

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

CRIMINAL APPEAL NO. 499 OF 2016

Bhagwat Putalaya Pawar

.. Appellant
(Orig. Accused)

Vs.

The State of Maharashtra

.... Respondent
(Orig. Complainant)

Mr. Prosper D'Souza, Advocate for appellant.

Ms. P.P. Shinde, APP for respondent-State.

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

Reserved for Judgment on : 10th September 2020.

Judgment Pronounced on : 22nd September 2020.

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

1. This appeal is directed against a judgment dated 11th January 2016 passed by learned Additional Sessions Judge, Solapur in Session Case No.206 of 2014, whereby and whereunder the accused came to be convicted for the offences punishable under section 302 and 201 of Indian Penal Code, 1860 ('the Penal Code') and sentenced to suffer imprisonment for life and pay fine of Rs.2,000/-, and rigorous imprisonment for five years and fine of Rs.1,000/-, respectively, with default stipulation.

2. The background facts leading to this appeal can be stated in brief as under:-

(a) Mr.Balasaheb Jadhav (the first informant) deals in

the business of preparing charcoal from wood. He hires labourers to prepare the charcoal by setting up a coal kiln in the vicinity of the place where he gets the contract to cut the wood. In the month of February 2014, the work was being executed at Fourteen Kamani, Bale, Solapur. Eight couples were working as labourers on the said work. The accused Bhagwat and his wife Parvati (the deceased) were amongst those couples. The labourers were staying in the make-shift tents erected by using tarpaulin sheets (Pali).

(b) The gravamen of indictment against the accused was that on 14th February 2014, the accused had a quarrel with deceased. Both were then under the influence of liquor. The first informant was then at his native place at Karkel, Taluka Ashti, District Beed. The first informant was apprised about the occurrence on 15th February 2014. The first informant came to Solapur on 16th February 2014. He visited the work site. Except Mr. Chandu, who was ill, rest of the labourers had gone on a fishing expedition. Chandu apprised the first informant that after

the quarrel with the deceased, the accused had not returned to the work site. The first informant traced the accused in a coal shop situated at Tilak Chowk, Solapur.

(c) On being inquired, the accused informed the first informant that, on the night of occurrence, there was a quarrel between him and the deceased over preparing food and, in a fit of rage, he assaulted the deceased by means of wooden log. As he realized that the deceased died, he dug a pit at some distance from the their tent (Pali) and buried the dead body therein. The accused took the first informant to the said place and pointed out the spot where the deceased was buried.

(d) The first informant lodged report with Fouzdar Chawdi Police Station, Solapur on 17th February 2014. Crime was registered at C.R.No.57 of 2014. Investigation commenced.

(e) The body of the deceased was disinterred in the presence of Executive Magistrate and Medical Officer. Dead body was dispatched for post-mortem examination.

The investigating officer visited the scene of offence, make-shift tent (Pali) of the accused, and seized the tarpaulin and clothes, which were stained with blood. The investigating officer interrogated the witnesses and recorded their statements. The accused came to arrested. On 20th February 2014, the accused made discovery leading to recovery of the weapon of assault (wooden log), the implements used for burying the deceased pickaxe and spade (kudal and phawada) and the blood stained clothes of the accused. The incriminating articles were sent for analysis to Forensic Science laboratory. After finding the complicity of the accused, charge-sheet came to be lodged against the accused for the offences punishable under section 302 and 201 of the Penal Code in the court of jurisdictional Magistrate.

3. On committal, the learned Sessions Judge framed charge against the accused for the offences punishable under section 302 and 201 of the Penal Code. The accused abjured his guilt and claimed for trial.
4. At the trial, the prosecution examined 9 witnesses, including Mr. Balasaheb Jadhav (P.W.No.2), the first informant, Mr.Shahu Kadam

(P.W.No.3)-Nayab Tahasildar, Dr.Santosh Bhoi (P.W.No.7), the Autopsy Surgeon, and Hemantkumar Jalinder Naiknaware (P.W.No.8), the photographer who had also videographed the process of disinterring the body of the deceased and Mr.Balkrishana Govind Salunkhe (P.W.No.9) the investigating officer, who furnished the details of investigation. After closure of the prosecution evidence, the statement of accused under section 313 of the Code of Criminal Procedure, 1993 ('Code') came to be recorded. The accused did not lead any evidence in his defence which was of denial and false implication.

5. After appraisal of the evidence, the learned Additional Sessions Judge was persuaded to return a finding of guilt against the accused. Resultantly, the accused came to be convicted and sentenced for the offences punishable under sections 302 and 201 of the Penal Code, as indicated above. Being aggrieved, the accused is in appeal.

6. We have heard Mr. Prosper D'Souza, the learned counsel for the appellant and Ms. P.P. Shinde, the learned APP for the State at some length. With the assistance of the learned counsels, we have carefully perused the evidence and material on record.

7. Mr. Prosper D'Souza, the learned counsel for the appellant urged

that the learned Sessions Judge committed a grave error in returning a finding of guilt against the accused primarily on the basis of the extra-judicial confession allegedly made before Mr. Balasaheb Jadhav (P.W.No.2). Amplifying the submission, Mr. D'Souza strenuously submitted that the learned Sessions Judge lost sight of well recognized principle that an extra-judicial confession is an inherently weak type of evidence. In the case at hand, there was material to indicate that the first informant Balasaheb Jadhav (P.W.No.2) had known about the occurrence much before the confession was allegedly made by the accused. The other circumstances of pointing out the place from where the body of the deceased was exhumed and the recovery of the weapon of offence, implements and blood stained clothes, pressed into service against the accused, have not been firmly and conclusively established. In the aforesaid backdrop, as the prosecution case was based on circumstantial evidence only, the conviction of the accused is legally unsustainable, urged Mr. D'Souza.

8. As against this, Mrs. Shinde, the learned APP submitted with tenacity that not only all the circumstances have been firmly established but those circumstances unerringly point towards the guilt of the accused and they are not explainable on any other hypothesis

than that of the guilt of the accused. In addition, Mrs. Shinde laid emphasis on the fact that there was no explanation, much less plausible, as regards the circumstances which led to the death of the deceased especially when it is indisputable that the accused and the deceased were working on the coal-kiln of the first informant and were residing together near the worksite in a make shift tent. The contemporaneous and post occurrence conduct of the accused squarely incriminates him, canvassed Mrs. Shinde.

9. It is rather indubitable that the deceased met a homicidal death. Dr.Santosh Bhoi (P.W.No.7) the Autopsy Surgeon claimed to have found the following ante-mortem injuries on the person of the deceased:

1) Lacerated wound of size 2 x 1 x 0.5 c.m., over 6 cm., above the left eyebrow and 7 cm., above glabella.

2) Incised wound of size 3 x 1.5 x 0.5 cm., over right scapula region (i.e., 14 cm., from tip of right shoulder and 7 cm., from midline)

10. On internal examination, Dr.Bhoi noticed, *inter-alia*, haematoma in frontal region of the scalp and fracture of thyroid cartilage. Dr.Bhoi (P.W.No.7) affirmed that the above external injury No.1 corresponds with the injury noted on the scalp. In his opinion, the cause of death

was head injury, which was inflicted with excessive force. The injury was sufficient in the ordinary course of nature to cause death.

11. The authorship of homicidal death was sought to be established by the prosecution by placing reliance on the following circumstances :

- 1) The accused voluntarily made an extra judicial confession before Balasaheb Jadhav (P.W.No.2), his employer.
- 2) The accused pointed out the place where the body of the deceased was buried, firstly, to Mr. Balasaheb Jadhav (P.W.No.2) and, secondly, to the party which had gone to exhume the dead body.
- 3) Blood stains were found on the clothes and tarpaulin in the make-shift tent where the deceased and accused were residing together.
- 4) The accused made discovery leading to the recovery of weapon of offence (wooden log) and the implements used for digging the pit (pickaxe and spade) and the blood stained clothes of the accused.
- 5) Failure of the accused to explain the circumstances in which the deceased died and the contemporaneous and subsequent

incriminating conduct of the accused.

12. The learned Sessions Judge was of the view that each of the above circumstances were fully and conclusively established and they formed a complete chain of the circumstances which led to no other hypothesis than that of the guilt of the accused.

13. Mr. Prosper D'Souza urged with a degree of vehemence that the claim of extra judicial confession allegedly made by the accused is far from established. Taking the Court through the testimony of Balasaheb Jadhav (P.W.No.2), Mr. D'Souza submitted that from the tenor of the testimony of Balasaheb Jadhav (P.W.No.2) it becomes evidently clear that the witness was apprised about the alleged occurrence much before the confessional statement. In the circumstances the claim of Balasaheb Jadhav (P.W.No.2) does not allure confidence, urged Mr.D'Souza.

14. Balasaheb Jadhav (P.W.No.2) wants the Court to believe that on 14th February 2014, when there was an alleged quarrel between the accused and the deceased, he was at his native place, Karkel, District Beed. On being informed about the occurrence on 15th February 2014, he rushed to Solapur. When he reached the work site, except Chandu,

who was sick, nobody was present as the rest of the labourers had gone on a fishing expedition. Balasaheb Jadhav (P.W.No.2) claimed to have found the accused at a coal shop at Tilak Chowk, Solapur.

15. Balasaheb Jadhav (P.W.No.2) informed the Court that the accused told him that there was some pretty quarrel between him and the deceased over serving dinner. They both were under influence of alcohol. The accused did not remember as to how he had assaulted the deceased. The accused had buried the dead body of the deceased. Balasaheb Jadhav (P.W.No.2) further affirmed that the accused had shown him the spot where the dead body of the deceased was buried.

16. During the course of the cross examination of Balasaheb Jadhav (P.W.No.2), it was elicited that he came to know about the occurrence initially from other people and thereafter the accused informed him about the occurrence. Banking upon the aforesaid admission, a strenuous effort was made by Mr.D'Souza to draw home the point that the claim of Balasaheb Jadhav (P.W.No.2) does not merit acceptance.

17. It is trite that an extra judicial confession, made in a sound state of mind, and if found to be voluntary and true, can be relied upon by the Court. A confession has to be proved like any other fact.

In the very nature of the things, the value of the evidence as to the confession hinges upon the veracity of the witness before whom the confession has been allegedly made. If the witness, to whom the confession is made, appears to be unbiased, not inimically disposed towards the accused, and against whom no motive, for attributing an untruthful statement to the accused, can be alleged, and the said person deposes to the statement made by the accused in clear, unambiguous and unequivocal terms, then the evidence can be said to pass the test of credibility and trustworthiness.

18. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Sahadevan Vs. State of Tamil Nadu***¹, wherein after reference to the previous pronouncements, the Supreme Court culled out the principles which govern the appraisal of evidence as to an extra judicial confession in para No. 16 as under :

“16 Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

1 (2012) 6 SCC 403

- i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.*
- ii) It should be made voluntarily and should be truthful.*
- iii) It should inspire confidence.*
- iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.*
- v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.*
- vi) Such statement essentially has to be proved like any other fact and in accordance with law.”*

19. Reverting to the facts of the case, the claim of Balasaheb Jadhav (P.W.No.2) is required to be appreciated in the context of the incontestable facts that Balasaheb Jadhav (P.W.No.2) had taken the contract for cutting the wood, set up the coal kiln and put the labourers including the accused and the deceased in make shift tents at the work site itself. The labourers, who were brought from various places for the work at the site, were strangers to the persons and the place. They were made to put up in make-shift tents. The relationship transgressed beyond the employer and contract labourer. Balasheb Jadhav (P.W.No.2) was responsible for the safety and well-being of the labourers. Conversely, for the labourers, Balasaheb Jadhav

(P.W.No.2) was the only person to whom they could approach in any eventuality. For them, Balasaheb Jadhav (P.W.No.2) was the person in authority.

20. Viewed through the aforesaid prism, the endeavour of the accused to make a clean breast of the transaction in which the deceased died and what happened thereafter, before Balasaheb Jadhav (P.W.No.2) appears to be natural. The attendant circumstances also lend credence to the claim of Balasaheb Jadhav (P.W.No.2). The claim of Balasaheb Jadhav (P.W.No.2) that he found the accused in a coal shop at Tilak Chowk, Solapur could not be impeached. The presence of accused in a coal shop in the circumstances appears natural as that could be the only acquaintance which a nomad labourer could develop. Balasaheb Jadhav (P.W.No.2) further affirmed that on the night on which the accused made the confession, they both stayed in Amar Lodge and, on the next day, he approached the police and lodged the report. This conduct of Balasaheb Jadhav (P.W.No.2) in ensuring that the accused remains with him till the matter is reported to police also shows the sense of responsibility which Balasaheb Jadhav (P.W.No.2) possessed.

21. Undoubtedly, Balasaheb Jadhav (P.W.No.2) claimed to have rushed to Solapur upon being apprised about the occurrence, which took place on the night of 14th February 2014. This factor, in the circumstances of the case, does not detract materially from the claim of Balasaheb Jadhav (P.W.No.2). Nor does it dilute the voluntariness and trustworthiness of the confessional statement made by the accused. Balasaheb Jadhav (P.W.No.2) must have inquired with the accused about the circumstances in which the deceased vanished. The fact that Balasaheb Jadhav (P.W.No.2) was already informed about the occurrence thus does not erode the credibility of his version.

22. Nothing could be elicited in the cross examination of Balasaheb Jadhav (P.W.No.2) to demonstrate that he had an axe to grind against the accused. On the contrary, the relationship between the accused and Balasaheb Jadhav (P.W.No.2) appeared to be one of trust and confidence. It seems that the accused was overcome by the urge to speak the truth before Balasaheb Jadhav (P.W.No.2). Hence, we are of the view that the learned Sessions Judge was within his rights in arriving at the conclusion that the extra judicial confession made by the accused before Balasaheb Jadhav (P.W.No.2) could be legitimately relied upon.

23. The recovery of the dead body at the instance of the accused was sought to be established by placing reliance on the testimonies of Mr.Shahu Kadam (P.W.No.3), Dr. Santosh Bhoi (P.W.No.7), and Mr. Hemantkumar Naiknaware (P.W.No.8), the photographer. It has come in the evidence of Mr.Shahu Kadam (P.W.No.3), the Nayab-Tahasildar, that pursuant to the request by the police, he had gone to the scene of occurrence. The accused had pointed out the spot where the dead body was buried. The said spot was dug out. The body of a female was found therein. There was an injury on the head near the ear. The accused identified the dead body to be that of his wife Parvatibai. Inquest Panchanama (Exh.13) and Exhumation Report (Exh.31) were drawn at the spot.

24. Dr.Santosh Bhoi (P.W.No.7) who was also a part of the said party lent support to the claim of Mr.Shahu Kadam (P.W.No.3). Dr. Santosh Bhoi (P.W.No.7) affirmed that the accused had pointed out the place wherefrom the body of the deceased was exhumed under the Exhumation Report (Exh.31). Hemantkumar Naiknaware (P.W.No.8), the Photographer testified to the fact that, at the instance of the accused, the process of digging out the dead body was carried out and he had photographed and video-graphed the said process.

25. A two-fold challenge was raised by Mr. Prosper D'Souza. One, the accused cannot be fastened with the exclusive knowledge of the dead body having been buried at the said spot which was at some distance from the work site. Two, the material on record indicates that the first informant was already aware of the said place and had, in fact, pointed out the same to the police party.

26. It is undoubtedly true that Mr. Balasaheb Jadhav (P.W.No.2) claimed that the accused had shown him the place where the body of the deceased was buried on the very day the accused made the confession. Before lodging of the First Information report, Mr. Balasaheb Jadhav (P.W.No.2) was aware of the spot. It is also true that the accused had not made any disclosure statement on 17th February 2014, while he was in police custody, to point out the place where the dead body was buried. The prosecution has claimed that the accused led the police party including the Executive Magistrate and the Medical Officer to the said place and pointed out the spot where the dead body was buried. Mr. Shahu Kadam (P.W.No.3), Dr. Santosh Bhoi (P.W.No.7), Mr. Hemantkumar Naiknaware (P.W.No.8), and Mr. Balkrishna Govind Salunkhe (P.W.No.9), the Investigating Officer, were all in unison on the point that the accused

had pointed out the said spot. Nothing material could be elicited in their cross examination to discard their claim.

27. The fact that there was no preceding statement, by itself, does not render the aforesaid evidence of the accused pointing out the place where the dead body of the deceased was buried, unworthy of consideration. Under section 8 of the Indian Evidence Act, 1872 ('Evidence Act'), the conduct of the accused which influences or is influenced by any fact in issue or relevant fact also becomes relevant. For want of preceding disclosure statement, the recovery of the dead body at the instance of the accused may not be admissible under section 27 of the Evidence Act. However, the aforesaid evidence of the accused having led the police party and pointed the place where the dead body was buried would be admissible under section 8 of the Evidence Act as conduct of the accused.

28. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of *A.N. Venkatesh & Anr. Vs. State of Karnataka* ², wherein, the accused therein had abducted a boy for ransom, killed him and buried the dead body, and, on being apprehended by police, had shown the place where the dead body

² (2005) 7 SCC 714

was buried, the Supreme Court held that the said act of the accused of pointing out the place from where the dead body of the deceased was exhumed would be admissible as conduct under section 8 of the Evidence Act irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of section 27.

29. The observations in paragraph 9 are material :

*“9 By virtue of [Section 8](#) of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under [Section 8](#) irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of [Section 27](#) or not as held by this Court in *Prakash Chand Vs. State* (AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants(Ex. P14 and P15) is not admissible under [Section 27](#) of the Evidence Act, still it is relevant under [Section 8](#). The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under [Section 8](#) as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under [Section 8](#) of the Evidence Act.*

(Emphasis supplied)

30. The aforesaid judgment was followed by the Supreme Court in the case of *Harivadan Babubhai Patel Vs. State of Gujarat* ³

31. In the light of the aforesaid exposition of the legal position, as the testimony of Balasaheb Jadhav (P.W.No.2) on the aspect of the accused having led him to the scene of occurrence and pointed out the place where the dead body of the deceased was buried could not be impeached, the said circumstance is independently admissible as conduct. Secondly, the evidence of witnesses namely Mr.Shahu Kadam (P.W.No.3)-Nayab Tahasildar, Dr.Santosh Bhoi (P.W.No.7), and Hemantkumar Jalinder Naiknaware (P.W.No.8) that the accused had pointed out the place does not suffer from any significant infirmity. Moreover, the learned Sessions Judge has specifically recorded that the cassette containing the video recording was played before the Court. It was noticed that the accused had pointed out the place where dead body of the deceased was buried by making a gesture. This act of the accused also becomes admissible as conduct which is influenced by the fact in issue. We are, thus, persuaded to hold that the evidence on the aspect of pointing out the place where the dead body of the deceased was buried by the accused inspires confidence.

3 (2013) 7 SCC 45

32. The failure of the accused to explain the circumstances in which the deceased died, in the peculiar facts of the case, is of critical significance. The accused and the deceased were residing in a make-shift tent (Pali) at a rather secluded place, away from the city. There is evidence to indicate that the deceased sustained fatal injuries at the said make-shift tent. The presence of the accused and the deceased therein has not been challenged. Yet no endeavour was made to explain the circumstances in which the deceased suffered the injuries leading to her death.

33. It is trite law that if it is established that the deceased wife died in an unnatural circumstance in the house which was occupied by the wife and husband, the law expects the husband to offer an explanation. In such situation, the circumstances in which the deceased died fall within the special knowledge of the accused and the onus rests upon the husband to explain the same as envisaged by section 106 of the Evidence Act.

34. The legal position is well neigh settled. A useful reference can be made to the judgment of the Supreme Court in the case of *Trimukh Maroti Kirkan Vs. State of Maharashtra* ⁴, wherein the

4 (2006) 10 SCC 681

Supreme Court, after adverting to the provisions of section 106 of the Evidence Act, expounded the nature of onus, in such a case, in the following words :-

“22 Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

(emphasis supplied)

35. In the case at hand, neither during the course of cross-examination of prosecution witnesses nor in his examination under section 313, the accused offered any explanation. This failure of the accused to offer explanation regarding the circumstances in which the deceased met homicidal death constitutes a strong circumstance against the accused. Nor there is any material to show the conduct of the accused compatible with his innocence like reporting the matter of the deceased having sustained injuries on account a cause, not attributable to the accused, approaching the authorities or Balasaheb Jadhav (P.W.No.2) or soliciting the assistance of co-labourers in arranging for the treatment of the deceased etc. The aforesaid

circumstances cumulatively render the necessary corroboration to the evidence of Mr. Balasaheb Jadhav (P.W.No.2) on the point of extra judicial confession.

36. On an independent analysis of the evidence, in the backdrop of the broad probabilities of the case, we are of the view that the circumstantial evidence does not leave any reasonable ground for the conclusion consistent with the innocence of the accused and, conversely, it shows that, in all probability, the accused had caused the death of the deceased.

37. For the foregoing reasons, we do not find any infirmity in the conclusion arrived at by the learned Sessions Judge that the accused was the author of the homicidal death suffered by the deceased.

38. We have examined the evidence and material to ascertain as to whether the case falls within any of the exceptions enumerated in section 300 of the Penal Code for, in that eventuality, the offence would be ‘culpable homicide not amounting to murder’ punishable under First Part of section 304 of the Penal Code. In the facts of the case, the applicability of Exception 4 to section 300 of the Penal Code may warrant consideration. From the phraseology of Exception 4 to

section 300, it becomes abundantly clear that to bring a case within its ambit, it has to be established that the act causing the death of the deceased was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

39. If we take the extra-judicial confession at par and give maximum latitude to the accused, we may draw an inference of sudden fight in the heat of passion upon a sudden quarrel between the accused and the deceased. The fact that the accused and the deceased were under the influence of alcohol may have added the fuel to the fury on account of the verbal altercation. However, we cannot lose sight of the injuries sustained by the deceased. Dr.Santosh Bhoi (P.W.No.7), the Autopsy Surgeon, found two distinct external injuries, i.e., one above left eyebrow and glabella and another incised wound over right scapula. Dr.Santosh Bhoi (P.W.No.7) further noticed fracture of thyroid cartilage, on internal examination. It was not a case of a single blow. The contemporaneous conduct of the accused of surreptitiously burying the dead body also has a material bearing. It would be unjustifiable to draw an inference that the accused had not

taken undue advantage or acted in cruel or unusual manner. Thus, all the ingredients envisaged by Exception 4 to section 300 of the Penal Code cannot be said to have been made out. Hence, the conviction of the accused for the offence punishable under section 302 of the Penal Code does not warrant any interference. Resultantly, the appeal deserves to be dismissed.

40. Hence, the following order :-

O R D E R

The appeal stands dismissed.

[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]