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

CRIMINAL APPEAL NO. 1057 OF 2017

Ganesh Sunil Jagtap
Age-26 years, Occu-Private Service,
R/o-Lohagaon, Pune.

... APPELLANT
(Orig. Accused no.2)

VERSUS

The State of Maharashtra
through the Vimantal Police
Station, Pune.

... RESPONDENT

W I T H

CRIMINAL APPLICATION NO.1094 OF 2018

IN

CRIMINAL APPEAL NO.1057 OF 2017

Ganesh Sunil Jagtap
Age-26 years, Occu-Private Service,
R/o-Lohagaon, Pune
(At present languishing in
the custody of Yerawada
Central Prison, Pune)

... APPLICANT

VERSUS

The State of Maharashtra
through the Vimantal Police
Station, Pune.

... RESPONDENT

W I T H

CRIMINAL APPEAL NO.1068 OF 2017

Krishna Subramaniam Swamy
Age-25 years, Occu-Service,
R/o-Shri Sasane, Near Santoshi Mata,
Temple, Wagholi Road, Lohagaon,
Pune
(Presently at Yerawada Jail)

... APPELLANT
(Orig. Accused no.1)

VERSUS

The State of Maharashtra
through the Vimantal Police
Station, Pune.

... RESPONDENT

...
Mr.Satyavrat Joshi, Advocate for Appellant/Applicant
in Criminal Appeal No. 1057 of 2017 and Criminal
Application No.1094 of 2018.

Mr. Satyavrat Joshi Advocate with Mr.Sumant Deshpande,
Advocate for Appellant in Criminal Appeal No.1068 of
2017.

Mr.H.J. Dedhia, A.P.P. for Respondent – State

...

**CORAM: S.S. SHINDE AND
A.S. GADKARI, JJ.**

DATE OF RESERVING JUDGMENT : 29th OCTOBER, 2018.

DATE OF PRONOUNCING JUDGMENT: 19th NOVEMBER, 2018.

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

1. Criminal Appeal No. 1057 of 2017 filed by Accused No.2 Ganesh Sunil Jagtap, is directed against the Judgment and Order dated 14th December, 2017 passed by the Additional Sessions Judge, Pune thereby convicting Accused No.2 Ganesh Sunil Jagtap for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, "IPC") and sentencing him to suffer life imprisonment and to pay fine of Rs.5,000/- and in default to suffer simple imprisonment for one year. The Trial Court also convicted Accused No.2 Ganesh Sunil Jagtap for the offence punishable under Section 201 read with 34 of IPC and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/, in default to suffer simple imprisonment for two months. Both sentences were directed to be run concurrently.

2. Criminal Appeal No.1068 of 2017 filed by Accused No.1 Krishna Subramaniyam Swamy is directed against the Judgment and Order dated 14th December, 2017 passed by the Additional Sessions Judge, Pune thereby convicting him for the offence punishable under Section 302 read with 34 of IPC and sentencing him to suffer life imprisonment and to pay fine of Rs.5,000/- and in default to suffer simple imprisonment for one year. The Trial Court also convicted Accused No.1 Krishna Subramaniyam Swamy for the offence punishable under Section 201 read with 34 of IPC and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/, and in default to suffer simple imprisonment for two months. Both sentences were directed to be run concurrently.

3. Criminal Application No.1094 of 2018 is filed by original Accused No.2 Ganesh Sunil Jagtap, for suspension of aforesaid sentence

imposed upon him and for enlarging him on bail, pending the hearing and final disposal of Criminal Appeal No.1057 of 2017.

4. Both these Criminal Appeals are arising out of one and the same Judgment and Order passed by the Trial Court, hence the same are being decided by this common Judgment.

5. The prosecution case, in brief, is as under:

A] The husband of Sheetal (PW-4) was a friend of Rakesh. Earlier Rakesh was in prison. Rakesh had visiting terms with Sheetal (PW-4). Rakesh was the son of informant Dnyaneshwar (PW-1). Accused persons were residing in the same locality where Sheetal was residing. Accused persons disliked the relations of Rakesh with Sheetal.

B] On 22nd June, 2013, Rakesh had been to the house of Sheetal (PW-4) at about 4.00 p.m., at that time, accused persons came there and they scolded Rakesh and asked him that, why he is in the house of Sheetal when her husband is in Prison. Rakesh told them that he is there to meet Netaji (brother of landlord of Sheetal). Accused persons quarreled with Rakesh. At that time, Netaji came there and hence Accused stopped quarreling. Thereafter, the accused and Rakesh were chitchatting outside the house of Sheetal(PW-4).

C] The informant (PW-1) returned from his duty on 23rd June, 2013 and he saw his son Rakesh was not at home. On inquiry, informant came to know that, on earlier day Rakesh had gone to Lohgaon, and he was not attending phone call of anyone since 9.00 p.m. The Informant came to know

from his wife that, the accused have threatened Rakesh not to meet Sheetal, otherwise they will finish him. As Rakesh did not return, the informant went to Police Station to lodge the missing report.

D] When the informant was in Police Station, at that time, one Bhupendrasingh (PW-11) informed to Police that, there was a pool of blood on wall near Cricket Ground and some articles were lying there. Accordingly, police and informant proceeded to open ground near Kalwad Vasti, Lohgaon, Pune, where informant saw goggle of his son, mobile of Samsung make and pool of blood. He identified those articles to be of his son Rakesh. Therefore, informant proceeded to Police Station and lodged the report against accused persons vide Crime No.119 of 2013 under Sections 302 read with 34 of IPC.

E] P.I. Naukudkar (PW-14) arrested accused persons. Accused No.1 Krishna Swamy made a disclosure statement that, he would show the place where the dead body of Rakesh was thrown. In consonance of his disclosure statement, police discovered the body of deceased. The Informant identified the body of deceased. Accused No.2 Ganesh was arrested by the police. Accused No.2 immediately disclosed that he want to produce the car used in commission of offence and clothes. Accordingly, police discovered the car and clothes and seized those articles. It transpired during the investigation that the accused persons, in furtherance of their common intention committed the murder of deceased as according to them he was having love affair with Sheetal Kamble (PW-4).

F) The Investigating officer sent body of deceased for medical examination. PM was conducted by Dr.Jadhav (PW-10). Investigating Officer

collected PM report. The police collected various samples of blood stains on clothes and sent it to Chemical Analyzer. After completion of the investigation, the investigating officer filed charge sheet against the accused persons for the offence punishable under Sections 302, 201 read with 34 of IPC.

G] As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, hence the matter was committed to the Sessions Court for trial.

H) The charge (Exhibit-18) under Sections 302, 201 r/w. 34 of IPC was framed against the accused. The contents of the charge were read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. Their defence is of false implication.

6. After recording the evidence and conducting full-fledged trial, the trial Court convicted and sentenced both appellants – accused for the aforesaid offences. Hence Criminal Appeal No.1057 of 2017 is preferred by appellant Ganesh Sunil Jagtap and Criminal Appeal No.1068 of 2017 is preferred by appellant – Krishna Subramaniam Swamy challenging their conviction and sentence.

7. Mr. Satyavrat Joshi, learned counsel appearing for the Appellants submitted that there was no eye witness to the incident and the case of the prosecution is based upon the circumstantial evidence. There is no direct evidence against the accused. He further submitted that chain of circumstances on which reliance was placed by the prosecution, has not been established beyond reasonable doubt by the prosecution. The prosecution has failed to prove that there was any motive for the accused to commit the offence. The

prosecution has examined only interested witnesses. The material witnesses like Masudkar and Shahrukh, whose presence is brought on record through the evidence of PW-4 Sheetal are not examined by the prosecution. Learned counsel submits that it is settled law that in case motive is not proved by leading cogent and reliable evidence, then the chain of circumstances in a case of circumstantial evidence is not complete. In support of his contention, learned counsel placed reliance upon the ratio laid down in the case of Surinder Pal Jain Vs. Delhi Administration¹ and S. Harnam Singh Vs. The State [Delhi Administration]².

8. Learned counsel further submits that though the prosecution has examined PW-4 Sheetal on the point of "last seen together", the defence has brought on record the contradiction in the

1 1993 Supp.[3] SCC 681

2 [1976] 2 SCC 819

police statement of PW-4 Sheetal wherein she has stated that after the incident of quarrel between Rakesh and accused, Rakesh again visited her house at which time he was fully under the influence of alcohol. Thus, the evidence brought on record by the prosecution regarding last seen together is not reliable. Learned counsel further submits that the evidence of panch witness PW-3 Nilesh regarding recovery of scythe at the instance of Accused No.1 Krishna is not reliable as the recovery is not from the place which was exclusively within the knowledge of Accused No.1.

9. Learned counsel further submits that the prosecution has not brought on record any evidence showing that the seized articles were properly sealed by affixing label by sealing with wax seals till the same were sent to Chemical Analyzer. Learned counsel further submits that C.A. report is inconclusive and the circumstance regarding the

C.A. report was not put to Accused No.1 while recording his statement under Section 313 of the Code of Criminal Procedure. In support of his aforesaid submission, learned counsel placed reliance upon the exposition of law in the case of Kiran Ashok Jadhav v/s State of Maharashtra³. Learned counsel further submits that though Medical Officer (PW-10) has stated that, injury No.2 was possible by any sharp pointed weapon, the weapon i.e. scythe was never shown to the doctor and hence, the said circumstance is not proved beyond reasonable doubts against the Accused. The evidence of Medical Officer is silent on the point that the injuries found on the dead body were contaminated though it was found in drainage. This creates doubt whether really dead body was found in drainage. In support of his aforesaid submission, learned counsel placed reliance upon the exposition in the case of Virender V/s The

3 2014 ALL MR (Cri) 3850

State of Delhi⁴, Raja Ram V/s State of Rajasthan⁵, Kiran Gorakh Shelke and another V/s the State of Maharashtra⁶ and Krishan Mohar Singh Dugal V/s State of Goa⁷.

10. Learned counsel further submits that the evidence of PW-5 regarding purchase of bottle of Rum by Accused No.2 Ganesh is also not useful as he admitted that the Accused was shown to him in the Police Station. Learned counsel further submits that the Car was discovered from the open place and the prosecution has not brought on record evidence that the said Car was in locked condition and the Accused were having dominion over the said car. No evidence regarding ownership of the Car has been brought on record. Though set of clothes had been recovered from the said Car, there was no identification of the said clothes

4 (1997) 6 SCC 171

5 (2005) 5 SCC 272

6 2016 ALL MR (Cri) 4160

7 (1999) 8 SCC 552

showing them to be of Accused. Learned counsel further submits that the evidence regarding recovery panchanama of dead body is also not reliable. The said panchanama was drawn between 18.10 hours to 19.30 hours and the FIR was lodged at 17.00 hours. Informant admitted in cross-examination that after confirming that the dead body of his son, he lodged the FIR.

11. Learned counsel further submits that the evidence of panch witness PW-8 Samir regarding recovery of motorcycle at the instance of Accused No.2 is not reliable, as where the motorcycle was allegedly thrown, was already known to the Police and hence the discovery will have no consequences. The number of motorcycle of the deceased mentioned by the informant is different than the number of the vehicle mentioned in the discovery panchanama. In support of his submission, learned counsel placed reliance upon the exposition of law in the

case of Datta Daulatrao Mundhe V/s The State of Maharashtra⁸. Learned counsel therefore submits that both the Appeals deserve to be allowed.

12. As against this, learned A.P.P. appearing for the State submitted that, though the case of the prosecution is based upon the circumstantial evidence, the chain of circumstances on which reliance was placed, has been established beyond reasonable doubt by the prosecution. Learned APP invites our attention to the evidence of PW-4 Sheetal and submits that, in presence of PW-4 both the accused have quarreled with Rakesh on the issue of he having on visiting terms with PW-4 though her husband was in jail. Learned APP further invites our attention to various recovery panchnamas under which weapon and other incriminating material was seized at the instance of both the accused. Learned APP also invites our

8 2018 ALL MR (Cri) 3130

attention to the evidence of PW-9 Sunil whose evidence shows that on the day of incident i.e. 22nd June, 2013, at 10.30 to 11.00 a.m. accused came to him and demanded money for filling the diesel at which time the clothes on the person of the accused were stained with blood, and accused were under the influence of liquor. Learned APP further submits that the dead body of Rakesh was recovered at the instance of accused No.1 Krishna from the place which was exclusively within the knowledge of the accused.

13. Learned A.P.P. further submits that after considering the entire evidence on record the trial court has convicted and sentenced both the accused, and the findings recorded by the trial Court are in consonance with the evidence brought on record. He, therefore, submits that both the appeals may be dismissed.

14. Heard learned counsel appearing for the Appellants and learned A.P.P. appearing for the Respondent – State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

15. Firstly, we will discuss the evidence of Medical Officer PW-10 Vijay Tarachand Jadhav who conducted postmortem on the dead body of Rakesh. PW-10 Vijay deposed that he himself and Dr.Vikas Borkar conducted postmortem. His evidence shows that on examination, they noticed following external injuries on the person of deceased:

1. Crushed injury present over face also involving chin, both fronto parieto temporal region of size 30 X 25 cm underlying skin, muscles, soft tissues, vessels, bones, crushed, brain exposed

to exterior half of the cerebrum
absent.

2. Stabbed wound present over front of neck, 4.5cm above supra sternal notch, obliquely placed of size 3 cm x 1 cm x tracheal lumen deep, margins contused.
3. Three contused abrasions present over mandibular region, each size 5 cm x 5 cm, red.
4. Multiple contused abrasions present over lower neck, left supra clavicular region, sternal region of size varying from 1 cm x 1 cm to 3 x 2 cm, red.
5. Lacerated wound present over lower 1/3rd of right forearm of size 3 cm x 2 cm x bone deep, underlying bone fractured.
6. Lacerated wound present over left ear pinna of size 5 cm x 1 cm x cartilage deep.
7. Lacerated wound present over right ear pinna of size 5 cm x 1 cm x cartilage deep.

16. The evidence of PW-10 Vijay shows that all above injuries were ante mortem in nature. His evidence further shows that on internal examination, they found the following internal injuries on the dead body:-

1) Head-

(i) Injuries under the scalp-crushed injury present over both fronto parieto temporal region refer to injury no.1 in column no.17.

2) Brain- Half of cerebrum absent, rest of the brain contused lacerated.

3) Thorax - Stabbed wound present over anterior wall of trachea, refer to injury no.2 in column no.17.

17. The evidence of PW-10 Vijay further shows that as per his opinion, the cause of death of Rakesh was "due to head injury". His evidence further shows that injury No.1 - crushed injury

could be possible if big stone hit on the head, and injury No.2 could be possible by any sharp pointed weapon. His evidence further shows that injury Nos.1 and 2 individually sufficient to cause death of a person in ordinary course of nature.

18. Thus, the evidence of Medical Officer i.e. PW-10 Vijay shows that he noticed multiple external and internal injuries on the person of Rakesh, including severe injuries to the head, brain and thorax. Even half of cerebrum of the brain was absent and rest of the brain was contused lacerated. Thus, the evidence of Medical Officer shows that the death of Rakesh was homicidal.

19. Now, we would discuss the evidence of other prosecution witnesses. PW-1 Dyadeshwar Mahadev Hargude is the informant, and father of

deceased Rakesh. His evidence shows that in June 2013 his son Rakesh (deceased) was serving in IBM Company at Yerwada. The evidence of informant further shows that on 23rd June, 2013 when he returned home at about 7.30 a.m., at that time his son Rakesh was not present in the house, and on enquiry with his wife, the informant came to know that on the earlier day Rakesh had gone to Lohgaon and thereafter did not return to house and since after 9.00 p.m. of the earlier day, the mobile of Rakesh was found switched off. On enquiry his wife disclosed to the informant that Rakesh had stated to his mother that accused Nos.1 and 2 were threatening him by saying that he should not keep relations with Sheetal Kamble otherwise they would kill him. Thus, the evidence of informant shows that his son Rakesh was missing and therefore he went to the police station and lodged the report. Thereafter he himself went to Lohgaon police chowky to lodge missing complaint. His evidence

further shows that at police chowky, he came to know that murder of one person has been committed in open land near Kalvad Vasti. Thereafter, police took him to the said place. There was pool of blood and blood was spilled on compound wall. Besides the pool of blood, one Raybon goggle stained with blood of chocolate shade, one Samsung mobile was lying. Police showed both the articles to the informant and he identified it to be of his son. His evidence further shows that from the situation of spot, he came to know that his son was murdered by sharp edged weapon. Thereafter, he lodged complaint in the police station [Exhibit-33].

20. In order to prove the motive for commission of offence of murder of Rakesh, the prosecution has examined PW-4 Smt. Sheetal Rakesh Kamble. The evidence of PW-4 Sheetal shows that in June 2013, she was residing in the chawl of Vivek

Chavan at village Lohogaon along with her husband Nitin. Her evidence further shows that she was knowing deceased Rakesh who was friend of her husband from his childhood days. Rakesh (deceased) used to visit their house and even some time her husband and Rakesh used to consume liquor in her house. Her evidence further shows that in June, 2013, her husband was lodged in Yerwada Jail at which time she herself and Rakesh had gone to Yerwada Jail to meet her husband and at that time her husband asked deceased to take care of his house.

21. The evidence of PW-4 Sheetal further shows that on 22.06.2013 at about 4.00 p.m. Rakesh had come to her house and inquired about her health. Her evidence further shows that Rakesh had brought liquor bottle with him and he started consuming liquor by sitting in her house. At that time door of her house was partly closed. After

some time accused Ganesh Jagtap, Krishna Swamy along with Rahul Masulkar and Shahrukh came to her house. They opened the door. Her evidence further shows that the accused Ganesh Jagtap and Krishna Swamy asked the deceased Rakesh, why he had been to the house of Sheetal when her husband was lodged in Jail, and on that count they started quarreling with Rakesh. Her evidence further shows that after sometime accused Krishna, Ganesh along with their other two companions and Rakesh left her house and started chitchatting on the road and thereafter went away. Her evidence further shows that on next day, she came to know that Rakesh had been murdered.

22. During the course of cross examination, PW-4 Sheetal stated that her husband was in Jail in connection with the murder case. Shahrukh and Masudkar were friends of her husband. She admits that prior to the incident occasionally Rakesh

used to visit her house. When portion marked 'A' in her statement was read over to her, she stated that the same is not correct and she had not stated so before the police.

23. Thus, so far as the motive for commission of crime is concerned, the evidence of PW-4 Sheetal is relevant as the prosecution has brought on record that when husband of Sheetal was in Jail, Rakesh used to frequently visit the house of Sheetal which was disliked by the accused. The prosecution has also relied upon the evidence of PW-4 Sheetal on the issue of "last seen together". However, the evidence of PW-4 Sheetal is not useful on the issue of last seen together to the prosecution. In her deposition, Sheetal has stated that when accused along with Rakesh left her house, she had gone to the Hospital and thereafter never met with Rakesh. However, her statement recorded by the police shows that when she

returned from the Hospital, again Rakesh visited her house at which time he was under the influence of alcohol and asked her whether accused have given any trouble to her and thereafter left her house. Even the evidence of investigating officer, PW-15 Subhash shows that while recording her statement, Shital had stated so. Thus, on the point of "last seen together" the evidence of Sheetal is not useful to the prosecution. However, through the evidence of Sheetal, the prosecution has brought on record motive for commission of offence.

24. PW-2 Nilesh Vijay Dagade is a panch witness, in whose presence dead body of Rakesh was discovered at the instance of accused No.1 Krishna. The evidence of PW-2 Nilesh shows that on 23rd June, 2013, he was called by Vimantal Police Station to act as Panch. His evidence shows that in his presence accused No.1 Krishna

voluntarily made disclosure statement that he would show the place where he has concealed the dead body of Rakesh. He proved memorandum statement [Exhibit-38] of accused No.1 Krishna.

25. The evidence of PW-2 Nilesh further shows that thereafter accused No.1 Krishna took him along with the police party to the place where the dead body was concealed. His evidence further shows that accused No.1 Krishna took them to PMC water supply tank by Lohgaon Dhanori road. Near that tank there was drainage tank. There were two covers to the said drainage tank. Accused No.1 pointed towards cover No.2 and disclosed that the dead body of Rakesh was thrown in that drainage water tank. Police staff opened the cover of drainage tank and found that the dead body of one person was floating on the surface of water in the drainage tank. Police summoned fire brigade there and with the help of fire brigade team the dead

body was recovered from the tank. The evidence of PW-2 Nilesh further shows the details of the clothes which were on the person of the dead body at that time. His evidence further shows that the face of the deceased was mangled. He proved recovery panchnama [Exhibit-39]. The defence has extensively cross-examined PW-2 Nilesh, but nothing contrary was brought on record and his evidence remained in tact and un-shattered.

26. Thus, evidence of PW-2 Nilesh shows that dead body of Rakesh was recovered at the instance of accused No.1 from the place which was exclusively in his knowledge. The dead body of Rakesh was recovered from behind the drainage tank which was covered and the place was not open and accessible to all. Thus, the prosecution has proved most incriminating circumstance from which and along other surrounding and attending circumstance only reasonable influence can be

drawn that accused No.1 has committed murder of Rakesh and to cause disappearance of evidence thrown the dead body in the drainage tank which was covered.

27. PW-3 Nilesh Bharat Saste is another panch witness. His evidence shows that in his presence accused No.1 made voluntary disclosure statement that he would show the place where he had concealed scythe which was used in the commission of offence. PW-3 Nilesh Saste proved memorandum statement [Exhibit-41] of accused No.1. His evidence further shows that accused No.1 took him and police personnel to quarry near Kalwad Vasti and further took them near one Babool tree and produced one scythe from the grass near the tree. His evidence further shows that one side of the scythe was sharp edged and one side was blunt and it was stained with blood. He proved the seizure panchnama [Exhibit-42] regarding seizure of scythe

at the instance of accused No.1. When muddemal article-33 i.e. scythe was shown to him during the course of his evidence, he identified the same, which was seized at the instance of accused No.1.

28. The evidence of PW-3 Nilesh Saste further shows that accused No.1 also made disclosure statement that he would show the place where he had thrown motorcycle of deceased. But regarding discovery of motorcycle of deceased Rakesh, the evidence of PW-3 Nilesh Saste is not useful as the motorcycle which was discovered at the instance of accused No.1 was different than the motorcycle of deceased.

29. Though the defence has cross examined PW-3 but nothing contrary has been brought on record regarding discovery of scythe at the instance of accused No.1. Thus, through the evidence of PW-3 Nilesh Saste, the prosecution has

proved that the scythe, which was used in the commission of offence by accused No.1 was seized at his instance from the place which was exclusively within his knowledge and the said place was not accessible to the general public.

30. The prosecution has examined PW-5 Govind Dattatraya Ghorpade, whose evidence shows that on 22nd June, 2013 at about 5.30 to 6.00 p.m. accused No.2 Ganesh purchased Rum Bottle from him. It is pertinent to note that though the prosecution has proved that on the day of incident accused No.2 Ganesh had purchased liquor, but the said circumstance cannot be said to be an incriminating as against accused No.2.

31. The prosecution has examined PW-6 Ashok Bhagwan Salvi, in whose presence the police had taken search of the houses of accused Nos.1 and 2. But his evidence shows that when the police took

search of the house of accused No.2 Ganesh, nothing incriminating was found in the house. Thus, evidence of PW-6 Ashok is not useful to the prosecution case.

32. The prosecution has examined PW-7 Sanjay Sadashiv Hagawane to show that at the instance of accused No.2 Ganesh, blood stained clothes were seized, which allegedly were on the person of accused No.2 at the time of incident. But the said recovery is from the open place.

33. The evidence of PW-7 Sanjay further shows that at the instance of accused No.2 Ganesh, one Indica Car was recovered in which some clothes stained with blood were recovered along with other articles like photos, visa card, election identity card and mobile etc. which were kept in the said car. However, the evidence of PW-7 - Sanjay shows that the said car was not locked and the place

where the car was parked was accessible to all and open to sky. Thus the evidence of PW-7 Sanjay is not at all useful to the prosecution.

34. PW-8 Samir Suresh Tapkir is another panch witness. His evidence shows that at the instance of accused No.2 Ganesh one Honda Unicorn Motorcycle which was belonging to deceased, was recovered. The evidence of this witness shows that, at the instance of accused No.2 the said motorcycle was recovered from the mine. We find considerable force in the argument advanced by the learned counsel appearing for the appellant that the evidence of PW-8 – Samir cannot be relied upon as the said place was already known to the police, because from the said place itself at the instance of accused No.1 one another motorcycle was recovered.

35. The evidence of PW-9 Sunil Rameshsinh

Rajput shows that, on the day of incident i.e. 22nd June, 2013, at about 10.30 to 11.00 p.m. accused No.1 and accused No.2 had came to the place where he was working and asked for Rs.1000/- from him for filling the diesel in vehicle. His evidence further shows that, at that time the clothes on the person of accused were stained with blood and they had consumed the liquor. His evidence further shows that he had given money to the accused and they went away.

36. We have carefully perused the cross examination of PW-9 - Sunil. In his cross examination, he stated that in connection with the murder of Rakesh, police took him in custody for five days, and told him that he being the friend of accused, they will book him in the crime. He further stated that, police told him to depose in the Court as stated by them to him, and he obliged the police by doing so, since he had fear in his

mind that police might falsely implicate him in said crime. Thus it is clear that, the evidence of PW-9 – Sunil is not at all reliable and the same deserves to be discarded, as he has deposed in the Court as per the say of the police.

37. PW-11 Bhupendrasinh Tarasingh Gandyok, whose evidence shows that on 23rd June, 2013 he had seen blood was spilled on the compound wall of Kalwad ground. He also found that near the compound wall, on earth human hair, blood, and one goggle was lying. Therefore, he went to the Police Chowky and informed the said fact to the police. Thus, PW-11 is the witness on his information, an investigation in aforesaid crime was commenced.

38. PW-12 Rahul Gajanan Kadam is the panch witness in whose presence panchnama [Exhibit-77] was drawn by the police, of the spot which was

already shown by PW-11 Bhupendrasinh. The evidence of PW-12 Rahul further shows that on 23rd June, 2013 he was called by police at Kalwad ground for panchnama. There was a compound wall near the ground and they found blood was spilled on the compound wall, so also the blood was lying on the earth near the compound wall. His evidence further shows that, small piece of human skull, 2-3 human teeth were also lying there. Police seized those articles and prepared panchnama. He proved spot panchnama [Exhibit-77].

39. PW-13 Haribhau Bhagwan Markad was the PSI of Vimantal Police Station at the relevant time, who has registered offence vide C.R.No.119/2013 under Section 302, 201, 34 of the IPC, on the basis of report of informant Dnyaneshwar, and accordingly recorded statement of witnesses.

40. PW-14 Dilip Ganpat Naukudkar and PW-15

Subhash Shankar Chavan, are the other Investigating Officers who have carried out further investigation in the matter. PW-14 Dilip and PW-15 Subhash deposed about the manner in which they have carried out the investigation in the crime.

41. The prosecution has also brought on record C.A. Reports regarding the seized articles, which are at Exhibits 24 to 30.

42. We have discussed the entire evidence brought on record by the prosecution. As already observed, the evidence of the Medical Officer (PW-10) shows that, deceased Rakesh received multiple internal and external injuries, including severe injuries to the head, brain and thorax. Even half of cerebrum of the brain was absent and rest of the brain was contused lacerated, and thus death of Rakesh was homicidal.

43. Admittedly, in the present case there is no eye witness to the incident and the entire prosecution case is based upon circumstantial evidence. For connecting the said offences with accused No.1, the prosecution has brought on record overwhelming circumstantial evidence. The evidence on record shows that at the instance of accused No.1 dead body of Rakesh was recovered from the place which was exclusively within his knowledge. The dead body was recovered from below the drainage which was covered and was not accessible to all. Accused No.1 showed the said place, and at his instance after opening the cover of the drainage, the dead body was taken out from the water of drainage. The evidence of Medical Officer, who conducted postmortem on the dead body of Rakesh, shows that injuries noticed on the person of Rakesh were possible by sharp pointed weapon. The evidence on record further shows that

the weapon i.e. scythe which was used in the commission of crime, was recovered at the instance of accused No.1 from the grass and the said place was not the place having access to the general public. The prosecution has brought on record motive through the evidence of PW-4 Sheetal. The prosecution has proved that Rakesh used to visit Sheetal when her husband was lodged in the Jail, and the said fact was not liked by accused No.1 and thus there was motive for commission of offence. Even the evidence of the informant shows that, accused used to threaten Rakesh due to his relations with Sheetal. Thus the prosecution has brought on record overwhelming circumstantial evidence against accused No.1 showing his involvement in the commission of murder of Rakesh. The C.A. reports brought on record by the prosecution also shows that at the instance of accused No.1 the clothes which were on his person at the time of commission of offence were seized

and there were blood stains on the said clothes. The prosecution has proved that accused No.1 had committed murder of Rakesh and thrown his body into the drainage water. Thus, the prosecution has proved that accused No.1 Krishna has committed an offence under Section 302, 201 of the IPC.

44. So far as the involvement of accused No.2 Ganesh in the said crime is concerned, we are of the considered view that the prosecution has utterly failed to bring on record sufficient circumstantial evidence against accused No.2. The only evidence brought on record against accused No.2 is that on the day of incident, he purchased one Rum Bottle. But as observed earlier, the said circumstance cannot be said to be an incriminating circumstance. Another circumstance brought on record against accused No.2 is of the alleged recovery of motorcycle of deceased at the instance of accused No.2. However, the said recovery of

motorcycle is from the place which was already known to the police. Further, the said recovery is from the water of the mine, visible and accessible to all. The prosecution has also tried to bring on record that at the instance of accused No.2 certain articles were seized from the car. However, the evidence on record shows that the said car was parked at the open place and also the doors of the said car were not locked. Thus, the recovery of those articles at the instance of accused No.2 is not useful to the prosecution case. The evidence on record shows that when the police took search of the house of accused No.2 Ganesh, nothing incriminating was found in his house. The circumstantial evidence brought on record by the prosecution against accused No.2 is too scanty to base the conviction under Section 302 of the IPC. As observed earlier, the dead body of Rakesh was recovered at the instance of accused No.1. The prosecution has failed to prove the

involvement of accused No.2 while throwing the dead body of Rakesh in the drainage water. Thus prosecution has not proved that accused No.2 had committed offence under Section 201 of the IPC. After considering the entire evidence brought on record by the prosecution, we are of the view that circumstances brought on record by the prosecution are not sufficient to connect accused No.2 for the offence under Section 302 and 201 of IPC. Thus, benefit of doubt deserves to be given to accused No.2.

45. For the reasons afore stated, we are of the view that the prosecution has proved that accused No.1 - Krishna had committed murder of Rakesh and thrown his dead body in the water of drainage. Thus, the prosecution has proved that accused No.1 had committed an offence under Section 302 and 201 of the IPC. So far as accused No.2 - Ganesh is concerned, the prosecution has

utterly failed to prove that he has committed an offence under Section 302 and 201 of IPC.

46. In the result, we pass the following order:

O R D E R

(I) Criminal Appeal No. 1057 of 2017 filed by Appellant – Original accused No.2 – Ganesh Sunil Jagtap is hereby allowed.

(I-a) The Judgment and order dated 14th December, 2017, passed by the Additional Sessions Judge, Pune in Sessions Case No.841 of 2013, thereby convicting and sentencing the Appellant – accused No.2 – Ganesh Sunil Jagtap for the offence punishable under Sections 302 read with 34 of the Indian Penal Code and Section

201 read with 34 of the Indian Penal Code, is quashed and set aside. The Appellant – accused No.2 Ganesh Sunil Jagtap, is acquitted of the offence punishable under Sections 302 read with 34 of the Indian Penal Code and Section 201 read with 34 of the Indian Penal Code. Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellant – Accused No.2 Ganesh Sunil Jagtap.

(I-b) The Appellant- accused No.2 Ganesh Sunil Jagtap is in jail, he be set at liberty forthwith, if not required in any other case.

(I-c) The Appellant – Ganesh Sunil Jagtap shall furnish Personal Bond of Rs.15,000/- and surety in the like amount, under Section 437-A of the Code

of Criminal Procedure, before the concerned trial Court at Pune.

(II) Criminal Appeal No.1068 of 2017 filed by Appellant – Original accused No.1 – Krishna Subramaniyam Swamy is hereby dismissed.

(II-a) The Appellant – accused No.1 Krishna Subramaniyam Swamy is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for Life and to pay fine of Rs.5,000/-, and in default of payment of fine, he shall suffer simple imprisonment for one year. The Appellant – accused No.1 Krishna Subramaniyam Swamy is also convicted for the offence punishable under Section 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year

and to pay fine of Rs.1,000/-, and in default he shall suffer simple imprisonment for two months. Both the sentences shall run concurrently.

(III) In view of the order passed in Criminal Appeal No.1057 of 2017, Criminal Application No.1094 of 2018 does not survive and the same stands disposed of, accordingly.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]