

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.659 OF 2012

Mohammad Ismail Noormohammad MadanaAppellant

Versus

The State of MaharashtraRespondent

Mr. Subhash Jha, Advocate for the Appellant.

Mr. J.P. Yagnik, APP for the Respondent-State.

CORAM : RANJIT MORE & SURENDRA P. TAVADE, JJ.

DATE ON WHICH JUDGMENT IS RESERVED : 23rd JANUARY, 2020.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 12th FEBRUARY, 2020.

JUDGMENT : (PER S.P. TAVADE, J.)

1. The appellant/accused has preferred this appeal against the Judgment and Order dated 31st March, 2012 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Goregaon, Mumbai in Criminal Sessions Case No.91 of 2011. The appellant/accused was charged for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the IPC). He was held guilty and sentenced to suffer life imprisonment and directed to pay fine of Rs.1,000/- and in default, he was directed to suffer simple imprisonment for one month. The impugned judgment is under challenge.

2. Brief facts leading to the prosecution of the appellant/accused can

be summarized thus :

(a) The informant Makbul Malang Shah is resident of Squaters Colony, Chincholi Gate, Malad, Mumbai. Deceased Zuber Mohd. Ismail was brother-in-law of the informant. Zuber was also residing at Squaters Colony. Deceased Zuber Mohd. Ismail was working in imitation jewelery business. The appellant/accused was also having imitation jewelery factory at Pathanwadi, Malad. Deceased Zuber was residing in Flyover Society, Link Road.

(b) On 06.02.2011 deceased Zuber had come to the house of the informant. He requested for two wheeler (Activa) of informant for visiting Dhanjiwadi, Rani Sati Marg, Malad and the informant gave his scooter to the deceased Zuber, who told him that he would return back within short time. But deceased Zuber did not return back within reasonable time, hence, the informant called him on cellphone. The deceased Zuber stated that the appellant/accused had called him to his factory at Pathanwadi and he would return back within short period, but deceased Zuber did not return till 11.00 p.m. Hence, the informant gave call to the house of the deceased Zuber. He came to know that deceased Zuber had not returned to his house also. Thus the informant along with one Jabbar went towards Hanuman Tekadi in search of the deceased Zuber. Similarly, he also visited the factory where deceased Zuber was working. He made enquiry with the workers of factory, but he came to know that deceased Zuber had not visited the factory in the said evening.

(c) On the next day, at about 12 noon, father-in-law of the appellant/

accused namely Ismail Shah called the informant on his cellphone and called him to his house. Accordingly, the informant went to the house of Ismail Shah, who disclosed that the appellant/accused killed Zuber in his factory and locked the shutter door of the factory. The informant asked the appellant/accused as to what had happened. The appellant/accused disclosed that he killed deceased Zuber. Thereafter, the informant, Ismail Shah and others took the appellant/accused to Kurar Police Station. The appellant/accused took police to his factory premises. He open the door of the factory with key.

(d) The appellant/accused took the police and others to the mezzanine floor of the factory where the dead body of deceased Zuber was lying. The Investigating Officer prepared inquest panchanama. He seized the clothes of deceased under panchanama. The dead body was sent to the postmortem at Bhagwati Hospital. The appellant/accused came to be arrested. His clothes were seized under panchanama. Seized articles were sent to the C.A. analysis. The informant Makbul Shah lodged FIR. On the basis of same, Crime No.31 of 2011 was registered against the appellant/accused under Section 302 of the IPC.

(e) The investigating officer recorded statements of witnesses. He collected C.A. report and filed chargesheet against the appellant/accused in the Court of Metropolitan Magistrate, Borivali. The case of the appellant/accused was committed to the Court of

City Civil & Sessions Court, Borivali Division, Dindoshi, Goregaon, Mumbai. Charge for the offence punishable under Section 302 of the IPC was explained to the appellant/accused. He pleaded not guilty and claimed to be tried. The defence of the appellant/accused was that of total denial.

3. In order to bring home the guilt of the appellant/accused, the prosecution has examined in all eight witnesses and also relied on the documentary evidence. The learned trial Court relied on the extra judicial confession made by the appellant/accused to his father-in-law and others. The learned trial court has also relied on the circumstantial evidence and convicted the appellant/accused for life for the offence punishable under Section 302 of the IPC.

4. On behalf of the appellant/accused, learned counsel Mr. Jha has vehemently submitted that the extra judicial confession is weak type of evidence and the learned Sessions Judge ought not to have relied upon the same. There are no other circumstances proved on record to corroborates the extra judicial confession. Therefore, the sentence imposed on the appellant/accused is not legal and proper. He also submitted that the prosecution has not lead the evidence regarding the scene of offence. He further submitted that the medical officer has opined that the death of deceased was due to strangulation, but the object of strangulation is not seized by the investigating officer. The entire prosecution case is based on circumstantial evidence, but the evidence on record does not prove the chain of circumstances pointing out the guilt

of the appellant/accused beyond the shadow of reasonable doubt. Hence, he prays for acquittal of the appellant/accused.

5. On the other hand, learned APP Mr. Yagnik submitted that the appellant/accused made confession before his father-in-law. The relation between the appellant/accused and his father-in-law were cordial. The appellant/accused had a faith on his father-in-law, and therefore, he disclosed the incident to him in presence of the several witnesses. Therefore, the extra judicial confession is proved by the prosecution through the evidence of Ismail Shah and others. The evidence of informant established that the deceased was in the company of the appellant in the night of incident in question. The place where dead body was found was in possession of the appellant/accused. The place of dead body was pointed out by the appellant/accused to the police. The subsequent conduct of the appellant/accused of showing remorse for his acts, all these facts are supporting the extra judicial confession, therefore, the learned trial court has rightly appreciated the evidence on record and convicted the appellant/accused. Therefore, there is no need to interfere with the findings of the learned trial Court. Hence, he prays for dismissal of the appeal.

6. Before analyzing the factual aspect, it may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must in all circumstances to be proved by direct, ocular evidence, by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The circumstantial evidence is not direct to the point in

issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

7. A reference may be made to a decision in **Sharad Birdhi Chand Sarda Vs. State of Maharashtra**¹ Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defense or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

8. The prosecution has relied on the following circumstances:-

(i) *Homicidal death of deceased Zuber.*

(ii) *Extra-judicial confession of appellant/accused.*

(iii) *The appellant/accused was in possession of factory*

¹ AIR 1984 SC 1622

premises of place of incident.

(iv) The appellant/accused had called deceased Zuber to his factory premises.

(v) Dead-body was pointed out by the appellant/accused.

(vi) Subsequent conduct of the appellant.

9. **Homicidal death of deceased Zuber :-**

The dead body of deceased Zuber was sent to the Bhagwati Hospital for postmortem examination. According to Dr. Sunil Birde, on 08.02.2011 he performed postmortem on the dead body of deceased Zuber. He noticed external injury on the body, which he has mentioned in Column No.17 of the postmortem report, which are as under:-

(1) There was evidence of ligature mark over neck, anterior aspect 8cm vertically below tip of Jean. It is horizontally passing on both sides of neck up to right lateral and left lateral aspect of neck respectively. It's length is 12cm and width is 8cm. Raddish in colour.

(2) There were small multiple abrasions over left antero lateral aspect of neck.

(3) Contusion over right antero lateral aspect of neck.

(4) Contusion over left antero lateral aspect of neck. On cut section-blood clot seen in left side sternomastoid muscle.

(5) Nail marks present over left antero aspect of neck.

10. On internal examination, he found trachealmucosa is congested, right and left lungs were having multiple blood clots. There was compression fracture of hyoidbone with blood clots at fracture site. He opined that death of deceased was due to throttling, which was unnatural. He had also taken viscera for chemical analysis. It was sent to the Forensic Science Laboratories. He received the C.A. report (Exhibit 20,

21 and 22). On going through the C.A. report, he gave final opinion regarding cause of death as throttling. In cross examination, he admitted that Asphyxia can be occurred at any stage. Death can be possible by accidental suffocation in industrial situation. Both these admissions do not support the defence as deceased has suffered many external injuries. The witness has admitted that the level of Methyl alcohol above 150 mg. is dangerous for life. It is admitted that as per Modi's medical Jurisprudence level of Methyl Alcohol, 80 mg is dangerous for life. In the present case, the CA report shows that the blood sample of the deceased Zuber contains 115 mg. of Methyl Alcohol. It is proved that deceased was under influence of liquor. But that itself is not sufficient to prove his death. There are injuries on the neck of the deceased will not cause by drinking alcohol. So the above admissions are not helpful to defence.

11. On the basis of postmortem report, learned counsel Shri. Jha submits that in the postmortem examination, the Medical Officer has noted ligature mark, but he finally opined that death was caused due to throttling. He has also submitted that the ligature mark is having length of 10 cm., therefore, some object must have been used for strangulating the neck of deceased, but the said object is not seized, so there is doubt whether death was caused due to strangulation or throttling. But we are not inclined to accept the said submission because the evidence of Dr. Birade is very specific. On going through the external injury of the neck, it appears that in addition to ligature mark, there are other injuries by which the hyoidbone was fracture. On the basis of same, the medical officer has categorically opined that death is not due to strangulation, but by

throttling; so there is no doubt regarding cause of death of deceased Zuber. The death of Zuber by throttling is not denied by the defence. Therefore, the evidence of Dr. Birde has rightly proved the homicidal death of deceased Zuber.

12. **Extra-judicial confession of appellant/accused :-**

Admittedly, the extra judicial confession is weak piece of evidence. The learned counsel for the appellant/accused has relied on the ratio laid down by the Apex Court in the cases of ***Vijay Shankar vs. State of Haryana***² and ***Kala Alias Chandrakal vs. State Through Inspector of Police***³. In the above cited cases, the Apex Court has held that the extra judicial confession should be corroborated by some other material on record and it is weak piece of evidence. In view of the ratio laid down in the cited supra, one has to appreciate the evidence laid on record.

13. To establish the extra judicial confession, the prosecution has heavily relied on the evidence of Mohd. Ismail Madar Shah (PW-3). Admittedly, Mohd. Shah (PW-3) is father-in-law of the appellant/accused. He deposed that he is resident of Squarters colony. He has a business of imitation jewelery. His daughter Nikatbanu got married with the appellant/accused about one year prior to the incident in question. The appellant/accused was residing with his daughter at Squarters Colony, Chincholi gate. The parents of the appellant/accused were residing along with him. The above evidence is not at all denied by the appellant/accused.

² (2015) 12 SCC 644

³ (2006) 9 Supreme Court Cases 337.

14. Mohd. Ismail Madar Shah (PW-3) further deposed that on 07.02.2011 at about 9.15 a.m. the appellant/accused called him on his cellphone. The appellant/accused was frightened at that time and was weeping, hence, he called the appellant/accused to his house. He further deposed that the appellant/accused reached his house within 15 to 20 minutes. The appellant/accused was frightened, hence, he asked him as to what had happened. The appellant/accused disclosed him that after drinking liquor, he had quarreled with deceased Zuber in the evening on 06.02.2011. He gave fist blows to deceased Zuber and due to his beating, Zuber expired. The appellant/accused has also disclosed that incident had taken place in his factory at Ambapada.

15. Mohd. Ismail Madar Shah (PW-3) further deposed that he called the informant Makbul Malang Shah (PW-1). He further deposed that on arrival of the informant, the informant made enquiry with the appellant/accused as to what had happened. The appellant/accused disclosed that he had beaten the deceased Zuber and killed him. The appellant/accused further disclosed that he and Zuber had quarreled after drinking liquor. PW-3/ Mohd. Ismail Madar Shah further deposed that the appellant/accused was taken to police station by Yunus and Abdul Kadar. His statement was recorded by the police.

16. In his cross examination, he admitted that he had no license for his imitation jewelery, but he carried on the said business for couple of years. He has also admitted that he has no reason as to why he has not obtained license for his business. He further admitted that his daughter has good relations with the appellant/accused. He also admitted that he had not

accompanied the appellant/accused to the police station. It is suggested that the appellant/accused never made any disclosure of his acts of killing Zuber to him. But he denied the suggestion. So except denial, nothing had brought on record to assail the extra judicial confession made by the appellant/accused to witness PW-3/Mohd. Ismail Madar Shah.

17. It is the case of the prosecution that the appellant/accused also made extra judicial confession before the informant when he had been to the house of PW-3/ Mohd. Ismail Madar Shah along with PW-4/Mohamed Latif Malang Shah. The informant/PW-1 deposed that deceased Zuber was his brother-in-law. The appellant/accused is son of his sister Jamila. In the year 2011, he had a business of imitation jewelery. The appellant/accused was also doing the same work. The factory of the appellant/accused was at Pathanwadi. Deceased Zuber was residing in Flyover Society near Link Road in February, 2011. The above evidence is not at all challenged by the appellant/accused, so it can be said that the appellant/accused and deceased are closed relative of the informant Makbul Shah.

18. The informant/PW-1 further deposed that on next day at about 12 noon, Mohd. Ismail Madar Shah (father-in-law of the appellant) contacted him on his cellphone and called him to his house. Accordingly, he went to the house of Mohd. Ismail Madar Shah/PW-3. On reaching the house of PW-3, the appellant/accused told him that he killed Zuber in his factory and he locked the shutter door. He further deposed that the appellant/accused was present in the house, so he asked him as to what was the matter. The appellant/accused told him that he killed Zuber.

Thereafter, PW-3/Mohd. Ismail Madar Shah asked him what to do because the appellant/accused and deceased were his closed relatives. He further deposed that he took the appellant/accused to Kurar Police Station along with Yunus and Abdul Kadar.

19. The third person before whom the appellant/accused made extra judicial confession of Mohamed Latif Malang Shah/PW-4. He deposed that on 07.02.2011 at about 11.45 he was in house. PW-3/Mohd. Ismail Madar Shah called him to his house on cellphone. He went there. The appellant/accused and his wife were present in the house. PW-3/Mohd. Ismail Madar Shah told him about the incident. Similarly, the appellant/accused also narrated the incident. He further deposed that the appellant/accused told him that he killed Zuber in the factory premises and he locked the door of the factory. Some relatives were also called there. He further deposed that the informant, Yunus Kasim, Abdul Rehman were also called there. The incident was also informed to them, then the matter was reported to the police. The extra judicial confession alleged to have been made by the appellant/accused before the witness was denied by way of suggestion.

20. On going through the above evidence of informant (PW-1), Mohd. Ismail Madar Shah (PW-3) and Mohamed Latif Malang Shah (PW-4), it can be said that all of them are related to the appellant/accused as well as to Zuber. Mohd. Ismail Madar Shah (PW-3) is father-in-law of the appellant/accused. The marriage of appellant/accused and daughter of PW-3 had taken place about one year prior to the incident. The appellant/accused and his wife were residing at Squarters Colony. The relations of

appellant/accused with his father-in-law were cordial. No material is brought on record to establish that PW-3/Mohd. Ismail Madar Shah had any undue influence over the appellant/accused. The appellant/accused is son of sister of the informant/Makbul Malang Shah. The relations of appellant/accused and the informant Makbul Malang Shah were also cordial. No material is brought on record to show any grudge against each other. PW-4/Mohamed Latif Malang Shah was also knowing the family of PW-3/ Mohd. Ismail Madar Shah and the informant. It has come on record from the evidence of Mohamod Latif Malang Shah (PW-4) he had taken lead to rent out his premises to the appellant/accused just prior to the incident. Therefore, it can be said that the informant/PW-1/Makbul Malang Shah, PW-3/ Mohd. Ismail Madar Shah and PW-4/Mohamed Latif Malang Shah were closely related to each other. They were from the same village. Therefore, the witnesses had no enmity or grudge against the appellant/accused to depose falsely against him.

21. In the present case, the appellant/accused called his father-in-law on hearing the voice of the appellant/accused, father-in-law felt that the appellant/accused was in great difficulty. Hence, he called him. On arrival in the house of PW-3/Mohd. Ismail Madar Shah, the appellant/accused disclosed that he had a quarrel with the deceased Zuber in earlier night. Both of them had consumed liquor and thereafter he assaulted Zuber and killed him. In order to express himself, the appellant/accused disclosed the incident occurred in earlier night before his father-in-law. Similarly, the appellant/accused also disclosed the said incident to the informant and PW-4/Mohamed Latif Malang Shah to gain sympathy. Therefore, it can

be said that the extra judicial confession of the appellant/accused was voluntary without any coercion obtained under undue influence.

22. Learned counsel for the appellant/accused has relied upon the ratio laid down by the Apex Court in the case of ***Kala Alias Chandrakal (supra)*** wherein it was held that the accused in that case had no good relationship with Susheela before whom he has made confession. Therefore, it was held that making confession to such an inimical person is more unlikely. Hence, the confession was not relied. In the said case, the Apex Court has relied on the ratio in the case of ***State of Rajasthan vs. Raja Ram***⁴ wherein it was held that witness must be unbiased and not even remotely inimical to the accused. It was also held by the Apex Court that extra judicial confession should be corroborated by some other material on record. In the present case, the relation between appellant and the persons before whom he made extra judicial confession were cordial. In fact, the appellant/accused made extra judicial confession before his own father-in-law and thereafter gave extra judicial confession to the informant and PW-4/Mohamed Latif Malang Shah. Their relations with the appellant/accused were also cordial. Therefore, it cannot be said that the extra judicial confession made by the appellant/accused was doubtful. Therefore, on going through the evidence of informant, PW-3/Mohd. Ismail Madar Shah and PW-4/Mohamed Latif Malang Shah, it is established that the act of disclosing the incident by appellant before them was voluntary. Therefore, the learned trial court has rightly relied on the extra judicial confession of the appellant.

⁴ (2003) 8 SCC 180

23. Learned counsel for the appellant/accused has vehemently submitted that the alleged extra judicial confession reveals that the appellant/accused gave fist blows to deceased Zuber, but infact there are many injuries on the person of deceased. The ultimate cause of death is throttling, but the said fact was not disclosed by the appellant/accused. Therefore, the extra judicial confession is doubtful, but the evidence on record shows that the appellant/accused had disclosed that he had assaulted the deceased Zuber under the influence of liquor. The appellant/accused is very specific that he killed Zuber and thereafter locked the factory premises, so that it can be said that the appellant/accused had a knowledge that deceased Zuber was no more. Hence, he was weeping and disclosed the said fact to his father-in-law in order to get his support or advise. Therefore, merely because the details of assault not disclosed by the appellant/accused before his father-in-law and others is no ground to disbelieve the same.

24. **The appellant/accused was in possession of factory premises of place of incident :-**

It is the case of prosecution that accused had taken business premises on rental basis. To prove the said fact, the prosecution has heavily relied on the evidence of PW-4/Mohamed Latif Malang Shah. He deposed that Mohamad Shafik Malang Shah is his brother, who was running business in the name and style as Fija Enterprises at Ambapada, Sanjay Nagar. Due to ill-health of his brother, his factory (Fija Enterprises) was closed. Therefore, the appellant/accused asked him to give said factory premises of his brother to him on rental basis. The discussion on the said point had taken place between the appellant, his

father-in-law and himself. About 15 days prior to the incident, the possession of factory was given to the appellant/accused, but the agreement was not executed. About 15 days prior to the incident, father-in-law of the appellant/accused had a talk with him and his brother for handing over possession of the premises to the appellant/accused. In the cross examination, the witness has admitted that from the date of giving possession, no agreement was prepared till the date of incident. The said suggestion implidely suggest that the possession was given to the appellant/accused, but the agreement was not executed between them. No doubt, it was suggested that the appellant/accused never received possession of factory premises of witness, but the said suggestion is refuted. On this point, the evidence of father-in-law (PW-3) of the appellant/accused is also crucial. He has categorically stated that the appellant/accused was doing business of jewelery at Pathanwadi, Ambapada in rental premises. The above evidence of PW-3/Mohamed Ismail Madar Shah has not denied. There is general denial that he was deposing falsely against the appellant/accused, but fact remains on record that being a father-in-law, he had a knowledge about the business activities of the appellant/accused. Therefore, he deposed that the appellant/accused was doing business on rental premises at Ambapada. PW-3/Mohd. Ismail Madar Shah was the best witness to establish the possession of appellant/accused over the factory premises, in which the dead body of the deceased Zuber was found. Therefore, it is established that the appellant/accused was in possession of factory, where the dead body of Zuber was found.

25. **The appellant/accused had called deceased Zuber to his factory premises :-**

It is established that the informant is brother-in-law of deceased Zuber. The appellant has son of sister of the appellant/accused. Therefore, the appellant/accused as well as deceased were closed to the informant. The informant Makbul Malang Shah (PW-1) has deposed that on 06.02.2011 at about 4.00 p.m., deceased Zuber came to his house and demanded scooter for visiting Dhanjiwadi. Accordingly, he gave his scooter to the deceased Zuber. Deceased Zuber assured the informant that he would return for back within 10 minutes, but he did not return about ½ hour. Hence, the informant called him, but deceased Zuber did not respond the call of informant. After sometime, deceased Zuber called the informant and disclosed that the appellant/accused took him to his factory at Pathanwadi and he would return within short period, but the deceased Zuber did not return as promised. Hence, the search was taken by the informant. The fact remains on record that the deceased Zuber had taken scooter of informant for visiting Dhanjiwadi. Meantime, the appellant/accused called him and took him to his factory. The said fact was informed by the deceased to the informant. The said fact is also not specifically denied. Therefore, from the evidence of informant, it is established that in the evening of 06.02.2011 deceased Zuber was in the company of the appellant/accused in his factory premises.

26. **Subsequent conduct of accused:-**

It is established from the extra judicial confession of the appellant/accused that he had consumed liquor along with deceased

Zuber in his factory premises and thereafter there was quarrel which ended into the death of the Zuber. In the next day morning, the appellant/accused gave call to his father-in-law and disclosed the incident. Thereafter, he disclosed the incident to the informant and other persons and showed his willingness to point out the place where the dead body was lying. Accordingly, he took informant, other witness and police party to his factory premises and pointed out the dead body, which was lying on the mezzanine floor of the factory.

27. It has come on record from the evidence of panch witness, informant that the appellant/accused opened the factory premises with key, which was in his possession. On the basis of said evidence, learned counsel for the appellant/accused submitted that the key is not seized from the possession of the appellant/accused. Similarly, no separate panchnama was prepared by the investigating officer showing that at the instance of appellant/accused, the premises were open. It is true that no separate panchnama was prepared for opening of premises. Similarly, the key by which the premises were open was not seized from the possession of the appellant/accused. It is a fault of Investigating Officer for not seizing the key from the possession of the appellant/accused, but the oral evidence of witnesses is inspiring the confidence that the appellant/accused lead police party and open the door with key which he had possessed. The conduct of the appellant/accused is also relevant because he disclosed the incident to his father in law and others. He took police to the place of incident and showed particular place where dead body was lying. He opened the premises with key which he had

possessed. Therefore, the said conduct also showed that he had a guilty mind and also having sense of remorse on his ill acts.

28. Learned counsel for the appellant/accused Mr. Jha has submitted that the charge is not properly framed against the appellant/accused. He invited our attention to the charge at Exhibit 3. On going through the charge, the learned trial Court has given the time of occurrence of incident as 4.15 hours of 06.02.2011 to 15.50 hours of 07.02.2011. In fact, the appellant/accused disclosed the incident to his father-in-law at about 9.20 a.m., so the incident must have been occurred during the night intervening 06.02.2011 and 07.02.2011 as there was no definite time available in the chargesheet, hence, the learned trial Court has written approximate time of the occurrence of incident. The said fact does not vitiate the charge. Mr. Jha has also made a grievance that the learned trial Court has mentioned the alleged act of the appellant/accused as giving fist blows on the chest and pressing of neck of deceased Zuber. There are other injuries on the neck of deceased Zuber, on the basis of the same the medical officer has opined that it is for throttling, therefore, the learned trial Court has rightly described the acts of appellant/accused while committing the crime. The charge is properly framed and does not vitiate the trial.

29. On going through the evidence on record, it can be said that the prosecution has established homicidal death of the deceased Zuber. The appellant/accused made voluntary extra judicial confession before his father in law, informant Makbul Malang Shah and PW-3/Mohd. Ismail Madar Shah. The said extra judicial confession is corroborated by other

circumstances namely taking police and witnesses to his factory premises. It is established that the appellant/accused had a key in possession. He opened the shutter of factory. He pointed out dead body which was on mezzanine floor. Therefore, the prosecution has proved the chain of circumstances leading to the homicidal death of the deceased Zuber. The said circumstances unerringly point out the guilt of the appellant/accused and none else. Therefore, the ratio laid down in the case of ***Sharad Birad Chand Sarda (supra)*** the prosecution has proved all circumstances leading to the death of deceased Zuber, wherein the appellant/accused was involved. The said circumstances point out the guilt of the appellant/accused.

30. Hence, the learned trial Court has rightly held the appellant/accused guilty for the offence punishable under Section 302 of the IPC. Therefore, there is no need to interfere with the findings of the learned trial Court. The appeal, as such, is devoid of substance and the same is dismissed.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]