

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

CRIMINAL APPEAL NO. 80 OF 2016

Ramdas Shrirang Awate
Aged about 28 Years, Occ : Labour
R/at Behind Champing Company, Kanhegaon,
Taluka Maval, Dist. Pune.

...Appellant/
Accused No.1

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO. 1149 OF 2015**

Varsha Ramdas Awate
Aged about 22 Years, Occ : Labour
R/at Behind Champing Company, Kanhegaon,
Taluka Maval, Dist. Pune

...Appellant/
Accused No.2

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO. 279 OF 2019**

Pradip Bhaurao Ovhal
Age – 44 Years, Occ.: Agricultural
R/o – Plot No.50, Ekvira society, behind
Atharv, Telegaon Dabhale, Dist. Pune.

...Appellant
(Org. Complainant)

Versus

1. The State of Maharashtra
Through Sr. Police Officer Vadgaon Maval
Police Station.
2. Ramdas Shrirang Awate
Aged about 28 Years, Occ : Labour
R/at- Behind Champing Company, Kanhegaon,
Taluka Maval, Dist. Pune

3. Varsha Ramdas Awate

Aged about 28 Years, Occ : Labour

R/at Behind Champing Company, Kanhegaon,

Taluka Maval, Dist. Pune.

...Respondents

...

Mr. Satyavrat P. Joshi, a/w Mr. Nitesh Mohite Advocate for the Appellant in Cri. Appeal No. 80 of 2016 & Cri. Appeal No. 1149 of 2015.

Mr. Sachin Chandan, Advocate for the appellant in Cri. Appeal No. 279 of 2019.

Ms. P. P. Shinde, APP for the Respondent - State.

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**CORAM : PRASANNA. B. VARALE AND
PRAKASH D. NAIK, JJ.**

DATE : 26th AUGUST, 2020.

JUDGMENT: (PER PRAKASH D. NAIK, J.): -

1. The appellants in Criminal Appeal No. 1149 of 2015 and 80 of 2016 were prosecuted for the offences punishable under Sections 302, 201 r/w Section 34 of Indian Penal Code vide Sessions Case No. 343 of 2014. The appellant in Criminal Appeal No. 279 of 2019 is the original complainant. The said appeal has been preferred purportedly under Section 372 of Cr.P.C. seeking enhancement of sentence.

2. The prosecution case is as under :-

a) On 9th January, 2014, the accused made phone calls to Pramod Bhaurao Ovhal on his mobile phone between 7.00 p.m. to 8.00 p.m. and called him at their residence on the pretext of mediating the dispute between them.

b) Pramod Bhaurao Ovhal went to the house of the accused. He was assaulted by the accused on account of spreading rumors of his illicit relations with Accused No.2. He was assaulted by sickle and wooden stick. The mobile phone of the deceased was destroyed by the accused.

c) On 10th January, 2014 dead body of Pramod Ovhal was seen by inhabitants of Village Kanhe, near the house of accused.

d) Pradip Bhaurao Ovhal- brother of deceased, lodged First Information Report (for short "FIR") against accused. Accused No.1 & 2 are husband and wife. C.R. No. 10 of 2014 was registered at Vadgaon Maval Police Station, Dist. Pune for offences punishable under Section 302 of Indian Penal Code.

e) On 10th January, 2014, father and brother of accused No.1 Shrirang Awate, Rohidas Awate and Pravin Awate went to Vadgaon Maval Police Station. Rohidas Awate informed the police that accused No.1 had informed them on 9th January, 2014 at about 9.00 p.m. that he had committed murder of Pramod since he was having illicit relations with his wife i.e. accused No.2. On the basis of this information, police effected station diary entry on 10th January, 2014 at 7.00 a.m.

f) Investigation commenced. Statement of witnesses were recorded. Necessary Panchanamas were recorded. Blood stained soil and other articles from the spot were collected. The accused were arrested on 12th January, 2014. Weapons of assault were recovered. Blood stained clothes of the accused were seized. On completing investigation charge sheet was filed against the accused for offences punishable under Sections 302, 201 r/w Section 34 of Indian Penal Code.

3. The case was committed to the Court of Sessions. Charge was framed against the accused for the offences punishable under Sections 302, 201 r/w Section 34 of Indian Penal Code by order dated 3rd February, 2015. The accused pleaded not guilty. The defence of the accused was of total denial and false implication.

4. The prosecution examined 17 witnesses. Statement of accused was recorded under Section 313 of Cr.PC. By Judgment and Order dated 1st December, 2015, the learned Additional Sessions Judge, Pune convicted the accused for offences punishable under Section 302 r/w Section 34 of Indian Penal Code and sentenced them to undergo imprisonment for life and fine of Rs. 5,000/- each and in default to suffer rigorous imprisonment for one year. They were acquitted for offence punishable under Section 201 of Indian Penal Code. The accused by preferring the aforesaid appeals have

challenged the Judgment of conviction by invoking Section 374 of Cr.P.C. whereas the original complainant has also preferred appeal under Section 372 of Cr.P.C. for enhancement of sentence of life imprisonment to death sentence.

5. The appeal preferred by the original complainant is not maintainable in law. The original complainant has invoked Section 372 of Cr.P.C. seeking enhancement of life imprisonment to death penalty. The Respondent-state has not preferred appeal for enhancement of sentence. On perusal of the Section 372 of Cr.P.C. it is apparent that the victim cannot prefer appeal for enhancement of sentence. The provision does not include right of appeal to the victim for enhancement of sentence. The said provision reads as under

" Section 372 of Cr.P.C.:- No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

6. The question whether the appeal under Section 372 be preferred for enhancement of sentence is dealt with by the Hon'ble Supreme Court, in the case of ***National Commission for Women V/s***

State (NCT of Delhi) – (2010) 12 SCC 599. It was held that Section 372 of Cr.P.C. does not confer right to appeal against inadequate Sentence. It would be maintainable under Section 377 of Cr.P.C. to High Court. Paragraph 8 of the said decision reads as under :

"8. Chapter XXIX of the Code of Criminal Procedure deals with "Appeal(s)". Section 372 specifically provides that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorises an appeal. The proviso inserted by Section 372 (Act 5 of 2009) with effect from 31-12-2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence."

In a recent decision in the case of ***Parvinder Kansal Vs. NCT of Delhi*** (Criminal Appeal No. 555 of 2020), the apex Court reiterated the law laid down in the case of ***National Commission for Woman V/s. State of Delhi***. The accused in that case was convicted for the offences punishable under Sections 364A, 302 and 201 of IPC. The father of deceased boy, filed appeal before Delhi High Court,

challenging the order of sentence seeking enhancement of sentence to death penalty. The apex Court held that so far as victims right of appeal is concerned, same is restricted to three eventualities, namely acquittal of accused, conviction of accused for lesser offence or for imposing inadequate compensation. It would be appropriate to reproduce the observation of the Court which reads as under :

“While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 of Cr.P.C. gives the power to State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 of Cr.P.C. but similarly no appeal can be maintained by victim under Section 372 of Cr.P.C. on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of statute unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim is maintainable”.

7. The case of the prosecution rests on circumstantial evidence. The prosecution has examined 17 witnesses to establish the charge against the accused. PW No.1- Pradip Bhaurao Ovhal is the first informant. PW No. 2- Raju Bhagwan Ovhal is the relative of the deceased. PW No.3- Prashant Bhaurao Ovhal is the brother of the deceased. PW No.4- Sarika Pramod Ovhal is the wife of the deceased.

PW No.5-Dipak Baban More is the panch witness for recovery of koyata, wooden stick, shoes of accused No.1 and chappal of accused No.2. PW No.6- Popat Raghunath Agale is the panch witness for seizure of clothes of accused. PW No.7-Ankush Satkar is the friend of the deceased. PW No.8- Raju Maruti Chavan is working for PW No.1 and resides near poly house. PW No.9- Prabhakar Satkar is resident of Village Kanhe. PW No.10- Chandrabai Shinde is the panch for seizure of clothes of accused. PW No.11 – Ravi Khemraj Pardeshi is the Nodal Officer from Vodafone Cellular Company. PW No.12 – Dattataram Angre is the Nodal Officer in Idea Cellular Company. PW No.13 – Rajendra Vishnu Shitole is Police Head Constable attached to Vadgaon Maval Police Station. PW No.14 – Rohidas Shrirang Awate is brother of accused. PW No.15 – Dr. Madhav Waghmare conducted post-mortem. PW No.16 Shahid Sayyad Pathan is the Police Sub Inspector, attached to Vadgaon Maval Police Station. PW No.17 – Sopan More was attached to Vadgaon Maval Police Station as Police Inspector and he is the Investigating Officer.

8. The documentary evidence adduced by the prosecution is First Information Report (Exh.50), Panchanama of Spot (Exh.53), Inquest (Exh.54), clothes of deceased (Exh.55), recovery of weapons (Exh.60 & 61), seizure of clothes of accused (Exh.63), Station diary

entry (Exh.76), Post-mortem report (Exh.79), C.D.R. Report (Exh.72/74), forwarding letter of Muddemal (Exh.94), Chemical Analysis (C.A.) report (Exh.39/40/41).

9. It is settled law that, in case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established and proved circumstances must bring home the offences to the accused beyond reasonable doubt. The circumstances from which the inference of guilt is sought to be drawn must be proved by cogent and reliable evidence. The circumstances taken jointly should form chain so complete that there is no scope from the conclusion that within all human probability, the crime was committed by the accused and none else.

10. Learned counsel for the appellant and learned APP for State took us through the evidence of witnesses and the documents exhibited in evidence. The evidence of the witnesses can be analyzed as follows :

(a) PW No.1 – Pradip Ovhal is the brother of deceased. He is the first informant. According to him, all brothers used to assemble in the evening at their cattle shed situated at Kanhephata. It was adjacent to poly house. They owned four bullocks. The bullocks were meant for cart racing. Accused No.1 used to accompany them for cart

rating. PW No.1 has employed worker in his poly house who resides near the poly house. He knows accused and their family. On 9th January, 2014 at about 6.00 p.m. he went to poly house. Pramod (deceased), Sharad, Prashant and Rajendra also came there. All of them were at poly house till 8.00 p.m. Pramod received 2 to 3 calls. PW No.1 left the poly house by his car. Pramod, Sharad, Rajendra, Prashant and Sonu continued to be at poly house. On the next day, he received a phone call from Baban Dimble. He informed that Pramod is lying dead and there are injuries on his body. He went to the spot. Pramod was lying dead. There were injuries of sharp weapons on his body. Police reached the spot. He sent some boys to look for accused No.1 at his house. He was informed that there was nobody in the house and it was locked. FIR was registered. It is marked as Exh.50. In cross examination he deposed that it did not happen that when he left poly house at about 8.00 p.m. by car, deceased Pramod also left poly house by walking towards house for dinner. The portion marked as "A" in the in the FIR is not correct and he cannot assign any reason why it was recorded. In the FIR it was mentioned that Pramod was walking towards house for dinner. He stated to the police that Pramod has received 2 to 3 phone calls between 6.00 to 8.00 p.m. during his presence. He cannot assign any reason as to why police did not record the same in the FIR. When he

left poly house at 8.00 p.m., all others also left the place. He had stated to the police that he sent boys to the house of Accused No.1, when he reached at the spot of incident and they informed him after returning that the house of accused is locked and there is nobody in the house. He cannot assign any reason as to why police did not record the same in the FIR.

(b) PW No.2 – Raju Ovhal is the relative of the deceased. He is resident of Same village. Accused No.1 was his classmate. On 9th January, 2014 he went to the poly house at about 6.15 p.m. Pramod, Sharad and Pradip were present at poly house. Prashant joined them. All of them were chit-chatting till 8.00 p.m. Pramod received 2 to 3 phone calls. Pramod had replied "Yeto Yeto". Thereafter, they left poly house. Pradip went by his car. PW No.2, Sharad, Pramod and Prashant went towards their houses by walking. While walking, Pramod told him that Accused No.1 and 2 phoned him 3 to 4 times and there is some difficulty between them and he would go to their house. PW No.2 left towards his house and Pramod went towards house of accused. Sharad and Prashant went to their respective house. On the next day, he was informed that Pramod had quarreled with somebody and his body is lying in the barren field. He rushed to the place where the body was lying. On reaching the spot, he noticed, injuries on the body of Pramod. He suspected that

accused killed him as he was having affair with accused No.2. Police reached the spot at about 8.45 a.m. Villagers had assembled at the spot. He was called at the Police Station. His statement was recorded. In the cross examination he deposed that he had stated to police that when he left towards his house, he saw deceased-Pramod going towards the house of accused. He cannot assign any reason as to why Police did not record the same. He had also stated to police that Pramod was having affair with accused No.2. However, it is not recorded in his statement. Pramod had stated about his affair with accused No.2 to him. He had not stated this fact to police while recording his statement.

(c) PW No.3 – Prashant Ovhal is brother of deceased. On 9th January, 2014 he went to poly house along with Pramod. Pradip, Sharad and Raju Ovhal were present at poly house. They were chit-chatting. At about 7.45 p.m. Pramod received 2 to 3 phone calls. He did not respond to two calls. He received third call and said "Yeto Yeto". All of them left poly house. Pradip went by his car. PW No.3, Pramod, Sharad and Raju walked towards their houses. On the way Pramod informed them that he had received a call from Ramdas and his wife and they had some problem and thus they were calling him. He left their company. Wife of Pramod inquired about Pramod. He told her that Pramod had gone to the house of Ramdas (Accused

No.1). On the next day his wife informed him that there was some quarrel between Pramod and others and dead body of Pramod is lying behind Kanishk Hotel. He went to the spot. He noticed that Pramod was lying in pool of blood. There was deep injury on his head. He inquired about Ramdas and his wife but he did not find them in their house. In cross he stated that, 9th January, 2014 was holiday for Pramod. He stated to police that Pramod accompanied him from his house to poly house. It is not reflected in his statement. He stated to police that after chit-chatting at about 8.00 p.m., Pradip left poly house by his car. This fact is not recorded in his statement. PW No.4 Sarika Ovhal is wife of Pramod. She stated that Pramod was at home on 9th January, 2014, since it was holiday for him being Thursday. At 6.30 p.m. he left his house with Prashant. Prashant returned home at 9.00 p.m. Prashant and Pramod had gone to poly house. She inquired with Prashant about Pramod. Prashant told him that Pramod had gone to the house of Ramdas Awate in connection with some work. She made a phone call to Pramod on his mobile but could not connect. On the next day she came to know about death of Pramod and rushed to the spot. She saw dead body of Pramod lying near the well. She knows accused persons. In cross she stated that Pramod took lunch at 1.00 p.m. on 9th January, 2014. It requires 10 minutes to walk towards poly house from her house. She had stated

to police, she tried calling the deceased- Pramod on his mobile but the call did not get connected. She cannot assign any reason as to why police did not record the same.

(d) PW No.8 Raju Chavan was employed with Pradip Ovhal. He was residing near poly house. Pramod was looking after four bullocks. On 9th January, 2014, Pradip came to poly house. Thereafter Pramod, Sharad, Raju and his uncle came to poly house. They were there till 8.00 p.m. Pradip left first and thereafter all others left poly house. On the next morning he saw people running towards Vijay Bungalow. Pramod was lying in pool of blood. He knows accused Ramdas. In cross he deposed that his payment is Rs.10,000/- per month. His wife was also working with him. The salary was collective for both. He did not state to police that he had taken a poly house on lease and the contents of portion marked "A" in his statement were not stated by him to police. He had stated to police that Pradip left first by car and others followed him. However, it is not recorded in the statement.

(e) PW No.5 – Dipak More is the panch witness for recovery of weapons at the instance of accused. On 16th January 2014 he was called by police at Police Station. Accused No. 1 and 2 were present at the Police Station. Accused No.1 stated that he is ready to show the place where he had hidden weapons. The police

recorded his statement. Statement was marked as Exh.60. PW No.5, other Panch witnesses and police along with accused No.1 proceeded by police- jeep to the house of accused at Kanhe. The accused took all of them near berry tree and took out one sickle, one wooden log, one pair of shoes and one pair of chappal hidden underneath the grass. There were blood stains on the articles. Panchanama was prepared. In cross he stated that Pradip Ovhal is his distant relative. He attended funeral of Pramod. There was no occasion for him to act as the Pancha prior to 16th January, 2014. The policeman who called him were not known him. The accused was not handcuffed. The house of accused is situated at the distance of 5 km. from Police Station.

(f) PW No.6 - Popat Agale acted as panch witness for recovery of seizure of clothes of accused. He stated that he was called to Vadgaon Police Station. He was requested to act as panch. He does not know as to where from police brought clothes. There was one pant, one shirt, one blouse, one petticoat and saree. All the clothes were stained with blood. Police wrapped each clothes in a separate paper and sealed them in his presence. Police fixed label of his signature on each packet. Police asked him to sign on some papers. He signed. He can identify the seized clothes if shown to him and he identified them. The police had also seized one underwear,

baniyan and two mobile handsets in his presence. He identified the articles. It did not happen that when he reached the police station, accused were present at the police station. Learned APP was granted permission to ask the question to the witness in the nature of cross examination, on the ground that the witness was suppressing the truth. He deposed that both the accused are residents of Kanhephata. They are residing near his house in the same locality. It is not true to say that police seized clothes and mobile phones from the custody of accused persons. It is true that accused are known him. He is not deposing false to save them. He identified his signature on Panchanama. He admitted that the Panchanama was prepared in his presence. All the seized clothes and mobile handsets are described in detail in the Panchanama. He signed the same as it was prepared in his presence. Contents of Panchanama are true and correct. It was marked as Exh.63. In cross he stated that he had never acted as Panch in the past. His house is situated at the distance of 5-6 km. from the Police Station. On 12th January, 2014, he reached the Police Station at 8.30 a.m. It is not true to say that he is deposing false that police recovered blood stained clothes and two mobile handsets in his presence from the custody of accused. He denied that he was asked to sign on dotted lines as he is habitual panch and accordingly he signed. He denied that he is deposing false.

(g) PW No.7 – Ankush Satkar has stated that deceased-Pramod was his childhood friend. He had purchased Vodafone sim card in 2013 and its number was 8390363646. The said number was liked by Pramod and hence he has allowed him to use the number and sim card. From the date of its delivery till his death Pramod was using same number. In cross he deposed that he met police on 20th January, 2014 for the first time. He learnt that Pramod was murdered. He was called by police on 20th January, 2014. He acted as panch in inquest Panchanama of Pramod on 10th January, 2014. He did not state about user of its sim card by the deceased- Pramod to police on 10th January, 2014. He owns racing bullock cart. He knows accused No.1. Accused never accompanied him for bullock cart racing. PW No.9 Prabhakar Satakar mentions that on 10th January, 2014 Shrirang Awate came to his house at 6.00 a.m. He told him that accused Ramdas and Varsha had committed murder of Pramod near village well. He was frightened. He also told him that after committing murder of Pramod, accused had left the house. He tried his best to convince the accused but they did not listen to him. Shrirang Awate was told to leave the place immediately. PW No.9 left the house to attend funeral of his relative at 'Sate' and returned home at about 7.30 p.m. He was called by the police. He informed the police about visit of Shrirang Awate. In cross

examination he stated that people started assembling near the village well. It is not true to say that after receipt of information about death of his relative he left the house within 5 to 10 minutes.

(h) PW No.10 – Chandrabai Suresh Shinde was called at Police Station to act as panch. She saw one lady and a male. Their clothes were stained with blood. They were asked to change their clothes. They went to inside the room and changed their clothes. They brought their clothes. The same were wrapped by police. The clothes were saree, blouse, petticoat, shirt, pant, baniyan, underwear and mobile phone. Panchanama was prepared. It is marked as Exh.63. In cross examination she deposed that she was at the Police Station for 10-15 minutes, she signed various documents.

(i) PW No.11- Ravi Pardeshi was working as Nodal Officer in Vodafone company. On 20th January, 2014 he received mail from S.P Pune (Rural) seeking call details in respect of mobile phone No. 8390363646 for the period from 1st December 2013 to 12th January, 2014. He furnished call details in respect to that phone number. The mobile number was registered in the name of Ankush Satkar. He brought the call details along with name of customer application form and certificate under Section 65(b) of the Evidence Act and produced it on record. Certificate bears his signature. The call details record, customer application form and certificate were

collectively marked as Exh.72. The CDR reflects that on 9th January, 2014 there were exchange of calls between 9689445492 and 8390363646 between 19.10 hrs. to 20.05 hrs. There were three calls between those numbers. First and third call was received from 9689445492 and second call was outgoing to 9689445492 from 8390363646. The tower location reflects that the calls from 9689445492 were made from Kanhephata and call from 8390363646 was made from Brhamanwadi. Kanhephata tower is situated at the distance of about 2 km. from Brhamanwadi tower. In case a person is calling or receiving the call from the place falling between two towers, either of the tower can capture the call or both the towers can detect the call. There is no possibility of tampering in the call details. He has brought the details of tower location. In cross he deposed that being Nodal Officer he is required to work in computer software. Main server for Maharashtra and Goa is located at Pune. The main server is looked after by technical and non-technical staff. In his office he is Chief Nodal Officer and there are two alternative Nodal Officers. The data is saved in Excel format. Edit facility is available in support of excel document. In the scanned document editing facility is available. The subscriber application and documents filed along with the application are scanned documents. He has filed CDR in excel format. The CDR is provided only on police

request made in writing. The documents which are produced were retrieved by him from his own computer. He operates his computer. He supplied CDR at Exh.72.

(j) PW No.12 was working as Nodal Officer with Idea Cellular Company Ltd. On 10th January, 2014 he received E-mail from SP (Rural), Pune wherein four mobile numbers were mentioned and CDR of those numbers was sought. On the same day CDR was submitted. While sending mail they do not supply certificate under Section 65(b) of the Evidence Act. Amongst the four numbers, one of the number was 9689445492. This number is registered in the name of Rohidas Awate. On 9th January, 2014 two calls were made from this number to 8390363646 and one call was received from 8390363646 to this number. The call timing of outgoing calls are 19.10 hrs. to 20.05 hrs. and the call timing of incoming call is 19.54 hrs. The outgoing calls were detected by the tower situated at Ambewadi near Kanhephata Railway Station. Same is tower location for received calls. He has brought CDR subscriber application along with documents and the certificate under Section 65(b) of Evidence Act. He also brought tower details record and E-mail received from SP (Rural) Pune. The certificate bears his signature. The documents were marked as Exh.74. The tower can be identified from its number in CDR. The tower which detected the calls on mobile number

9689445492 is 10092-30002 and 30003. Said towers are located at Ambewadi near Kanhephata. In the cross he stated that documents Exh.74 are computer generated copies. From CDR name of subscriber cannot be stated. He did not supply details of subscriber to police nor they called for it. In the certificate under Section 65(b) of the Evidence Act there is no mention of subscriber details and tower location address. The documents in Excel form can be edited and the scanned copy can be edited. The documents produced by him are computer generated copies and he himself operate the computer.

(k) PW No.13 – Rajendra Shitole was attached to Vadgaon Maval Police Station. On 9th January, 2014 he was on duty as officer in-charge of the Police Station. At about 7.00 a.m. on 10th January, 2014, three persons came to Police Station. He asked their names and addresses. They gave their names as Shrirang Awate, Rohidas Awate and Pravin Awate. They were residents of Kanhephata. Rohidas Awate informed that his brother Ramdas Awate had informed him that there was quarrel between him and his wife on account of infidelity and deceased-Pramod was with them. Ramdas killed Pramod. Rohidas also informed that Ramdas and his wife left house. He did not believe in the information given by Ramdas and therefore intended to lodge complaint. They searched for Ramdas and his wife but could not find them. Information was

reduced in writing in the station diary and the same was informed to superiors. Thereafter his superiors visited Kanhephata for verifying the information and it was learnt that one person was found murdered in the vicinity of Village Kanhe. The station diary entry was recorded by him in his own handwriting. The extracts were shown to him. It is in handwriting of ASI Deshpande along with seal of Police Station. The document was marked as Exh.76. In cross examination he stated that one more policeman was present with him at 7.00 a.m. From the information, he guessed that it is case of murder. He did not register FIR. He did not obtain signatures of those three persons. He did inquire about the spot of murder but they feigned ignorance about it. There is no mention of name of Rohidas Awate as the person informing him. It is not mentioned that those persons had come to lodge FIR. Those three persons left police station at 7.35 a.m. His statement was not recorded. For the first time he stated that he gave information about station diary to superiors and they went to the spot. There is no mention of his superiors visiting the spot.

(1) PW No.14 Rohidas Awate is the brother of accused No.1. On 9th January, 2014 he did not meet accused. In that night he inquired about them with other inmates of house. He was informed that both accused had gone to Mulshi to see mother of accused No.2.

In the morning he saw crowd near his field. He saw dead body of Pramod. He denied that the accused informed that they killed Pramod since she was having illicit relationship with accused No.2. He was cross examined by learned APP. He denied that police took him to Vadgaon Maval Police Station on 10th January, 2014 between 10.30 to 11.00 a.m. and that his statement was recorded. He had not stated contents of portion marked to the police. He denied that on 10th January, 2014 at about 7.00 a.m. he, his father and brother went to Vadgaon Maval Police Station and informed about killing of Pramod by accused due to illicit relations with Accused No.2. It is not true to say that, he had informed the police that accused left house to avoid trouble to them. He also denied that police recorded the information as per his say. His parents are not in good terms with him. He doesn't know where his parents are living. He cannot state the place where his parents are presently living. He cannot state as to how many days of the incident, his parents left home. He did not lodge missing complaint in the Police Station and did not inquire about place of residence of parents. Accused No.1 is his real brother. Judicial Magistrate had recorded his statement on 30th August, 2014. His parents, brothers Pappu and Sonu are not missing but they are residing separately.

(m) PW No.15 - Dr. Madhav Waghmare has deposed

that dead body of Pramod was brought to P.H.C. Talegaon Dabhade. He conducted post-mortem on 10th January, 2014 and noticed following external & internal injuries :-

“External examination :-

- 1] Contused Lacerated Wound on right side temporo frontoparieto occipital region. Size 8’x3’xdeep bone.
- 2] CLW on right upper lip size 1’x1/2x1/2’
- 3] Contusion on left eyebrow region size 2’x2’
- 4] Fractured skull involving right temporal parietal frontal occipital bone.

All the above injuries were ante-mortem.

Internal examination: –

- 1] CLW on right temporo parieto fronto occipital region,
- 2] Fracture in skull on right temporal frontal parietal occipital bone.
- 3] Meningis congested. Laceration to brain.”

External injuries mentioned in column no. 17 at Sr. No.1 is corresponding to internal injury at Sr. No.1 of column no.19. He prepared postmortem report.

According to him, the cause of death was shock and haemorrhage due to greivous injury to vital organs with fractured skull involving right temporal, parietal frontal occipital bone with laceration to brain. The above injury is sufficient in ordinary course of nature to cause death. The above injury can be caused by means of hard and blunt object. The injury were caused within 18 to 19

hours prior to conducting postmortem. The weapons viz. Sattur and wooden stick were shown to him. According to him, the above injuries can be caused by means of wooden stick and blunt side of the sattur. "

In the cross examination he mentioned that the time of death can be concluded from contents of stomach. He noticed semi-digested food in the stomach. Pramod would have died within 2 to 3 hours of last meal. In case of death due to haemorrhage, there is possibility of instantaneous death. Age of injury was about 18 to 19 hours before post-mortem. Due to assault by wooden stick, wheel marks appear of that size. If assault is by hard and blunt object on the scalp, in that event hair bulbs would be crushed and if sharp edged weapon used, hair bulbs would be cut. Contused lacerated wound may cause due to fall. Post-mortem report was marked as Exh.79

(n) PW No.16 stated that, he was attached to Vadgaon Maval Police Station, as Police Sub Inspector. He received information about murder committed within jurisdiction of Kanhegaon. PW No.1 came to Police Station and lodged FIR. He conducted spot Panchanama. Accused were arrested. Relatives of accused were summoned. Clothes of the accused were seized. Seized clothes and mobile handsets were deposited with Muddemal clerk on

12th January, 2014. Accused No.1 made disclosure statement and articles were recovered. In the cross examination he stated that he did not record the information about the accused were roaming near cremation ground of Village-javan. He sent Head Constable Mr. Kumbhar to house of accused for summoning relatives. He did not make entry in the lockup register about taking the Accused No.1 from lockup at 7.00 a.m. on 16th January, 2014. Omissions were proved through him. PW No.17-Sopan More was Police Inspector, attached to Vadgaon Maval Police Station. He received information from Mr. S.C. Shitole that Shrirang Awate and his sons have come to the Police Station and Rohidas have stated that Ramdas had told him about illicit relations of his wife Varsha with deceased-Pramod and therefore he killed him. Hence, he told Mr. Shitole to effect entry to the same in the station diary and deputed policemen on the spot. He visited place of incident. Dead body was lying near the well and people gathered. Post-mortem was conducted. On completing investigation P.I. Mr. Jadhav filed charge-sheet against accused. In cross he stated that he recorded statement of Prashant Ovhal. Omissions were proved through him. He recorded statements of Prashant Ovhal, Sarika Ovhal and Raju Chavan. Omissions were proved through him.

11. Statements of accused were recorded under Section 313

of Cr.P.C. The accused denied all the circumstances put to them. The defence did not examine any defence witness.

12. Learned counsel for the appellant advanced submissions challenging the Judgment and order of conviction, which can be summarized as follows:

i) The prosecution has not proved the case beyond reasonable doubt. The appellants are falsely impleaded in this case.

ii) The case is based on circumstantial evidence. There is no eye witness to the incident. Circumstances claimed by the prosecution are not established and the appellants cannot be convicted for the alleged offences.

iii) The circumstances should be conclusive in nature. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

iv) The prosecution has not proved the motive for committing crime which is essential in the case based on circumstantial evidence.

v) There are glaring contradictions, omissions, and improvements in the evidence of witnesses. The Judgment of the Trial Court is based on surmises and conjectures. The prosecution is relying upon the evidence of interested witnesses viz. PW No.1, who

is brother of deceased, PW No.2 – relative of the deceased, PW No.3– brother of the deceased and PW No. 4 – wife of the deceased. Their evidence suffer from serious omissions and contradictions and does not inspire confidence.

vi) The evidence of recovery under Section 27 of Evidence Act suffers from discrepancies. The recoveries are from open place. The statement leading to discovery was in respect to the articles kept near the berry tree. He has not stated that the articles were concealed beneath the grass.

vii) PW No.14 has not supported the prosecution case. He was examined to establish the fact that the said witness along with others had visited Police Station and disclosed the information provided by the Accused No.1 to them about murder of Pramod. The station diary is concocted document. The signature of the persons who gave information was not obtained. The name of person who gave information is not mentioned. Although the information disclosed cognizable offence, no FIR was registered. There is no evidence to establish that the information was provided to superiors.

viii) The Chemical Analysis (CA) report do not corroborate the articles seized during the investigation with the accused as author of crime. No blood was detected on Koyata.

ix) The evidence with regards to call details suffers from serious infirmities. It is not proved that the phone number on which the calls were received by the deceased or the call made by him belongs to him. The sim card was in the name of another person. It is not proved that the deceased had used the said phone. The sim card was in the name of PW No.7.

x) The tower locations are different. There is no strong/cogent evidence to show that the phone which was used by the deceased that their call was made from the place where all the witnesses were gathered or the call is received at that said place from the place where the cell phone was allegedly operated by the accused. The sim card in the cell phone allegedly used by the accused does not stand in the name of the accused.

xi) The CDR document cannot be relied upon the prosecution has not complied the provisions of Section 65(b) of the evidence Act. There are serious discrepancies in the evidence of Nodal Officers. Their version is contradictory. The witness have stated that the documents were retrieved from his own computer which runs counter to the record. The required details were not reflected in the certificate. The witnesses have no authority to issue such certificate. It is not stated that the documents were not tampered and there is possibility of editing.

xii) The Trial Court has drawn adverse inference on the basis that the accused were absconding. The accused were arrested on 12th January, 2014. Merely because the accused tried to evade their arrest would not be on circumstance to infer guilt. In the absence of strong evidence, the benefit of doubt to be given to the accused.

xiii) There is no iota of evidence against accused No.2. There is no recovery from her. There is no evidence of calls being made by her or received by her. She is convicted on the basis of inferences which are not supported by evidence.

xiv) The evidence with regards to Muddemal articles suffers from doubt. The articles remained at the Police Station for a period of about 8 days. The prosecution has not established that while they were lying at the Police Station for a long period of time they were not tampered. Learned counsel relied upon the decision of this Court in the case of *Ashraf Hussain Shah V/s. State of Maharashtra, 1996 Cri. L.J. 3147*.

xv) All the circumstances used against the appellant not put him under Section 313 of Cr.P.C. which resulted in prejudice to accused. Reliance is placed on the decision of the Hon. Supreme Court, in the case of *Asraf Ali V/s. State of Assam AIR (SC) (Supp) 654*.

xvi) The offence would not fall under Section 302 of Indian Penal Code. At the most it would be culpable homicide not amounting to murder for which the accused can be convicted under Section 304(ii) of Indian Penal Code. Reliance is placed on the post-mortem notes.

13. Learned APP submitted as follows :-

i) There is strong evidence to convict the accused. There is consistency in the evidence of PW No.1, PW No.2, PW No.3, PW No.4 and PW No.8. Their version has not been demolished in the cross examination.

ii) The witnesses have proved that the calls were received by the deceased on the date of incident and thereafter he proceeded by parting company with others. The dead body was found on the next day.

iii) There are no discrepancies in the recording of statements under Section 313 of Cr.P.C. No prejudice has been caused to the accused.

iv) There is recovery of weapons at the instance of accused No.1. The recovery has been established by panch witnesses. There is no reason to doubt the evidence of the witnesses. Sickle, wooden stick, clothes, pair of shoes and pair of chappal were recovered. The

C.A. report supports the prosecution case.

v) Station diary recorded by PW No.13 has been proved. The information mentions that the persons who had visited Police Station had disclosed that deceased Pramod was killed by the accused.

vi) The CDR record was adduced in evidence. It is proved that the calls were made from the mobile phone which were in possession of the accused and the deceased. The mobile phone used by the accused was recovered at the instance of the accused. The sim card was in the name of the brother of Accused No.1. The sim card of the phone number which was in possession of the deceased stands in the name of PW No.7. He has stated that the phone was being used by the deceased. There is no reason to discard his evidence. Receipt of calls by the deceased and the calls made by the deceased to the accused has been proved in the evidence of witnesses. Thus, there are strong circumstances which are proved by the prosecution.

14. Although the appeal preferred by complainants is not maintainable, we permitted learned counsel appearing for the complainant to assist the Court. He submitted that the prosecution has established its case beyond doubt. He adopted arguments advanced by learned APP. He submitted that all the circumstances are proved against the accused.

15. We find that there are strong circumstances to establish the guilt of accused No.1 - Ramdas Awate. However, the chain of circumstances has not been established qua accused No.2 - Varsha Awate. She is entitled for benefit of doubt.

16. PW No.1 is the first informant. He is the brother of the deceased. From his evidence it is established that on 9th January, 2014 at about 6.00 p.m. he had visited poly house. The family has cattle shed and the poly house in the field. They used to visit the said place and in routine course gathered at that place. He deposed that On 9th January, 2014, Pramod, Sharad, Prashant and Rajendra were at poly house. Their presence cannot be doubted. The omission in his evidence was in respect of the fact that Pramod had left for his residence for dinner by walk. The other omission was in respect to calls received by Pramod between 6.00 p.m. to 8.00 p.m. and that he had sent boys to house of accused but they replied after returning that house is locked and there is nobody in the house. It is relevant to note that the FIR was lodged after learning that his brother Pramod was murdered and his body was thrown in the field. Pramod had sustained injuries. In these circumstances, it is not expected that he would furnish all the details. Even considering the omissions it can be seen that the gathering of persons at poly house is spelt out right from inception. PW No.1 is corroborated by PW No.2, PW No.3

PW No.4 and PW No.8. PW No.1, PW No.2, PW No.3, PW No.8 and deceased Pramod were at poly house. PW No. 2 has referred to phone calls received by Pramod, which was answered by saying “Yeto Yeto”. Immediately thereafter all of them dispersed from the said place. Pramod told him that there is difficulty between him and accused and he would go to their house. On the next day dead body of Pramod was found. Omissions brought through the cross examination is with regards to the fact that when he left towards his house, he saw deceased-Pramod going towards house of accused and that Pramod was having affair with accused No.2. Thus, the evidence with regards to gathering of these witnesses’, calls received by deceased, conversations of deceased on phone and information about the difficulty between the deceased and the accused has been established. There is no reason to discard the evidence of this witnesses. PW No.3 is brother of deceased. The fact that all these witnesses were related to each other inspires confidence that they had reason to gather at poly house. PW No.3 has disclosed the presence of deceased with him and others. He has referred to the calls received by the deceased. His reply to the call as “Yeto Yeto” and the fact that the deceased told him that he had received call from accused that they had some problem and thus they were calling him. He parted their accompany. He told Sarika (PW No.4) wife of

Pramod that, Pramod had gone to house of Ramdas. In the cross examination the omissions which was brought on record is with regards to the fact that Pramod had accompanied him from home to poly house and that after chit-chatting, Pradip left poly house by his car. Thus, the corroborative evidence in the form of their gathering at poly house, receipt of call by deceased, his reply, disclosure, that the calls were made by the accused is established. PW No.4 is wife of the deceased. She stated that Pramod had left along with brother-in-law Prashant (PW No.3) on 9th January, 2014 at about 6.30 p.m. She also corroborates version of PW No.3 that Pramod had gone to house of Ramdas Awate (Accused No.1). The only omission in her evidence is that, she tried calling Pramod on his mobile through mobile of PW No.3. PW No.8 was working with PW No.1. His house was situated near poly house. He was looking after the cattle shed where bullocks owned by PW No.1 were kept. He also stated that Pramod was also looking after the bullocks. He has referred to the presence of the aforesaid witnesses at poly house on 9th January, 2014 along with deceased till 8.00 p.m. There is minor omission about the fact that PW No.1 left first by car and others followed him and contradiction about poly house taken on lease by him.

17. PW No.7 have stated that deceased-Pramod was his childhood friend. He was using his sim card of Vodafone and its

number was 8390363646. His cross examination was futile as his version could not be disturbed in any manner. Thus, it is established that the sim card bearing the aforesaid mobile number was used through mobile phone by deceased-Pramod. The Nodal Officer of Vodafone, Mr. Ravi Khemraj Pardeshi (PW No.11) has mentioned that CDR reflects that on 9th January, 2014 there were exchange of calls between mobile numbers 9689445492 and 8390363646 between 19.10 hrs. to 20.05 hrs. There were three calls between those numbers. The first and third call was received from 9689445492 and second call was outgoing to the said phone number from 8390363646. The mobile number which was in possession of the deceased was registered in the name of Ankush Satkar (PW No.7). There was no doubt to accept the said fact that the said phone number sim card was in the name of Ankush who is childhood friend of deceased-Pramod. PW No.11 has furnished all the details about the calls. He produced the documents relating to the sim card. He also produced certificate under Section 65(b) of the Evidence Act. The submissions advanced by the learned counsel for the appellant with regards to the secondary evidence and violation of Section 65(b) of the Evidence Act are devoid of substance. Some minor irregularities as alleged by the defence cannot discard the evidence of these witnesses. There is no discrepancy in certificate issued under

Section 65(b) of the Evidence Act. Similarly, PW No.12 Dattaram Angre is the Nodal Officer of Idea Cellular Ltd. Co. He has stated that mobile number 9689445492 stands in the name of Rohidas Awate (PW No.14). He is brother of Accused No.1 and residing jointly with Accused No.1 & 2. PW No.12 have stated that on 9th January 2014, two calls were made from 9689445492 to 8390363646 and one call was received from 8390363646. He referred to call timings which corroborates evidence of PW No.11. He also corroborated PW No.11 in respect of tower location. The evidence of both sides evidences is supported by call details record (Exh.72), Customer information form, call detail records (Exh.74), the customer application form, and certificate under Section 65(b) of the Evidence Act. The Customer Application forms were in the name of PW No.7 and PW No.14. Thus, making of calls and receipt of calls, gathering of witnesses on 9th January, 2014 is fully established by PW No.1, 2, 3, 4, 8 and that the calls were exchanged between the two mobile numbers referred to herein above is proved from the evidence of PW No.11 & 12. Learned counsel for the appellant had argued that the certificate under Section 65(b) were not submitted by Nodal Officers at the time of furnishing call and tower details during investigation. This anomaly would not discard their evidence. The requirement of certificate has been established by the prosecution.

18. It is relevant to note that the defence has admitted spot Panchanama Exh.53, Inquest Panchanama – Exh.54, Panchanama relating to clothes of the deceased – Exh.55. The dead body of Pramod was found near the village well. The house of the accused No.1 is near the spot where dead body of Pramod was lying. PW No.14 have stated that he saw crowd near his field where dead body of Pramod was lying. The deceased had sustained serious injuries.

19. On perusal of Inquest Panchanama it can be seen that deceased had sustained injuries on head and face. These injuries were reflected in the post-mortem report. PW No.15 – Dr. Waghmare who conducted post-mortem on the dead body of Pramod on 10th January, 2014 has referred to external injuries and injuries noticed on internal examination. PW No.15 stated that cause of death was shock and heamorrhage due to grievous injury to vital organs with fractured skull involving right temporal, parietal frontal occipital bone that laceration to brain. He opined that the injuries can be caused by hard and blunt object like wooden stick and blunt side of sickle. Learned counsel for the appellant had submitted that the witness has referred to Sattur in his evidence although it is a case of the prosecution that Koyata was used in assaulting the deceased. Description would not discard the evidence of this witness.

20. PW No.13 was performing his duty at Police Station as

Officer in-charge. According to him three persons visited Police Station. They gave their names as Shrirang Awate, Rohidas Awate (PW No.14). PW No.14 stated that his brother Ramdas Awate informed that there was quarrel between him and his wife Varsha on account of infidelity and at that time deceased was with them and Accused No.1 has killed Pramod. He informed that accused No.1 and 2 left the house. The information was recorded in station diary. He informed this fact to superiors. Thereafter, the superiors visited Kanhephata and subsequently dead body of Pramod was found. The Station diary entry at Exh.76 supports this fact. Time and date of entry is reflected. PW No.13 had no reason to create such document. Names of persons who visited Police Station are mentioned. The entry was prior to tracing dead body. The cross examination of PW No.13 is not successful in discarding evidence of PW No.13 and Exh.76. Learned counsel for the appellant submits that all the persons who had visited Police Station were not examined by prosecution. The prosecution had indeed examined Rohidas PW No.14 who is the brother of the accused No.1. He deviated from his statement. He was asked questions by learned APP. From his evidence it is elicited that he did not meet accused in the night of 9th January, 2014 as they had gone to Mulshi. In the prosecution evidence it has appeared that accused were not in the house when

enquiry was made after dead body of Pramod was found. Absence is corroborated by PW No.14. PW No.17 have stated that he had recorded statement of PW No.14 on 10th January, 2014. The contents of his statement were narrated by him.

21. The Trial Court has dealt with the evidence of the station diary entry in Paragraph 31 to 36 of the of the Judgment which are reproduced herein above.

31] The station diary entry (Exh.76), reveals that, it was taken on 10.01.2014 at about 7.00 a.m., wherein minute details were given about the information given by Rohidas (PW14) and therefore, it needs to be treated as First Information Report, which is earlier in point of time and disclosing commission of cognizable crime. The same principle is reiterated by Hon'ble Apex Court in Tapankumar Singh's case (cited supra) and in the case of State of M.P Vs. Ramesh and another (cited supra).

32] At this juncture, it needs to be seen as to what weightage can be given to the station diary entry (Exh.76), which came to be effected pursuant to the information given by Rohidas (PW14), that too when Rohidas (PW14) having had denied about giving of so called information, in his testimony. Secondly, the question crops up in the judicial mind about admissibility of so called version of Rohidas (PW14), which he allegedly stated to Shitole (PW13), as the same would fall in the category of hearsay evidence.

33] The Apex Court in Ramesh and another's case (cited supra) relied upon earlier authority of the Apex Court in Sukhar Vs. State of U.P [(1999) 9 SCC 507], wherein it is held, "This court has explained the provisions of Section 6 of the Evidence Act, 1872 observing that, it is an exception to the general rule whereunder the hearsay evidence becomes admissible.

However, such evidence must be almost contemporaneous with the acts and there should not be an interval, which would allow fabrication. The statements sought to be admitted, therefore, as forming part of resgestae must have been made contemporaneously with the acts or immediately thereafter. The essence of the doctrine is that a fact which though not in issue, is so connected with the fact in issue as to form part of the same transaction, that it becomes relevant by itself". The contents of station diary entry (Exh.76), therefore, need to be scrutinized, with above perspective, to find out, as to whether the same falls within the category of admissible evidence, falling under section 6 of the Evidence Act, which is termed as resgestae.

34] From reading the contents of station diary entry (Exh.76), it reveal that, accused no.1 after commission of the crime, immediately went to his father, brothers Pravin and Ramdas (PW14) and stated that, due to illicit relations of accused no.2 with deceased Pramod, there was quarrel with the latter at 9.00 p.m. and thereafter, he killed Pramod. The contents itself suggest that, accused no.1 immediately after the incident, confided about commission of the crime to his father and brothers. Therefore, said information passes the test of contemporaneousness and thus, the said is admissible in evidence, though Rohidas (PW14) disowned his statement in his testimony. Disowning of his statement is natural with a view to save his brother i.e. accused no.1 from capital punishment. Much capital was made for not taking signature of Rohidas (PW14), his father and/or his brother, at the time of taking such entry. But in my view, non-obtaining signature of those persons do not falsify the station diary entry (Exh.76), as no law contemplates that, before effecting station diary entry, signature of the person making such information is necessary.

35] In addition thereto, presumption contemplated under section 114 of the Evidence Act, 1872 that, official acts are regularly performed, would also come to the rescue of station diary entry (Exh.76). In this respect, testimony of Prabhakar (PW9) is also relevant

as he stated that, father of accused no.1 by name Shrirang Awate had come on 10.01.2014 to his house at 6.00 a.m. and confided that, accused nos.1 and 2 had committed murder of Pramod near the village well.

Abscondance of accused nos. and 2 and their arrest on 12.01.2014 : Seizure of blood stained clothes :

36] The informant categorically stated that, immediately after seeing dead body of Pramod, he sent some boys to the house of accused no.1. Those boys informed him that, house of accused no.1 was locked. This fact stands corroborated from the contents of station diary (Exh.76). In addition thereto, Rohidas (PW14) had stated before Police Inspector More (PW17) that, after informing about commission of offence of murder, accused nos.1 and 2 both left to unknown place and this fact came to be proved by exhibiting the portion mark to the statement of Rohidas (PW14) i.e. Exh.93. The said fact further buttressed from the testimony of Prabhakar (PW9) as stated above. Suffice to state here that, accused nos.1 and 2 both absconded from their house to some unknown place, immediately after commission of the offence, without informing about their whereabouts. This fact, definitely is an another important link to the chain of circumstantial evidence.

22. The evidence of panch witnesses, PW No.5 relating to recovery of articles at the instance of accused No.1 and PW No.6 with regards articles of the accused is corroborative evidence to support the prosecution case. PW No.9 & 10 supported the prosecution to establish the guilt of Accused No.1.

23. The Assistant Police Inspector Pathan (PW No.16) stated that, accused No.1 made disclosure statement (Exh.60) in presence

of panch witnesses. Pursuant to the said statement, he recovered a sickle, wooden stick one pair of shoes and one pair of lady footwear, on the showing of accused no.1, from the backyard of the house of latter, which were hidden underneath the grass. He also stated that, all the articles were stained with blood. He sealed those articles, in presence of panch witnesses and prepared seizure panchanama (Exh.61) therefore. The said fact came to be corroborated from the testimony of panch witness Dipak (PW No.5). In his cross-examination, panch witness Dipak (PW No.5) though, stated incorrectly about the time of making disclosure statement (Exh.60) and recovery of articles vide panchanama (Exh.61), but it need to be kept in mind that, this witness is a rustic villager and by occupation a cultivator. In such circumstances, surgical precision about statement of time is not expected of such witness. Suffice to state here that, on material aspects, API Pathan (PW No.16) and panch witness Dipak (PW No.5) deposed correctly.

24. The Chemical Analysis Reports (Exhs.42 and 43) reflect that, on the clothes of deceased Pramod human blood of Group-B was detected as well as blood group was detected from the soil collected from the spot. In addition thereto, from the scalp hair of deceased Pramod, it is noticed that, his blood group was 'B'. Said blood group was also detected on the wooden stick, which was used

as weapon of assault. The shirt of accused no.1 was also stained with human blood of Group-‘B’. The saree and blouse seized from accused no.2 were also found to be stained with human blood of Group- ‘B’. On shoes and chappals recovered, pursuant to disclosure statement (Exh.60) human blood was noticed and on shoes, human blood of Group- ‘B’ was noticed.

25. Learned Advocate relied upon the decision of Supreme Court in the case of *Asraf Ali V/s State of Assam, AIR 2009 (SC) (Supp) 654* and the decision of this Court in the Case of *Ashraf Hussain Shah V/s. State of Maharashtra*. The decision relied upon by the learned counsel for the appellant would be of no assistance to the appellant/accused No.1. The same were delivered in the fact of that case. We do not find any discrepancies in the statement under Section 313 of Cr.P.C. nor there is any infirmity in the evidence relating to Muddemal articles being lying at the Police Station for some time. The documents on record clearly shows that the articles were found in sealed condition. The submission that the offence would not fall within purview of Section 302 of Indian Penal Code and it would be under Section 304 of Indian Penal Code is devoid of merits in the light of medical evidence and other evidence on record.

26. The analysis of evidence and the observations made herein above would indicate that accused No.1 is guilty of offence of

murder. The circumstance are not strong enough to convict accused No.2. She is wife of accused No.1. The telephone calls were made from mobile phone which was in possession of accused No.1 to deceased. The weapons and other articles were recovered from accused No.1. Station diary entry (Exh.76) implicated accused No.1. Mobile phone was seized from accused No.1. There is no evidence beyond reasonable doubt to convict Accused No.2 – Varsha Awate. Hence, conviction would not sustain against her. However, there are strong circumstances against accused No.1 and his conviction is required to be confirmed.

27. Considering the effect of the evidence on record indicate that, the prosecution has been able to establish that Accused No.1 is the author of crime. Hence, we do not find any reason to deviate from the finding of the Trial Court convicting him for the offence under Section 302 of Indian Penal Code. However, for the reasons stated above, we set aside the Judgment and order of conviction passed against the Accused No.2 and she stands acquitted. Hence, we pass the following order :-

ORDER

- i) Criminal Appeal No. 80 of 2016 preferred by Ramdas Shrirang Awate against the conviction and sentence recorded in Judgment and order dated 1st December, 2015 passed by the

learned Additional Sessions Judge, Pune, in Sessions Case No. 343 of 2014 is dismissed.

ii) Criminal Appeal No. 1149 of 2015 preferred by Appellant Sou. Varsha Ramdas Awate is allowed.

iii) Criminal Appeal No. 279 of 2019 is disposed of.

This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE, J.)