

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

CRIMINAL APPEAL NO. 306 OF 2013

Tukaram Dattarao Sontakke
Age: 30 Years, Occ.: Labour,
R/o Kaudgaon, Taluka - Basmat,
District – Hingoli.

... **Appellant**

Versus

The State of Maharashtra,
Through Police Station _ Hatta,
Taluka – Basmat, Dist.- Hingoli

... **Respondent**

Mr. S.H.Jagiasi, Advocate (appointed) for the Appellant.
Mrs. P.V.Diggikar, APP for respondent-state.

**WITH
CRIMINAL APPEAL NO. 91 OF 2014**

The State of Maharashtra,
Through Police Station - Hatta,
Taluka – Basmat, Dist.- Hingoli

... **Appellant**

Versus

Tukaram Dattarao Sontakke
Age: 29 Years, Occ.: Labourer,
R/o Kaudgaon, Taluka - Basmat,
District – Hingoli.

... **Respondent**

Mrs. P.V.Diggikar, APP for Appellant-State.

Mr. S.H.Jagiasi, Advocate (appointed) for the Respondent.

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

**RESERVED ON : 09.11.2017
PRONOUNCED ON : 25.01.2018**

...

JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Criminal Appeal No. 306 of 2013 is an appeal by the accused under Section 374 (2) of the Code of Criminal Procedure against his conviction in Sessions Trial No. 16 of 2012 from the file of the learned Additional Sessions Judge, Basmathnagar, District Hingoli for the offence punishable under Section 302 of the Indian Penal Code and sentence of R.I. for life and fine of Rs. 1,000/- and in default of payment of fine R.I. for six months, for each of the two murders.

2] The State has preferred Criminal Appeal No. 91 of 2014 under Section 377 (1) of the Code of Criminal Procedure for enhancement of the sentence. Therefore we are disposing of both these Criminal Appeals by this common judgment.

3] Shorn of unnecessary details, the prosecution case as can be made out from the charge-sheet and the evidence laid before the learned Additional Sessions Judge can be summarised as under:

Deceased Janardhan is the brother of the informant Chagan (PW-1). They are the residents of the village Kaudgaon, Tq. Basmath. Their parents also stay with them. They have agricultural land at village Kaudgaon. Some of which is irrigated. They had constructed couple of rooms in the field for storing agricultural instruments and fertilizers. There is a swing tied to a mango tree near these two rooms. This entire premises is described by the prosecution witnesses as 'Akhada'. The appellant was working as an agricultural labourer with these brothers couple of years prior to the incident. Even his wife was working as an agricultural labourer in the field of these brothers. It has also come on record that even on the eventful day she was working in the field of these brothers. It is alleged that the appellant was suspecting that deceased Janardhan was having illicit relations with his wife.

4] On 11.10.2011 Janardhan, Chagan (PW-1) and the deceased son of Janardhan by name Shrinivas @ Sahil @ Bablu aged five years had come to the Akhada in the morning. They had their tiffin at about 10.00 a.m. Uttam

(PW-2) was engaged as an agricultural labourer by these two brothers on yearly wage basis. He also came to the field and each one of them were engaged in agricultural operations. Uttam (PW-2) had gone for tethering bullocks under a mango tree. Chagan (PW-1) went to the side where the crop of cotton was sown. Some lady labourers were also working in the nearby field. Dnyaneshwar (PW-4) is the cousin of Janardhan and Chagan (PW-1), Vaishali (PW-3) is wife of Dnyaneshwar (PW-4). The couple has also agricultural land adjacent to the land of these two brothers. They were present in their field. Deceased Janardhan and deceased Shrinivas were present in the Akhada. Janardhan was sitting on the swing and the appellant was also present nearby. His wife was also working in the field of these two brothers.

5] At about 01.00 p.m., Uttam (PW-2) heard a hue and cry from the side of Akhada therefore he rushed towards it and saw that the appellant was assaulting Janardhan with a chopper and inflicted several blows on his head. Uttam (PW-2) saw that the appellant was assaulting Janardhan with the chopper on his head. Uttam (PW-2) tried to intervene however, the appellant threatened him therefore he started running and even Shrinivas also starting

running after him. After hearing the hue and cry Vaishali (PW-3) and Dnyaneshwar (PW-4) also rushed towards the Akhada. Simultaneously, even Chagan (PW-1) also rushed towards the spot. However, at a short distance the appellant allegedly caught hold Shrinivas, when Vaishali (PW-3) and Dnyaneshwar (PW-4) tried to intervene the appellant threatened him and assaulted Shrinivas with the chopper on his head. The appellant then fled from the spot. Janardhan was found lying in the pool of blood and had died on the spot. Since Shrinivas was still alive Uttam (PW-2) and Dnyaneshwar (PW-4) carried him to the Government Hospital at Basmathnagar on a motor-cycle but even he was declared dead on arrival.

6] The incident was reported to the Hatta Police Station. Police rushed to the spot. P.S.I. Waghmare (PW-12) recorded the statement of Chagan (PW-1) and sent it to the Hatta Police Station where Police Naik Hatkar (PW-7) registered it as F.I.R. and registered it as Crime No. 129 of 2011 for the offence punishable under Section 302 of the Indian Penal Code.

7] P.S.I. Waghmare (PW-12) then carried out the investigation. He conducted panchanama of the scene of the offence. Inquest was conducted in respect of both the dead bodies in presence of panch Rangnath (PW-5) and

panch Bhanudas (PW-6). Clothes on the person of both the deceased were seized under another panchanama (Exhibit-35) in presence of panch Anurath (PW-9). Dr. Salunke (PW-10) conducted autopsies as per postmortem notes (Exhibit-41 and 42). After noticing several injuries Dr. Salunke (PW-10) opined that Janardhan had died due to hemorrhagic shock, neurogenic shock and multiple fractures of skull bone at various sides. She also opined that the injuries sustained by Janardhan were difficult to describe since all the face was crushed. It was also opined that all the injuries were ante mortem. In respect of Shrinivas Dr. Salunke (PW-10) gave exactly the same opinion as to the cause of death.

8] The appellant was arrested from Shani Shingnapur on 13.10.2011. He allegedly made the statement and agreed to discover the chopper. His statement was recorded in presence of panch Sandeep (PW-11). The appellant then discovered chopper which was also seized under panchnama (Exhibit-43). It is further alleged that the clothes on the person of the appellant were also stained with blood and those were also seized. All these Muddemal Articles were then sent for Chemical Analysis and in due course of time the appellant was chargesheeted.

9] The defence of the appellant is of total denial. During the cross-examination of some of the prosecution witnesses an attempt was made to suggest that Chagan (PW-1) had committed the murders since Janardhan was having ill-eye on the formers wife. However, the witnesses have denied the suggestions and there has been no other evidence to substantiate it.

10] After conducting the trial, the learned Additional Sessions Judge by the impugned judgment and order has convicted the appellant as mentioned herein-above. However, simultaneously the learned Additional Sessions Judge has also concluded that the offence does not fall into the category of rarest of rare case. There was no premeditation and instead of giving capital punishment he awarded the life terms. Hence these appeals, one against conviction and the other for enhancement of the sentence.

11] We have heard the learned Advocate Mr. S.H. Jagiasi at length. According to the learned Advocate, the learned Additional Sessions Judge has not appreciated the evidence in the proper perspective. There are material inconsistencies in the evidence of the prosecution witnesses who are cited as eye-witnesses. The evidence of the prosecution witnesses does not inspire confidence. All the eye-witnesses are interested witnesses and still their

evidence has not been properly considered. The medical evidence is inconsistent with the ocular version of the witnesses. The prosecution has failed to establish the motive. The panch witnesses are also not reliable. The same person Mr. Anurath (PW-9) has acted as panch in respect of panchnamas on three different dates. No reason is forthcoming as to why independent persons were not made panchas. The learned Advocate also pointed out that it is improbable that the appellant could have roamed freely with blood stained clothes on his person for couple of days. In all human probabilities he would have immediately disposed of his clothes. Therefore, even that piece of evidence of matching of blood stains on his clothes with the blood group of the deceased persons is not reliable. The learned Advocate further pointed out that the prosecution witnesses have not been substantiating the allegations of the prosecution regarding the motive. Thus, in sum and substance, the submission of the learned Advocate is that the evidence of the prosecution witnesses is not trustworthy and reliable. There are several inconsistencies. The motive has not been established. The discovery of the weapon and seizure of the blood stained clothes of the appellant is equally doubtful and the appellant deserves to be given benefit.

12] The learned Advocate for the appellant also submitted that the case does not fall in the category of rarest of rare cases and there is no sufficient basis to enhance the sentence.

13] The learned A.P.P. submitted that since the incident had taken place in the field, it is but natural that the eye-witnesses are either relatives or the employees of the informant Chagan (PW-1). Therefore, merely because they are related to him in this manner one cannot ipso facto discard their testimonies. The learned A.P.P. also submitted that minor contradictions and inconsistencies in the deposition of these eye-witnesses inter se only strengthen the fact that they were not tutored. The contradictions are minor and irrelevant. They have corroborated each other in material particulars. Their presence at the spot is natural. Since the prosecution has been relying upon the direct account of the incident, the motive becomes irrelevant. Failure of the prosecution to establish the motive is therefore inconsequential. The learned A.P.P. thus submitted that the learned Additional Sessions Judge has correctly appreciated the evidence and has reached to the correct conclusion.

14] The learned A.P.P. then submitted that considering the fact that

the appellant has committed double murder and the fact that the assault was with the chopper on the head of the deceased persons to the extent that even the injuries could not be described since the faces/heads were smashed brutally. The brutality alone makes the case rarest of rare. The appellant has not spared the child aged five years and has committed his brutal murder with the deadly weapon like chopper and therefore he deserves capital punishment.

15] As is apparent, the prosecution has been simultaneously relying upon the ocular version of eye-witnesses in the form of Chagan (PW-1), Uttam (PW-2), Vaishali (PW-3) and Dnyaneshwar (PW-4) and has also attempted to prove the circumstance to corroborate its version, like discovery of chopper at the instance of the appellant and matching of blood stains found on his clothes with the blood group of the deceased persons.

16] To begin with, it is necessary to refer to the version of Dr. Salunke (PW-10) who has performed the autopsies and has certified in respect of both the deaths that the cause of death was due to hemorrhagic shock, neurogenic shock multiple fractures of skull bone with brain injury with large vessels injuries due to multiple lacerated wounds. Since no other version as to how

both these deceased could have sustained these injuries, merely on the basis of this opinion one can safely uphold the conclusion drawn by the learned Additional Sessions Judge that Janardhan and Shrinivas both have died homicidal death.

17] Only some bold suggestions have been put to Dr. Salunke (PW-10) that the injuries were possible by falling from the height on stony surface, which suggestions she has denied. She has also stated that the injuries were possible by chopper. In view of such state of affairs, we find no hesitation in subscribing to the conclusion of the learned Additional Sessions Judge that Janardhan and Shrinivas both have died homicidal death.

18] This takes us to the ocular version of the witnesses who have been stated to have described the incident by giving direct account. We shall begin with the testimonies of Uttam (PW-2) who has stated to have rushed to the spot at the first instance after hearing hue and cry. He has stated that he was serving as an agricultural labourer on yearly basis in the field of Chagan (PW-1) and Janardhan. He also stated that he knew the accused. He was frequently coming to the land of Janardhan. As regards the incident he has stated that he had come to the field in the morning. After taking tiffin at

about 10.00 a.m. he operated Tractor along with Chagan (PW-1) and Janardhan. Thereafter, the Tractor was parked at the Akhada. Chagan (PW-1) went to the land to supervise the work. He himself took bullocks to water and tethered them under a mango tree. At that time Janardhan was lying on the swing, whereas, Shrinivas was playing nearby. The appellant was also lying on the country cot. He then went for cutting grass to the bundh and after completing that work he started shaving by the side of the Akhada. He heard sound from the side of swing and rushed towards it. He saw that the appellant was giving blows of chopper on the head and face of Janardhan. He tried to question the appellant but the latter rushed towards him and threatened him. He therefore raised shouts and ran towards mango tree and the Akhada in the field of Dnyaneshwar (PW-4). Shrinivas also ran after him and stopped near the mango tree. He then met Dnyaneshwar (PW-4) and Vaishali (PW-3) and narrated the incident to them. He has then stated that when Vaishali (PW-3) tried to intervene and asked the appellant not to assault Shrinivas, he threatened Vaishali (PW-3) and inflicted blows of chopper on Shrinivas. He has then stated that he and Dnyaneshwar (PW-4) also tried to rush towards the appellant but he threatened them. After hearing alarm Chagan (PW-1) also came to the spot and tried to accost the appellant but the

latter fled away with the blood stained chopper in his hand. He has then stated that he along with Dnyaneshwar (PW-4) took Shrinivas to Government Hospital at Basmathnagar on a motor-cycle but doctor declared him dead. He then identified the chopper (Muddemal Article No. 16) to be the same.

19] During his searching cross-examination various information was solicited but absolutely nothing could be extracted, firstly to describe his version as unbelievable or to refute his version as improbable. Only one attempt has been made to attribute the blame to Chagan (PW-1). Suggestions have been put to the effect that Janardhan had attempted to molest wife of Chagan (PW-1) and that Chagan (PW-1) has committed the murders. Obviously he has denied these suggestions. Considering the fact that Uttam (PW-2) is rather an independent witness and happens to be present at the scene only because of his employment as a labourer in the field of the deceased Janardhan and Chagan (PW-1), his presence at the spot is but natural. He has no axe to grind in the matter. Even no suggestion has been put to him attributing any ulterior motive on his part to implicate the appellant. The fact that he did not try to prevent the appellant is also equally natural. Considering the fact that the appellant was carrying deadly weapon

like a chopper and had already assaulted Janardhan, it was but natural for Uttam (PW-2) not to have dared to physically accost the appellant. The learned Additional Sessions Judge has rightly appreciated these facts and has accepted the testimony of Uttam (PW-2) at its face value.

20] As regards the testimony of Vaishali (PW-3) and her husband Dnyaneshwar (PW-4), since they are cousins of Chagan (PW-1) and deceased Janardhan, the law requires their testimonies to be scanned carefully to obviate any improvisation with an ulterior motive. It is but natural for them to have rushed to the spot since they were also having agricultural land adjacent to the land of Chagan (PW-1) and were present there in their own Akhada. They have stated that they were performing agricultural operations in their field. Uttam (PW-2) came running towards them in frightened condition and told them that Janardhan was assaulted. They have then stated that when they were rushing to the spot they saw the accused/appellant assaulting Shrinivas with a chopper and when they tried to intervene he threatened them. They have then stated about having been the appellant assaulting Shrinivas and running away with the chopper. They have then stated that Uttam (PW-2) and Dnyaneshwar (PW-4) then ran after the

appellant and tried to accost him but he threatened them. They have then stated that Chagan (PW-1) tried to apprehend the appellant but he got himself released and ran away.

21] It is elucidated from Vaishali (PW-3) during her cross-examination that firstly they heard the shouts of Uttam (PW-2) who came running from Akhada in the field of Chagan (PW-1). He was frightened and then he accompanied her and her husband to the spot. She has admitted that her husband Dnyaneshwar (PW-4) and Uttam (PW-2) did not try to apprehend the accused/appellant. She admitted that Chagan (PW-1) also did not try to apprehend the appellant. Simultaneously, Dnyaneshwar (PW-4) has also have been cross-examined on the same lines and an attempt was made to elucidate information regarding description of the spot. However, conspicuously nothing could be extracted during the cross-examination of Vaishali (PW-3) and Dnyaneshwar (PW-4) firstly disbelieve their version of having seen the part of the incident at least, wherein the appellant allegedly assaulted Shrinivas. Even there has been no suggestion as to why these witnesses were falsely implicating the appellant. We have carefully gone through the testimonies of these two witnesses and has been rightly concluded by the

learned Additional Sessions Judge, we find no reason to discard their version. Their presence at the spot is natural and so is their oral account of the incident.

22] Coming to the testimony of Chagan (PW-1), in consonance with the version of Uttam (PW-2), Vaishali (PW-3) and Dnyaneshwar (PW-4) he has stated about having rushed to the spot after hearing hue and cry. He has stated that he heard the shouts of his brother Janardhan and also that of Shrinivas. He then heard hue and cry of Vaishali (PW-3) and rushed to the spot. Vaishali (PW-3) and Dnyaneshwar (PW-4) were also present there. The appellant had caught hold of Shrinivas and assaulted him with chopper. Vaishali (PW-3) tried to save Shrinivas but the appellant threatened her. When he himself tried to catch hold the appellant latter released himself and threatened him. Again, a careful reading of his cross-examination reveals that no material could be extracted firstly to discard his testimony outrightly and secondly to attribute any ulterior reason for him to falsely involve the appellant.

23] It is to be borne in mind while appreciating the evidence of all these eye-witnesses that they were knowing the appellant since he was

working in the field of Chagan (PW-1) and Janardhan. Even on the date of the incident, his wife was working as an agricultural labourer in the field. Therefore, there cannot be any dispute as regards identity of the appellant as the assailant. Even suggestions has been put to Chagan (PW-1) that the appellant had come to the spot after hearing hue and cry to help the victims. It is true that the ladies who were working in the field have not been examined by the prosecution including the wife of the appellant. However, in our considered view, no importance needs to be attached to this circumstance. Unless the ladies had an occasion to see the incident there was no reason for the Investigating Officer to have recorded their statements and for the prosecution to call them as witnesses. Therefore, in the absence of any material to show that these lady labourers had seen the incident, no adverse interference can be drawn for their non-examination.

24] True it is that there are some inconsistencies in the testimonies of these eye-witnesses inter se. But in our considered view these inconsistencies are minor and do not relate to material particulars. Such minor inconsistencies are bound to occur when there are several eye-witnesses. On the contrary, it is trite that such minor inconsistencies on the contrary

strengthen the inference that the witnesses are not tutored. Chagan (PW-1) has not stated about any talk between Janardhan and the appellant having taken place, whereas, Uttam (PW-2) has stated that these two persons had talked for about ten to twenty minutes. Chagan (PW-1) has stated about having heard shouts of Janardhan and then Shriniwas. Whereas Uttam (PW-2) has not stated about having heard the shouts of Janardhan or Shriniwas but has stated about having heard the sound of swing, whereas, Vaishali (PW-3) and Dnyaneshwar (PW-4) have not stated about having heard any hue and cry and merely stated about Uttam (PW-2) having rushed to them. Again, Chagan (PW-1) has stated that Uttam (PW-2) tried to rescue Shriniwas but the appellant threatened him but Uttam (PW-2) does not support this version. Chagan (PW-1) has then stated that he tried to catch hold the appellant but he threatened him and by releasing himself he ran away. He has further stated that Uttam (PW-2) and Dnyaneshwar (PW-4) did not try to accost the accused/appellant. Whereas, Uttam (PW-2) has stated that he did not see appellant/accused threatening Chagan (PW-1). Having considered these contradictions, by no stretch of imagination, can it be said that these are material enough to outrightly discard the testimonies of these witnesses. In our considered view there are only minor inconsistencies which

fortify the conclusion drawn by the learned Additional Sessions Judge that the version of these witnesses is natural and not tainted with any oblique intention. We therefore find no hesitation in subscribing to the conclusion drawn by the learned Additional Sessions Judge when the ocular version of these witnesses is reliable and cogent enough to attribute the appellant with both the murders.

25] The learned Advocate for the appellant vehemently submitted that the spot panchnama depicts that the two spots of occurrences are located about 500 ft. apart. If the version of the prosecution witnesses and particularly Uttam (PW-2) and Vaishali (PW-3) and her husband Dnyaneshwar (PW-4) are to be accepted, it is highly improbable that they could have seen the deceased being assaulted by the appellant. Panch Bhanudas (PW-6) has proved this panchnama of the scene of the offence. The first objection to his testimony that has been raised by the learned Advocate for the appellant is to the effect that the very same person has acted as panch on the inquest panchnama of Janardhan (Exhibit-27) as well as the panchnama of the scene of the offence (Exhibit-28). It is not made clear by the Investigating Officer as to why services of the very same person were requisitioned for these two

things which have taken place with interval of about one hour between the two. He also pointed out that when several other persons which according to this witness about 25 in number were already present at the scene of the offence when he reached there and equal number of persons had gathered thereafter, he was picked up to act as panch. Thus, according to the learned Advocate such conduct of the Investigating Officer selecting a particular person to act as panch is enough to discard the testimony of this witness.

26] Certainly it is a matter of fact that this witness has acted as panch on the inquest panchnama (Exhibit-27) as well as panchnama of the scene of the offence (Exhibit-28). It is equally a matter of fact that many other persons were already present at the spot and many other had gathered thereafter his arrival. However, in our considered view unless there is any material to indicate that the witness has either come with testimony which is inherently improbable or has acted with some prejudice, one cannot discard it. During his cross-examination the only suggestion that has been put to him is to the effect that he was not present at the spot or scene of the offence at all and the panchnama (Exhibit-28) was prepared in the police station. He has flatly denied this suggestion and conspicuously no suggestion has been put to him

at all to reveal that he has any prejudice against the accused or has any relation with the family of the deceased. Therefore, in our considered view one cannot discard his testimony merely because he has acted as panch at inquest panchnama (Exhibit-26) as well as the panchnama of the scene of offence (Exhibit-28). The submission of the learned Advocate for the appellant, on this count, therefore deserves to be discarded.

27] Coming to the other argument of the learned Advocate that the two incidents have taken place 500 ft. apart, going by the version of Uttam (PW-2), Vaishali (PW-3) and Dnyaneshwar (PW-4) they must not have actually witnessed the incident of the appellant assaulting deceased Janardhan. A careful perusal of the testimony of these three eye-witnesses would reveal that none of them has deposed about having seen the appellant assaulting Janardhan. Their version is that after hearing hue and cry they all had rushed towards the spot. Chagan (PW-1) has stated that when he rushed to the spot Vaishali (PW-3) and Dnyaneshwar (PW-4) were present there. Vaishali (PW-3) was shouting not to assault the boy deceased Shrinivas and still the appellant started assaulting him with the chopper on face, neck, rib and finger. However, Uttam (PW-2) has stated that he was shaving by the side of the

Akhada, he heard the sound from the side of swing and when he rushed towards it he saw that the appellant was assaulting Janardhan with a chopper. When he tried to intervene the appellant threatened him and therefore he rushed towards mango tree of the Akhada of Dnyaneshwar (PW-4). More importantly he has stated that even Shrinivas ran after him. If we see the version of this witness Uttam (PW-2) it clearly explains as to how there is a distance of about 500 ft. between the two scene of offences as depicted in the panchnama of the scene of the offence (Exhibit-28). It cannot be said to be improbable that the appellant having first started assaulting Janardhan and when the alarm was raised Uttam (PW-2) must have rushed to the spot and seen the assault was apparently going on. As is mentioned earlier deceased Shrinivas was also playing around the same place and in all probabilities must have seen the assault. When Uttam (PW-2) tried to intervene the appellant allegedly threatened him and therefore he started running from the spot and even the boy Shrinivas started running. When the alarm was raised the other three eye-witnesses also came running towards the direction from where the hue and cry was heard and in all probabilities, before they reached the spot the appellant must have succeeded in nabbing the boy Shrinivas at some distance apart. In view of such state of affairs, we do not see that this fact

that two scenes of offences are 500 ft. apart in anyway gives a jolt to the prosecution story.

28] To sum up, in our considered view, the testimonies of these four eye-witnesses are quite cogent, reliable and trustworthy. The learned Additional Sessions Judge has elaborately scanned their testimonies and has reached a correct conclusion which in our view deserves to be accepted.

29] In view of our such conclusion, right in the teeth of trustworthy ocular version of both the murders, the other peripheral circumstances become academic. The prosecution has been relying upon such circumstances which can be described as follows:

[1] Discovery of blood stained chopper by the accused/appellant pursuant to his statement and the recovery panchnama (Exhibit-44) and (Exhibit-45).

[2] Seizure of the blood stained clothes of Janardhan (Exhibit-37) and Sahil (Exhibit-36).

[3] Seizure of the clothes of the appellant (Exhibit-38).

[4] The reports of the Chemical Analysis (Exhibit-52) and (Exhibit-55) opining that the blood group of the deceased tallies with the blood found on the chopper and the blood found on the clothes of the appellant.

[5] Seizure of footwear from the spot belonging to the accused.

30] The learned Advocate for the appellant vehemently submitted that panchanamas of all these seizure of the clothes of the deceased, clothes of the appellant and the alleged discovery of the chopper have been conducted on three successive days and still only one person Anurath (PW-9) has acted as a panch on all these panchanamas and this would clearly suggest that there is fabrication. No plausible explanation is attempted to be given by the Investigating Officer P.S.I. Waghmare (PW-12) or can be gathered from the evidence of the prosecution.

31] It is a matter of fact that Anurath (PW-9) has acted as a panch on the panchnama of the seizure of the clothes of Shrinivas (Exhibit-36) which has taken place on 11.10.2011, seizure panchnama of the clothes of the deceased Janardhan (Exhibit-37) which was conducted on 12.10.2011 and panchnama of seizure of the clothes of the appellant (Exhibit-38) on 13.10.2011. It is indeed surprising as to why his services were requisitioned by the Investigating Officer on three successive days. Even according to the version of this witness all these three panchnamas have taken place in the

police station. Taking into account the fact that the inquest panchnamas (Exhibit-25 and Exhibit-27) of the deceased Janardhan and Shrinivas were conducted on 11.10.2011 and the clothes on the person of the deceased Shrinivas were also seized during the same period, it is not clear as to why the panchnama of the seizure of the clothes of the deceased Janardhan (Exhibit-37) was conducted on the next date i.e. 12.10.2011. Further it also does not seem to be sheer coincidence that even on the very next day i.e. 13.10.2011 the very same person Anurath (PW-9) was present that too at odd hours when the clothes on the person of the accused were seized between 23.00 hours to 23.30 hours. It is not clear as to why when the other panchas of all these panchnamas were different, the testimony of Anurath (PW-9) alone was recorded to prove these panchnamas. In our considered view, presence of such witness on three different days for conducting three different panchnamas creates a serious doubt about his veracity.

32] There is one surprising fact that it is quite believable that considering the brutality with which the persons are killed with the chopper, the clothes of the assailant would get smeared with the blood stains and which is but obvious. However we could not comprehend the situation where

the appellant has already committed murders on 11.10.2011 and could have freely roamed around wearing the blood stained clothes for two and half days before he was nabbed on 13.10.2011 at 23.00 hours in a distant place like Shani Shingnapur. Even in this respect the prosecution has not been coming with any plausible explanation. It is equally surprising that though the Investigating Officer P.S.I. Waghmare (PW-12) has stated that he arrested the accused from Shani Shingnapur, the panchnama of his arrest was prepared at the police station (Exhibit-50). If at all the accused had gone to Shani Shingnapur which comes in Ahmednagar district after committing murders at Basmath which is in Hingoli district. It is equally surprising and therefore unbelievable as to how he could have gone to such place wearing blood stained clothes. It is not the prosecution version that the appellant was hiding somewhere in and around Basmath in some secluded place and therefore making it probable that he could have been wearing the blood stained clothes. Therefore, as has been rightly submitted by the learned Advocate for the appellant, all these aspects create serious doubt about the genuineness of the seizure of the blood stained clothes on the person of the appellant.

33] In somewhat similar circumstance obtaining before the Division

Bench of this Court in the case of Mohan @ Bapu s/o Khushal Pendam V/s. State of Maharashtra; 2017 (1) BOM. C.R. (CRI) 546, the accused were arrested more than 24 hours after the incident and their clothes were seized 19 to 20 hours after their arrest, about 66 hours after the incident. It was held that the seizure of the clothes from the accused was faulty and doubtful. For the reasons discussed herein-above, we find no hesitation in reaching a similar conclusion.

34] As a logical and legal corollary to the above conclusion the fact that the Chemical Analysis reports disclose that the blood stains found on the clothes of the accused/appellant tally with the blood group of the deceased, becomes irrelevant and inconsequential.

35] Now coming to the other circumstances regarding discovery of the chopper as per the statement of the appellant (Exhibit-44) and its seizure (Exhibit-45), panch Sandeep (PW-11) has been examined. He has stated that on 16.10.2011 he was called to the Basmath Police Station where the appellant was present and shown his willingness to produce the chopper. The statement was recorded in his presence (Exhibit-44). Therefore he along with other panch, police party and the appellant went to the border of village

Kaudgaon and Konatha. The appellant then took them near the bushes and discovered the chopper from the bushes which was seized under the panchnama (Exhibit-45). During his cross-examination, it has been elucidated that he has never acted as a panch earlier. He was called to the Police Station when he was sitting in Sachin General Stores situated nearby the Police Station. It has been then elucidated that he and deceased belong to same caste apparently to show his proximity to favour the prosecution. However, he flatly denied that he is son of maternal uncle of deceased Janardhan and that the statement of the appellant was not recorded in his presence nor had he discovered the chopper. In our considered view, there are apparently no reasons at all to discard the testimony of this witness. We therefore find no hesitation in conforming to the observations and the conclusions of the learned Additional Sessions Judge accepting this piece of evidence. True it is that Chagan (PW-1) and Uttam (PW-2) have apparently identified this chopper when it was shown to them during recording of their depositions. However, such objective identification of the chopper in our view cannot carry much weight. The fact remains that the recording of memorandum statement and discovery of the chopper has been duly established/proved by the evidence of independent panch Sandeep (PW-11).

36] Once it is found that such discovery of chopper at the instance of the appellant is reliable, the report of the Chemical Analysis (Exhibit-52) certifying that the blood stains on the chopper was of blood group 'A' and the blood group of the deceased Janardhan was also of the same group, is a strong and clinching circumstance which can safely be relied upon and establishes authorship of the crime to the appellant/accused.

37] In view of direct ocular account of the incident in the form of testimonies of eye-witnesses Chagan (PW-1), Uttam (PW-2), Vaishali (PW-3) and Dnyaneshwar (PW-4) coupled with the discovery of the weapon chopper admissible under Section 27 of the Indian Evidence Act seals the case for the prosecution. The conclusion drawn by the learned Additional Sessions Judge in our considered view convicting the accused for both the murders is on correct appreciation of the prosecution evidence and we uphold it.

38] This takes us to the appeal by the State for enhancement of the punishment. The learned Additional Sessions Judge has sentenced the appellant to imprisonment for life for each of the murders and has also put rider that the appellant shall at least undergo imprisonment for minimum 21 years. While considering the aspect of punishment in case of murder, the law

has been laid down in the case of **Bachan Singh vs. State of Punjab; AIR 1980 SC 898.** The aspect has also been considered in the recent time by the Supreme Court in the case of **Ramnaresh vs. State of Chhattisgarh; AIR 2012 SC 1357.** It has been specifically observed in the case of **Ramnaresh** that the Court has to record reasons for awarding death sentences after considering the nature of the offence, the circumstance in which and the manner in which it is committed, aspect of brutality, motive, provoking and aggravating circumstances, possibility of reformation, adequacy of life imprisonment and these are some of the circumstances which need to be borne in mind. Simultaneously, the Court should borne in mind the mitigating circumstances like if the offence is committed under the influence of extreme mental or emotional condition, probability of the accused not committing similar offences and the probability of reformation. It is then observed that the Court therefore has to consider both aggravating and mitigating circumstances and has to strike a balance between the two while deciding punishment.

39] Bearing in mind these guidelines if one examines the matter before hand, apparently it is a case of double murder committed in immediate

succession. It is also apparent that the murders have been committed with a weapon like chopper inflicting blows mainly on head of both the deceased. The head of Janardhan has been smashed in such a manner that the injuries could not be described as stated by Dr. Salunke (PW-10). However, simultaneously, it is also important to note that even according to the prosecution, the motive in commission of murders was that the deceased Janardhan was having illicit relations with the wife of the appellant or he was entertaining such suspicion. In the absence of any evidence about any criminal antecedent, in our considered view this alleged motive must have played vital part and in all probabilities has provoked the incident. In our considered view, taking into account the aggravating as well as mitigating circumstances, the case does not fit into the formula of rarest of rare cases. The learned Additional Sessions Judge has also carefully considered all these aspects and the law laid down by the apex Court and has reached the correct conclusion. We find no hesitation in subscribing to it.

40] Resultantly, both the Criminal Appeals fail and are dismissed.

41] Since Mr. S.H. Jagiasi, learned Advocate is appointed to prosecute the cases of the appellant/accused in both the appeals his fees and

expenses are quantified at Rs. 7500/- (Rupees Seven Thousand Five Hundred).

[MANGESH S. PATIL, J.]

[S. S. SHINDE, J.]