. The evidence of this witness is assailed on the ground that he has not disclosed about his seeing Accused Nos.1 and 3 near the spot of incident for three months. His statement came to be recorded only on 9<sup>th</sup> September 2011. In our considered opinion, having regard to the admitted position on record that, after this incident, there was curfew for fifteen days on account of the riots in the village between these two communities of '*Hindu*' and '*Muslim*' and there was heavy Police *bandobast*, creating the atmosphere of terror and fright, if there is hesitation or delay on the part of the witnesses to come forward to give the statements, no fault can be found so as to make this delay fatal to the prosecution case. Even otherwise, in our considered opinion, the evidence of other two witnesses sufficiently proves that Deceased was last seen in the company of the Accused and, thereafter, there was no trace of the Deceased.

27. This circumstance of Deceased last seen in the company of the Accused persons assumes significance in the

instant case, as the time-gap between the point of time when the Accused persons and the Deceased were last seen alive and when the Deceased is found to be dead is so small, that the possibility of any person other than the Accused persons, being the perpetrators of the crime, becomes impossible. Here in the case, the evidence on record proves that the Deceased was last seen in the company of Accused at about 10 p.m. and the evidence of PW-12 Ayesha proves that the last call she had with Deceased was at about 7:45 p.m. to 8:00 p.m. and, thereafter, when she tried to call the Deceased at about 10 p.m., his phone was switched off. Thus, here is a case, where the Prosecution has, on the basis of reliable evidence, established that Sagar was last seen in the company of the Accused and was never seen thereafter; then, it was obligatory on the part of Accused No.2-Khalid to explain the circumstances in which he and Sagar parted company.

28. As held by the Apex Court in the case of *State of Rajasthan Vs. Kashi Ram*, (2006) 12 SCC 254;

*“The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the*

*knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the Deceased, he must offer explanation as to how and when he parted company. He must furnish an explanation, which appears to the Court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge burden cast upon him by Section 106 of Evidence Act. In a case resting on circumstantial evidence, if Accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him.”*

29.           **(C) HOMICIDAL DEATH**

To prove that Sagar has succumbed to the homicidal death, the Prosecution has relied upon the evidence of PW-1 Chavgonda Pachore, the Panch to the Inquest Panchanama, and the evidence of PW-8 Santosh, who has seen the dead-body of deceased Sagar. According to their evidence, the dead-body was found kept in the cement pipe with injuries on various parts.

30.           There is also the evidence of PW-17 Dr. Prakash

Hankare, who has conducted the autopsy at Rural Hospital, Tasgaon. According to his evidence, there were, as many as, five injuries on the dead-body; out of them one was on the left side of fronto parietal region; the bones in that region were fractured; the skull was burst opened and the brain matter was absent. Further, there was one de-gloving injury over left orbital, maxillary zygomatic region with depressed fracture of left orbital zygomatic, maxillary bones. Another incised wound was found on neck and then the fingers of left and right hand were amputated. In his opinion that the cause of the death was on account of "*head injury with burst open fracture skull*". The Postmortem Report is at Exhibit-76. Having regard to the condition in which the dead-body was found as kept in the cement pipe and the multiple injuries on the body, the Defence has also not seriously challenged the fact that Sagar has succumbed to homicidal death.

31. (D) EXTRA-JUDICIAL CONFESSION OF THE  
ACCUSED

To prove the extra-judicial confession made by the Accused, the Prosecution has placed reliance on the evidence of

PW-10 Akshay Patil. He is resident of the same village and knowing Deceased and Accused persons. Accused No.1-Sohel and Accused No.3-Rafiq were his classmates also. He was also knowing PW-12 Ayesha and the love-affair between Sagar and Ayesha. He was also witness to Accused No.1-Sohel giving friendship band to Ayesha and, thereafter, all of them going for watching movie "*Wanted*" on the birth-day of Accused No.1-Sohel. It is his evidence that Accused No.1-Sohel had told him that Sagar had love-affair with Ayesha and he had told, therefore, to Ayesha that she should not keep relations with Sagar. Accused No.1-Sohel has also told him about the quarrel between the Accused persons and the Deceased fifteen days prior to the incident. Therefore, it is clear that this witness is sufficiently close to the Accused persons and appears to be a friend of confidence, as he is knowing everything that has transpired not only between the Deceased and Ayesha, but also between the Accused and the Deceased. He was also part of some of those incidents, like, Accused No.1-Sohel giving friendship band to Ayesha and then all of them going for a movie.

32. As per his evidence, on the date of the incident,

Accused No.3-Rafiq talked with him on phone at about 5:00 p.m. to 5:30 p.m. and enquired with him when he will come to village fare (*Urus*) at Nandre. When this witness told Accused No.3-Rafiq that he will come within a day or two, Accused No.3 has asked him to come on the next day and he will give him one good news. According to his evidence, therefore, on 13<sup>th</sup> June 2011, he came to village Nandre, along with his mother, at 11 a.m. He met Accused No.3-Rafiq at 3 p.m. and, thereafter, they went to *Urus*. At that time, he enquired with Accused No.3 what was the good news, but, Accused No.3 assured him that he will tell the good news afterwards. Then at 7 p.m., they met Accused No.1-Sohel in the *Urus*. This witness again enquired as to what was the good news, but he was not informed.

33. It is deposed by him that on the next day, in the noon time, Accused No.3-Rafiq came to him and they again went for *Urus* and, thereafter, to the school premises. There Accused No.3 told him that on 10<sup>th</sup> June 2011, he and other co-accused planned to murder Sagar. The plan was hatched in the school premises. Accordingly, on 12<sup>th</sup> June 2011, Accused No.2-Khalid took Sagar to one Dhaba, near Kavathe-Ekand, on the motor-cycle of Sagar

and gave liquor to Sagar. Thereafter, at the first turn of Nandre to Kavathe-Ekand, Accused No.1-Sohel and Accused No.3-Rafiq were waiting. Accused No.2-Khalid took Sagar on his motor-cycle to that spot. When Sagar was getting down from the motor-cycle, Accused No.1-Sohel assaulted him with an *Axe* on his neck. Sagar fell down. Then Accused No.2-Khalid took the said *Axe* from the hands of Accused No.1-Sohel and gave blows of that *Axe* on the face of Sagar. Sagar tried to resist it by his hands. In that attempt, his fingers were cut. Thereafter, ascertaining that Sagar was dead, they put the dead-body in cement pipe, which was below the said road, in the place reserved for flowing water. While returning, they pushed the motor-cycle of Sagar in one *Well* and then they went to their respective houses. As per the evidence of this witness, he enquired with Accused No.3-Rafiq whether he was making fun, Accused No.3-Rafiq, however, assured him that he was not making fun, but it was a fact. This witness also enquired with Accused No.3 as to why they killed Sagar and Accused No.3 told him that, if they had not killed him, Sagar would have killed them.

34. The evidence of this witness further discloses that, on

the same day, in the evening, he and Accused No.2-Khalid again went to *Urus*. There, they met Accused No.1-Sohel and Accused No.3-Rafiq at about 7:00 p.m. to 7:15 p.m. He enquired with them whether they had killed Sagar and they confirmed that they had killed Sagar. They also reiterated to him what was told to him by Accused No.3-Rafiq.

35. As per evidence of this witness, when the news of this incident appeared in the newspapers, when his father made enquiries with him, he informed about the same to his father. Then his father told him to inform the Police and, hence, on 25<sup>th</sup> June 2011, he went to Tasgaon Police Station, where his statement came to be recorded.

36. On factual aspects, there is absolutely no cross-examination about the confession made by the Accused persons before him. The only ground on which his evidence is assailed is that, there is delay of about eleven days in recording of his statement. Secondly, it is submitted that the evidence of extra-judicial confession being a weak piece of evidence, this Court should not place reliance thereon.

37. However, we are unable to accept this submission. As regards the delayed disclosure, we have already noted as to what was the cause of delay in recording statements of these witnesses. The first being there were, admittedly, communal riots in the village, creating the atmosphere of terror and awe, as a result of which, curfew was imposed for fifteen days and there was heavy police *bandobast*; therefore, it is quite possible that witnesses may not have gathered courage to disclose the information they had about the incident to the Police immediately. The delay in such case, therefore, cannot become fatal in any way.

38. As regards the submission that the evidence of extra-judicial confession is of a weak type, we would like to quote that the Apex Court has held in the case of *Gura Singh Vs. State of Rajasthan, (2001) 2 SCC 205*. It is as follows :

*“The Courts cannot start with the presumption that extra-judicial confession is always suspect or a weak type of evidence. Ultimately, it would depend on the nature of the circumstances, the time when confession is made and the credibility of the witnesses, who speak about such a confession and*

*whether confession is voluntary and truthful. It is eventually the satisfaction of the Court”.*

39. This legal position is confirmed by the Apex Court in the decision of *R. Kuppusamy Vs. State, (2013) 3 SCC 322*, wherein, relying upon the above said decision of *Gura Singh Vs. State of Rajasthan (Supra)*, it was held by the Apex Court that,

*“Despite the inherent weakness of an extra-judicial confession as a piece of evidence, the same cannot be ignored, if it is otherwise shown to be voluntary and truthful. The extra judicial confession cannot always be termed as 'tainted evidence' and that corroboration of such evidence is required only as a measure of abundant caution. If the Court found the witness to whom the confession was made to be trustworthy and that the confession was found to be true and voluntary, a conviction can be founded on such evidence alone. More particularly, the Court declared that Courts cannot start with the presumption that extra judicial confession is always suspect or weak type of evidence, but it would depend on the nature of the circumstances, the time when confession is made and the credibility of the witnesses who speak about such a confession and whether the confession is voluntary and truthful. It is eventually the satisfaction of the Court.”*

40. Here in the case, we have already stated that this witness was on quite friendly terms with the Accused. He was knowing the details of the relationship of deceased Sagar and Ayesha and also of Accused No.1-Sohel with Ayesha. He was also, as stated above, witness to the Accused No.1-Sohel giving Ayesha the friendship band. He was also with them when they went for the movie. He was also of the same village and, hence, knowing the Deceased, Accused and Ayesha since childhood. Therefore, he was not a stranger or unknown.

41. It may be true, that Accused persons have not made these extra-judicial confessions before him out of remorse as such, but it was in the nature of boasting by the Accused. He has confirmed whatever was disclosed or confessed before him by Accused No.3-Rafiq with Accused No.1-Sohel and Accused No.2-Khalid. There is nothing unnatural amongst the friends of boasting or confessing whatever acts they have committed.

42. Therefore, there is no reason, in our opinion, to

disbelieve his evidence about extra-judicial confession of the Accused persons before him; especially, when this extra-judicial confession is also getting corroboration from other evidence on record, like the confession made by the Accused and they were planning about murder of the Deceased since two to three days prior to the incident is corroborated from the evidence of PW-9 Javed Mulla. He has deposed that Accused No.2-Khalid had borrowed his motor-cycle and an *Axe* from him on a day before the incident. The motor-cycle was returned to him on the night of the incident. However, the *Axe* was not returned to him. When Muddemal Article No.1-Blade of the *Axe* and Muddemal Article No.2-Handle of the *Axe*, which were recovered from the spot of incident, were shown to him, he has identified the same as belonging to him.

43. The recovery of the dead-body with incised wounds caused by sharp weapon like *Axe* from the spot, along with the *Axe* and the articles of the Deceased, gives further corroboration to the evidence of extra-judicial confession, as deposed by this witness PW-10 Akshay Patil.

44. (E) RECOVERY OF INCRIMINATING ARTICLES

The crucial circumstance, on which the Prosecution is placing reliance, is the recovery of incriminating articles from the spot of incident and at the instance of Accused persons. The evidence of PW-2 Panch Satish Patil, corroborated with the evidence of the Investigating Officer PW-21 API Waghmare, goes to prove that, during Police custody on 17<sup>th</sup> June 2011, i.e. very next day, Accused No.1-Sohel gave a disclosing statement that he will produce the motor-cycle, which was pushed in the *Well*. The Memorandum Panchanama of the statement was made vide Exhibit-30. Thereafter, Accused No.1-Sohel guided the Police and Panch to the *Well*, which was near the first turn from the side of Nandre. There, in the *Well* of one Upadhyay, Accused No.1 pointed out the '*Pulsar*' motor-cycle of black colour. It was removed from the *Well* and it was bearing No.MH-10-AD-3677. It was seized under Panchanama (Exhibit-31). PW-8 Santosh has stated that this motor-cycle was belonging to deceased Sagar.

45. Then, there is also evidence of PW-1 Panch Chavgonda Pachore, proving that at the spot of incident, they found the Identity-Card of Accused No.1-Sohel lying in the shrubs. The Spot

Panchanama was made immediately, after the dead-body was found, and the Spot Panchanama (Exhibit-28) sufficiently corroborates his oral evidence to prove that the Identity-Card was lying in the shrub on the northern side of the pipe, in which the dead-body was found, and the said pipe was at the distance of 3 ft. The Spot Panchanama also contains the description of the Identity-Card, proving that it was of Accused No.1-Sohel. It was a laminated Identity-Card of Accused No.1-Sohel, issued by Kasturbai Walchand College, Sangli. His Roll number and photograph was appearing on the said Identity-Card. Prosecution has also examined PW-13 Bahubali Kante, the Junior Clerk from the said College, to prove the fact that the Identity-Card was of Accused No.1-Sohel. Accused No.1 has not offered any explanation about the presence of his Identity-Card just near the spot of incident.

46. There is then evidence of PW-7 Panch Sheetal Kogmole, proving the recovery of wallet and mobile phone of the Deceased at the instance of Accused No.1-Sohel, in pursuance of the disclosing statement given by Accused No.1-Sohel. The recovery was made from the spot pointed out by Accused No.1,

which was a space in between the wall of his house and the wall of his neighbour. The Driving License of deceased Sagar, with his photo and one SIM Card, were found in the said wallet. They were seized under Panchanama (Exhibit-48). Again no explanation is offered by Accused No.1-Sohel as to how he came into possession of this wallet, containing Driving License and mobile phone of the Deceased. The recovery is at his instance and, that too, from the place known exclusively to him. Recovery of these incriminating articles, therefore, constitute a clinching piece of circumstantial evidence.

47. The prosecution has further placed reliance on the evidence of PW-5 Panch Nilesh Mahajan to prove the seizure of the clothes of Accused No.3-Rafiq, at his instance under Panchanama (Exhibits “38” and “39”). The clothes were having blood stains thereon and the C.A. Report sufficiently proves this fact. The blood stains were found to be of a human blood and again no explanation is offered by Accused No.3-Rafiq for the same. In this case, the Axe was also found to be having human blood of “A” group, which was the blood group of the Deceased. Apart from that, in the C.A. Report (Exhibit-128), it is categorically brought

out that the open shirt having blood-stains thereon, which was seized at the instance of Accused No.1-Sohel, was not having the two buttons. The C.A. Report (Exhibit-131) revealed that those two buttons, which were seized from the spot of incident, were found to be tallying with the other buttons of the shirt of Accused No.1-Sohel, in respect of hue and physical characteristics.

48. In our considered opinion, each and every incriminating circumstance, therefore, alleged is proved by the Prosecution with cogent, convincing and reliable evidence on record and all these incriminating circumstances, taken cumulatively, form a chain so complete that no other inference but that of the guilt of the Accused persons alone can be drawn therefrom.

49. **(F) CALL DETAIL RECORDS**

In addition thereto, the Prosecution has also relied upon the evidence of PW-18 Satish Mali, Nodal Officer from B.S.N.L.; PW-19 Ravi Pardeshi, Nodal Officer from Vodafone; and PW-20 Chandrakant Bhor, Nodal Officer from Reliance Internet Company, to prove that there was exchange of several calls on the

mobile of Accused No.1-Sohel and Accused No.2-Khalid at the relevant time of incident. Here, in this case, none of the Accused have offered any explanation about this circumstance also.

50. In our considered opinion, therefore, there is more than sufficient evidence on record to hold that the Prosecution has established its case against the Accused beyond reasonable doubt. The Appeals, therefore, hold no merit; hence, stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]