

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 433 OF 2016**

Tukaram Rau Jadhav, Age : 57 years
Occu. Convict, Presently lodged at
Kolhapur Central Prison,
Kalmaba - 416 007.

...Appellant

Versus

State of Maharashtra
at the instance of Pusegaon Police
Station, Tal - Khatav, Dist - Satara, in
respect of CR No.35/2014 U/s 302 of
IPC

...Respondent

Mr. Prosper D'souza, for the Appellant.
Ms. P. P. Shinde, APP for the State/Respondent.

**CORAM: SMT. SADHANA S. JADHAV
& N. J. JAMADAR, JJ.**

RESERVED ON : 22nd September, 2020

PRONOUNCED ON: 1st October, 2020

JUDGMENT: (Per: N.J. Jamadar, J.)

1. This appeal is directed against the judgment and order dated 29th October, 2015, in Sessions Case No. 37 of 2014, passed by the learned Additional Sessions Judge, Vaduj, whereby and whereunder the appellant - accused came to be convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 ('IPC') and sentenced to suffer imprisonment for life and pay a fine of Rs.20,000/- with default

stipulation, for having committed murder of Yashodabai (hereinafter referred to as, 'the deceased').

2. Shorn of unnecessary details, the background facts leading to this appeal can be stated as under:

(a) The deceased was resident of Revalkarwadi, Taluka Khatav. The accused resided at Gavwadi Visapur, a nearby village. On 27th April, 2014, after having dinner the deceased went to sleep on a cot in the courtyard of her house. Her daughter Dhanashree slept besides the deceased on the same cot. Fulabai, the mother-in-law of the deceased, was sleeping on the floor near the cot. Laxman ('the first informant') the son of the deceased had gone to sleep at the house of Krushnat Yadav, his cousin, as marriage of Krushnat was to be solemnized in the ensuing few days and preparations were on.

(b) At about 12.15 am. Dhanashree raised loud alarm. Laxman and Krushnat rushed to the house of the first informant. Neighbours also rushed to the house of the first informant. The deceased was lying in a pool of blood, on the cot. She had suffered a grievous injury on the right side of the neck, by means of a sharp weapon. Dhanashree apprised that the accused came to their house armed with an axe and inflicted blow on the neck of the deceased. Thus, she raised alarm and thereupon the accused ran away.

(c) The first informant thus approached Pusegaon Police Station and lodged report against the accused. The first informant reported that in the month of November - 2013 the accused had, with an evil eye, insisted the deceased to accompany him and the deceased had abused him and thus the accused caused death of the deceased. Crime was registered at Pusegaon police station vide CR No.35 of 2014 at 3.55 am.

(d) During the course of investigation the Investigating Officer visited the scene of occurrence, drew panchnama, collected the articles lying at the spot, held inquest on the dead body of the deceased and sent the dead body for postmortem examination. The Investigation Officer interrogated the witnesses and recorded their statements. The accused came to be arrested on 5th May, 2014. The clothes of the accused, which had blood stains, were seized. On 8th May, 2014, the accused made discovery leading to the recovery of the weapon of offence i.e. axe, which had blood stains on its blade and handle, from the house of the accused. After finding the complicity of the accused charge-sheet came to be lodged against the accused in the Court of jurisdictional Magistrate.

(e) On committal, the learned Sessions Judge framed charge against the accused for the offence punishable under Section 302 of IPC. The accused pleaded not guilty and claimed for trial.

(f) At the trial, to substantiate the indictment against the accused the prosecution examined in all 11 witnesses including Dhanashree (PW-8) and Laxman (PW-10); the daughter and the son of the deceased, as the witnesses to the occurrence, Dr. Meghna Pandurang Patil (PW-6); the autopsy surgeon, Mr. Vasudeo Namdeo Kapse (PW-7) and Hanmant Ramchandra Jagdale (PW-9), who claimed to have seen the accused armed with an axe at Kalubai temple few minutes prior to the occurrence, and Dhanajay Ingale (PW-11); the Investigating Officer, who furnished the details of investigation. After the closure of the prosecution evidence the accused was examined under Section 313 of Code of Criminal Procedure, 1973. The accused did not lead any evidence in his defence which consisted of false implication on account of political affiliations.

(g) After appraisal of the evidence, the learned Sessions Judge was persuaded to enter a finding of guilt, opining that the evidence of Dhanashree (PW-8) was reliable and trustworthy and found necessary corroboration in the

evidence of Laxman (PW-10), the first informant, and the circumstantial evidence formed by the testimony of Vasudeo (PW-7) and Hanumant (PW-9) and the recovery of the weapon of offence i.e. axe, pursuant to the discovery made by the accused, and the seizure of the clothes of the accused, which had blood stains of female origin. Thus, the learned Sessions Judge was persuaded to convict and sentence the accused as indicated above.

3. Being aggrieved, the accused has preferred this appeal.

4. We have heard Mr. Prosper D'souza, the learned Counsel for the appellant and Ms. Shinde, the learned APP for the State/Respondent, at considerable length. With the assistance of the learned Counsels we have perused the evidence and material on record.

5. To begin with, the factum of homicidal death of the deceased. The claim of Dhanashree (PW-8) that on account of the fatal blow the deceased met an instantaneous death finds support in the testimony of Dr. Meghna (PW-6). Upon postmortem examination, on the morning of 27th April, 2014 Dr. Meghna (PW-6) claimed to have found following injuries:

- (i) Incised wound over right side of neck. 4 Cm. Below mastoid bone, extended cervical spine 3rd, outside of laryngeal bone, cut all muscles and blood vessels of right side. 6 inch in length and 2 ½ inch in deep.

Bleeding present. Age of injury recent and fresh within 8 to 10 hours. Cause of injury, injury by sharp cutting edged object.

(ii) Cut the vertebral column at C-3m, C-4 Level.

In her opinion, the cause of death was injury to spinal cord at C-3, C-4 level and hypo-volumic shock due to severe bleeding from all major and minor blood vessels on right side of neck due to incised wound. She further opined that the aforesaid injury was possible by the axe.

6. The aforesaid nature of the injuries indicates that a single forceful blow by means of a sharp object which cut the spinal cord at C-3 and C-4 level led to the instantaneous death of the deceased. The homicidal nature of the death can thus be said to have been established beyond the pale of controversy.

7. Mr. D'souza, the learned Counsel for the appellant, would urge that the learned Sessions Judge committed a manifest error in arriving at the conclusion that the accused was the perpetrator of the assault. The learned Sessions Judge, according to the learned Counsel for the appellant, fell in error in placing implicit reliance on the testimony of Dhanashree (PW-8). Firstly, on a proper evaluation of her evidence, an inference becomes inescapable that Dhanashree (PW-8) was not an eye witness to the occurrence. Secondly, the testimony

of Laxman (PW-10) could not have been relied upon as corroborative to the evidence of Dhanashree (PW-8), on the aspect of authorship of the assault, as it suffered from the vice of material improvement with a view to fill the lacuna in the prosecution case. Thirdly, Dhanashree (PW-8) and Laxman (PW-10), being highly interested witnesses, could not have been relied upon without necessary corroboration from independent sources. Fourthly, the non-examination of material witnesses especially Fulabai, the mother-in-law of the deceased, erodes the credibility of the prosecution case. Lastly, the circumstantial evidence from its very nature was of weak character and the learned Sessions Judge misdirected himself in seeking corroboration to the testimony of Dhanashree (PW-8) from such circumstantial evidence. Proper analysis of the evidence and material on record, according to the learned Counsel for the appellant, would indicate that the prosecution failed to establish the guilt of the accused beyond reasonable doubt.

8. Per contra, Ms. Shinde, the learned APP supported the impugned judgment. It was urged that Dhanashree (PW-8), was the most natural witness. Her presence at the scene of occurrence could not be questioned. Dhanashree (PW-8) has given a vivid account of the manner in which the accused

assaulted the deceased. The sole testimony of Dhanashree (PW-8) is so convincing and trustworthy that it would form a surer basis of conviction. In addition, the prosecution has led ample evidence which corroborates the version of Dhanashree (PW-8). Thus the appeal being devoid of substance deserves to be dismissed, urged Ms. Shinde.

9. As the fate of the prosecution hinges upon the testimony of Dhanashree (PW-8) we deem it appropriate to have a brief resume of her evidence. Dhanashree (PW-8) informed the Court that on the night of occurrence the deceased was sleeping on a cot in the courtyard. Fulabai, her grandmother, was sleeping on the floor near the cot. Laxman (PW-10) had gone to sleep at the house of her cousin. She viewed programmes on television till 11.45 pm. Though she was lying on the cot besides the deceased, she was awake. The accused, who was then wearing white shirt and payjama, with a red towel wrapped around the neck, came thereat armed with an axe. The accused gave a blow by means of the sharp side of the axe on the neck of the deceased, who moved slightly. The deceased got soaked in blood. Dhanashree (PW-8) claimed to have raised alarm. Thereupon, the accused ran away and her neighbour Shankar Kadam and brother Laxman (PW-10) came to the scene of occurrence. Dhanashree (PW-8)

further affirmed that the accused had a quarrel with the deceased and was insisting that the deceased should accompany him for work.

10. During the course of cross-examination of Dhanashree (PW-8), it was elicited that the deceased was sleeping on her left side. She was facing the deceased. Blood splashed on her body. There were blood stains on her clothes as well. To a pointed question as to why she did not try to wake up the deceased upon noticing the accused, Dhanashree (PW-8) replied that she had no chance to wake up the deceased. She went on to concede that after she raised alarm Shankar Antu Kadam was the first person to reach her house. Dhanashree (PW-8) do not cave in to the suggestion that a thief had come to their house, snatched the marriage string (mangalsutra) and ear ring from the person of deceased and thereafter hit the deceased and fled away.

11. An endeavour was made in the cross-examination of Dhanashree (PW-8) to draw home the point that she was unable to identify the assailant due to darkness. Dhanashree (PW-8) was, however, forthright in asserting that as the marriage of her cousin was scheduled in few days, lights were switched on at his house, and thus there was sufficient light at the time of the occurrence.

12. Laxman (PW-10) the first informant endeavoured to lend support to the claim of Dhanashree (PW-8). He affirmed that, after hearing the alarm raised by Dhanashree (PW-8), while he was rushing to his house the accused ran across armed with an axe. Laxman (PW-10) claimed to have found the deceased lying in a pool of blood. He and Deepak, his cousin, chased the accused but the latter ran towards the hill. Laxman (PW-10) further affirmed that he called the son of the accused on phone and the latter informed him that the accused left the house at 10.30 pm. armed with an ax. Thus, Laxman (PW-10) approached Pusegaon police station and lodged the report (Exhibit 25).

13. Mr. D'souza, the learned Counsel for the appellant urged with a degree of vehemence that the testimony of Laxman (PW-10) on the aspect of having seen the accused running away from the lane armed with an axe, is unworthy of credence. Firstly, Laxman (PW-10) conceded in the cross-examination that while lodging the FIR (Exhibit-25) he did not state that the accused crossed him armed with an axe whilst he rushed to his house and that he and Deepak chased the accused who ran towards the hill. Laxman (PW-10) attempted to wriggle out of the situation by asserting that he did not state those facts as he was confused. Secondly, the conduct

of Laxman (PW-10) in not accosting the accused when the latter was allegedly running away armed with an axe cannot be said to be natural, in the circumstances of the case, urged Mr. D'souza.

14. The aforesaid criticism appears to be justifiable. It is imperative to note that the first informant lodged the report within hours of the occurrence. In the said report, the first informant disclosed the identity of the alleged assailant, the weapon used and even the cause for the animosity between the deceased and the accused. The fact that the deceased was found in a pool of blood within moments of the accused allegedly crossing the witnesses armed with an axe was such a notorious fact that the first informant would not have missed to state the same at the first possible opportunity, had it happened the way deposed to by the first informant. The omission to state the said fact, in the context of the nature and time of the occurrence, cannot be said to be inconsequential or immaterial. The omission is in respect of a vital aspect. Moreover, it does not stand to reason that the witness and his relations and neighbours would have allowed the accused to calmly run away. They would have made efforts to at least confront, if not, apprehend the accused. The

omission to state the fact that the informant and Deepak chased the accused thus assumes critical significance.

15. The testimony of Laxman (PW-10) on the aspect of having seen the accused running away armed with an axe moments after the occurrence thus does not allure confidence. The testimony thus losses corroborative significance on the aspect of the identity of the assailant.

16. However, on the aspects of the first informant having gone to sleep at the house of his cousin Krushnat, where preparations of ensuing marriage were on, and that the lights were kept on, and he rushed to his house after hearing the alarm raised by the Dhanashree (PW-10), nothing material could be elicited in the cross-examination of Laxman (PW-10). To this extent Laxman (PW-10) lends support to the testimony of Dhanashree (PW-8).

17. First and foremost, it has to be seen whether sufficient source of light was available to facilitate Dhanashree (PW-8) to witness the occurrence. The claim of Dhanashree (PW-8) that in the house of her cousin on account of ensuing marriage, lights were kept on found support in the evidence of Laxman (PW-10). She affirmed that in addition to source of light from the house of her cousin Krushnat, which is on the left side of her house, there was source of light from the street-light on

the main road. This claim of Dhanashree (PW-8) could not be impeached during the course of cross-examination. Moreover, the manner in which the deceased was assaulted, in itself, points to the availability of adequate source of light. A single blow was given on the neck of the deceased, with clinical precision, which caused the instantaneous death of the deceased. The assailant could not have unleashed such a blow with precision in the absence of adequate light. We are thus persuaded to hold that there was sufficient source of light to witness the occurrence.

18. Mr. D'souza, the learned Counsel for the appellant urged that Dhanashree (PW-8) being an interested witness could not have been relied upon unhesitatingly. The non-examination of independent witnesses, though available, corrodes the prosecution case, urged Mr. D'souza. Amplifying the submission, it was urged that Mr. Dhananjay Ingle (PW-11), the Investigating Officer conceded in no uncertain terms that he did not record the statement of Fulabai, the mother-in-law of the deceased nor he seized the clothes of Dhanashree (PW-8). Non-examination of Fulabai, who was sleeping alongwith deceased and Dhanashree (PW-8) at the very place of the occurrence, according to Mr. D'souza, dismantles the prosecution case.

19. Indeed, Dhanashree (PW-8) and Laxman (PW-10) have consistently deposed that apart from Dhanashree (PW-8), Fulabai was at the place of occurrence. No explanation was offered by the Investigating Officer as to why Fulabai was not interrogated and cited as a prosecution witness.

20. The non-examination of neighbours who rushed to the scene of occurrence after hearing the alarms raised by the Dhanashree (PW-8), however, in the circumstances of the case, does not impair the prosecution. The reasons are not far to seek. The incident occurred at the dead of the night. The neighbours rushed to the spot after Dhanashree (PW-8) raised alarm. Only one fatal blow was inflicted on the deceased. The incident did not last more than few moments. In such circumstances, any person who rushed to the scene of occurrence would have been a witness to the events transpired post the assault.

21. As regards the non-examination of Fulabai, the submission on behalf of the appellant carries some substance. While appreciating this challenge, it is imperative to note that, it is the duty of the Court to first assess the trustworthiness of the evidence adduced by the prosecution. And if the Court finds that the evidence so adduced is worthy of being relied on and deserves acceptance then the non-examination of any

other witness, who could have been examined but not examined, may not affect the prosecution.

22. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of ***State of HP vs. Gian Chand¹*** wherein the following position was expounded:

“**14.** Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the Court levelled against the prosecution should be examined in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution.”

23. The non-examination of Fulabai, in the context of time, place and manner of occurrence, does not detract materially from the prosecution. The evidence of Fulabai, would also have been assailed on the ground of non-existence of opportunity to observe the incident in the manner in which the testimony of Dhanashree (PW-8) is assailed. In addition, nothing could be elicited in the cross-examination of Dhanashree (PW-8) and Laxman (PW-10) to demonstrate that Dhanashree (PW-8) shared the animosity against the accused which Fulabai did not share or that there was a definite design in withholding Fulabai.

1(2001) 6 SCC 71.

24. We are not impressed by the broad proposition sought to be canvassed on behalf of the appellant that Dhanashree (PW-8), being the daughter of the deceased, can be painted as an interested witness. On the contrary, Dhanashree (PW-8), being the daughter of the deceased and an ordinary resident of the house where the occurrence took place is, in a sense, natural witness. Having regard to the time of occurrence i.e. midnight, the residents of the house could only be expected to be present in the house. Relations of the deceased, who happen to be natural witnesses, cannot be branded as interested witness on account of relationship alone.

25. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Dalip Singh vs. State of Punjab***², wherein it was enunciated that, “a close relative who is a very natural witness cannot be regarded as an interested witness. The term “interested” postulates that the person concerned must have some direct interest in seeing the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason.”

2AIR 1953 SC 364.

26. In the case of *Kartik Malhar vs. State of Bihar*³ after adverting to the previous pronouncements, the Supreme Court culled out the legal position in the following words:

“7. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelyu Thevar's case (supra) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence.”

(emphasis supplied)

27. The pronouncement in the case of *Namdeo vs. State of Maharashtra*⁴ is also instructive. The facts in the said case were somewhat similar to the facts in the case at hand. In the said case, the deceased was assaulted at about 2.00 am. or 3.00 am. in his house and after hearing the alarm raised by the deceased, his son, who was sleeping in another room, rushed towards the backyard and noticed the accused therein assaulting the deceased by means of an axe. The testimony of the son of the deceased was assailed being of highly interested nature. Repelling the challenge, the Supreme Court, after adverting to the leading authorities on this point, culled out the legal position as under:

³(1996) 1 SCC 614.

⁴(2007) 14 SCC 150.

"38. From the above case law, it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

(emphasis supplied)

28. In the backdrop of the aforesaid exposition of law, the testimony of Dhanashree (PW-8) cannot be jettisoned away being of interested nature. As indicated above, the presence of Dhanashree (PW-8) is quite natural. There is evidence to indicate that Laxman (PW-10) and the neighbours gathered after hearing the alarm raised by Dhanashree (PW-8). She has testified to the fact as to how she had known the accused in the backdrop of the quarrel between the accused and the deceased. She further deposed to the clothes which the accused wore and the weapon he was armed with. The swift manner in which the accused unleashed the fatal blow lends credence to her claim that she had no chance to wake up the deceased.

29. The claim of Dhanashree (PW-8) that she was sleeping besides the deceased when the latter was assaulted coupled with the situation at the scene of occurrence, depicted in the scene of occurrence panchnama (Exhibit-11) which reveals that there were blood stains even on the wall, which was at a

distance of 1 feet behind the cot, would indicate that the blood must have splashed on the clothes and person of Dhanashree (PW-8) as well. Indeed, it was brought out in her cross-examination that there were blood stains on her person and the clothes. The Investigating Officer did concede that he did not seize the clothes of Dhanashree (PW-8). The seizure of clothes of Dhanashree (PW-8) with blood stains thereon, of the blood group of the deceased, might have been of assistance in establishing the presence of Dhanashree (PW-8) at the scene of occurrence. The lapse on the part of the Investigating Officer, especially when Dhanashree (PW-8) claimed that there were blood stains on her clothes, cannot, however, be exalted to such of a pedestal as to throw the testimony of Dhanashree (PW-8) overboard, when the presence of Dhanashree (PW-8) at the scene of occurrence is most natural.

30. This propels us to consideration of evidence which was pressed into service by the prosecution as corroborative to the testimony of Dhanashree (PW-8). Hanumant Jagdale (PW-9) apprised the Court that on the night intervening 26th and 27th April, 2014, he and Vasudeo Kapse (PW-7) were installing electric fittings at Kalubai temple, Revalkarwadi. The accused came to Kalubai temple at about 12.00 midnight. The accused had an axe with him. The accused kept the axe in the corner

of the temple and paid obeisance to goddess Kalubai. Thereafter the accused left the temple alongwith axe. Hanumant (PW-9) further affirmed while he was on his way to home, after finishing the work, he noticed people had gathered at the house of the deceased. He found that the deceased was assaulted by somebody. Thereupon he claimed to have informed the persons so gathered thereat that the accused had come to the temple at about 12.00 midnight with an axe.

31. Though Hanumant (PW-9) was subjected to searching cross-examination, nothing material could be elicited either to show that his presence at Kalubai temple was doubtful or that he had not seen the accused at the said temple as deposed to. Nor it could be brought out that Hanumant (PW-9) is either inimically deposed towards the accused or interested in advancing the cause of the first informant.

32. Vasudeo Kapse (PW-7) also testified to the fact that while he and Hanumant (PW-9) were working at Kalubai temple on the night of occurrence the accused had come to the Kalubai temple and had took Darshan of the goddess and thereafter left the temple. Vasudeo (PW-7), however, did not subscribe to the prosecution version that the accused was then armed with an axe. Nonetheless Vasudeo (PW-7) was firm in asserting that the accused did visit the Kalubai temple, on that night.

33. The accused was not an ordinary resident of Revalkarwadi. He resided at Gavwadi, Visapur. The accused was found at Kalubai temple at an unearthly hour. There is evidence to indicate that the said Kalubai temple was at a distance of about 200 meter from the scene of occurrence. The aforesaid circumstances were duly put to the accused during his examination under Section 313 of Criminal Procedure Code. However no plausible explanation was offered. This circumstance, which bears upon the fact in issue, thus lends support to the claim of the Dhanashree (PW-8).

34. In addition to this, the weapon of offence i.e. axe came to be recovered pursuant to the discovery made by the accused, which was proved in the evidence of Dhiraj Jagdale (PW-1) the public witness. Dhiraj Jagdale (PW-1) wants the Court to believe that on 8th May, 2014, after making the disclosure statement, the accused led the police party to his house and took out the axe from the wooden beam of the roof of his house. There were blood stains on the said axe, which was duly seized and sealed. Dhiraj Jagdale (PW-1) stood the test of cross-examination.

35. Rahul Salunke (PW-4), another public witness, informed the Court that on 6th May, 2014, the clothes which the accused wore had blood stains and those clothes were seized under

panchnama (Exhibit-15) after a change of clothes was provided to the accused.

36. It would be contextually relevant to note that CA report (Exhibit-32) revealed that the shirt and payjama (which appeared to be washed) had blood stains of 'A' group. The axe was also stained with blood of 'A' group, which was the blood group of the deceased. The report of Forensic Laboratory (Exhibit-29) indicates that DNA profile of the blood detected on the clothes of the deceased, the shirt and payjama of the accused and the weapon of the offence was identical and from one and the same source of female origin. No explanation was offered as to how the clothes of the accused were stained with the same blood group as that of the deceased.

37. The learned Counsel for the appellant strenuously urged that the discovery is unworthy of credence. It was further submitted that the case of prosecution that the accused was found wearing the same clothes which the accused allegedly wore at the time of the occurrence, and had blood stains thereon, after about 10 days of the occurrence, is unbelievable. As regards the discovery, leading to the recovery of the weapon i.e. axe, as indicated above, nothing could be elicited in the cross-examination of Dhiraj Jagdale

(PW-1) and Dhananjay Ingle (PW-11) the Investigating Officer so as to discard their versions on the aspect of discovery. No endeavour was made to show that the accused cannot be fastened with the exclusive knowledge of the concealment of the weapon of offence, in his house.

38. It is true that there was time lag of about 10 days in the arrest of the accused from the date of the occurrence. However, the claim of the Investigating Officer on the aspect of the arrest of the accused on 5th May, 2014, could not be assailed. Nor it could be shown that the accused was not arrested though the accused was very much available. In the absence of any foundation having been laid in the cross-examination of the prosecution witnesses, the submission that the accused could not have continued to wear the very same clothes cannot be urged to discard positive evidence.

39. The conspectus of the aforesaid consideration is that the sole testimony of Dhanashree (PW-8) passes the test of reliability and trustworthiness. Moreover, there is circumstantial evidence which provides necessary assurance.

40. Thus, we do not find any infirmity in the impugned order of conviction and sentence.

41. Before parting, we place on record our appreciation for the able assistance rendered by Mr. Prosper D'souza, who was appointed to espouse the cause of the appellant.

42. Resultantly, the appeal deserves to be dismissed. Hence, the following order.

: O r d e r :

The appeal stands dismissed.

Shraddha
K. Talekar

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Shraddha K.
Talekar
Date: 2020.10.03
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[N. J. JAMADAR, J.] [SMT. SADHANA S. JADHAV J.]