

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CONFIRMATION CASE NO. 01 OF 2019

The State of Maharashtra,
through Police Station Bhokar,
Taluka Bhokar, District Nanded.

... Complainant

Versus

Digambar S/o Baburao Dasre,
Age 27 years, Occupation – Labour,
R/o. Therban, Taluka Bhokar,
District Nanded.

... Accused

.....

APP for the Complainant State : Mr. R. V. Dasalkar
Advocate for the Accused : Mr. Santosh C. Bhosale

.....

**WITH
CRIMINAL APPEAL NO. 810 OF 2019**

Digambar S/o Baburao Dasre,
Age 27 years, Occupation – Labour,
R/o. Therban, Taluka Bhokar,
District Nanded.

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra

... Respondent

.....

Advocate for the Appellant : Mr. Santosh C. Bhosale
APP for the Respondent-State : Mr. R. V. Dasalkar

.....

**WITH
CRIMINAL APPEAL NO. 808 OF 2019**

Mohan S/o Nagorao Dasre
Age : 27 years, Occupation Agriculture,
R/o Therban, Taluka Bhokar,
District Nanded.

... Appellant
(Original Accused no.2)

Versus

The State of Maharashtra

... Respondent

.....

Advocate for the Appellant : Mr. Sudarshan J. Salunke
APP for Respondent-State : Mr. R. V. Dasalkar

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
RESERVED ON : 24.09.2021
PRONOUNCED ON : 13.12.2021**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. This is a case of honour killing by the appellant-accused Digambar of his own real sister. Confirmation Case No. 1 of 2019 [State of Maharashtra through Police Station Bhokar v. Digambar Baburao Dasre], Criminal Appeal No. 810 of 2019 [Digambar Baburao Dasre v. The State of Maharashtra] and Criminal Appeal No. 808 of 2019 [Mohan S/o Nagorao Dasre v. The State of Maharashtra] arise out of the judgment and order of conviction

dated 18.07.2019 passed by the Additional Sessions Judge, Bhokar in Session Case No. 24 of 2017.

2. The prosecution case in brief is as under :

a. The appellant-accused Digambar had two brothers and three sisters. All the sisters were married. Deceased Pooja was the younger sister. Her marriage was performed on 10.06.2017. She was given in marriage to one Jethiba Hashanna Varshewar. Deceased Pooja had a love affair with deceased Govind prior to her marriage.

b. On 22.07.2017, deceased Pooja left her matrimonial home without informing to anybody. Thus, her husband had lodged a missing report at Bhokar Police Station. Appellant-accused Digambar was knowing the love affair of deceased Pooja with deceased Govind. Thus, he had suspicion that deceased Pooja might have gone along with deceased Govind. Thus, appellant-accused Digambar had made a phone call to deceased Govind at about 11.00 a.m. on his mobile. However, deceased Govind had informed to him that his sister i.e. deceased Pooja was not with him and do whatever he want. Appellant-accused Digambar had

thereafter taken search of deceased Pooja at various places. However, during the said search, he had called deceased Govind on his mobile two/three times. Deceased Govind had informed him that deceased Pooja was not with him and as to why he was giving trouble to him. In the night, appellant-accused Digambar had again made a phone call to deceased Govind on his mobile. However, it was found switched off. Appellant-accused Digambar had taken it as an indication and he became sure that deceased Pooja was with deceased Govind.

c. Meanwhile, on 22.07.2017 itself, deceased Pooja had contacted deceased Govind on his mobile phone and informed him that she ran away from her matrimonial home to Nanded. At that time deceased Govind was in the house of his sister. PW-5 Shankar Gade is the husband of the said sister of deceased Govind. Deceased Govind had informed about the said call to his brother-in-law PW-5 Shankar Gade. Thereupon, PW-5 Shankar Gade had abused deceased Govind and told him to switch off the cell phone. PW-5 Shankar Gade thereafter went to his agricultural field and deceased Govind stayed in the house along with his sister at village Kharbala, Taluka Mudhol, District Nirmal (Telangana). At about

3.00 p.m. to 4.00 p.m., PW-5 Shankar returned to his house from the agricultural field. At that time, deceased Govind told him that he has given address of the house to deceased Pooja. At about 6.00 p.m., deceased Pooja had been to the said house. PW-5 Shankar had a talk with deceased Pooja and even he told her that her conduct was not proper and he will call her father on mobile. Deceased Pooja however told him that he should not tell anybody because she is not going to leave deceased Govind as she is in love with deceased Govind since five years. PW-5 Shankar even told deceased Pooja that her parents are not good persons and they may kill Govind and his family members who are very poor persons. However, deceased Pooja had assured him that nobody will do anything to them.

d. On 23.07.2017, at about 8.00 to 9.00 a.m., appellant-accused Digambar and appellant-accused Mohan had been to the house of PW-5 Shankar Gade situated at village Kharbala, Taluka Mudhol and inquired with him the whereabouts of deceased Pooja. After meeting deceased Pooja, appellant-accused Digambar had assured deceased Pooja that he will perform her marriage with deceased Govind since they are in love with each other for last five years.

Deceased Govind was also a childhood friend of appellant-accused Digambar. Thereupon, deceased Pooja got convinced and believed him by saying that appellant-accused Digambar is her brother and she had faith in him. Appellant-accused Digambar assured her that he will perform their marriage at village Basar. PW-5 Shankar has tried to say that now marriage of deceased Pooja with deceased Govind was not possible since deceased Pooja was a married woman. However, deceased Pooja had decided to go with appellant-accused Digambar believing his assurance. PW-5 Shankar even tried to tell them that they may take their sister with them and he will bring deceased Govind with him. However, deceased Pooja told all of them that she will not leave without Govind. Consequently, appellant-accused Digambar, appellant-accused Mohan, deceased Govind and deceased Pooja left that place on the motorcycle of appellant-accused Mohan. Appellant-accused Mohan was driving the motorcycle. After they left the place, PW-5 Shankar had called deceased Govind on his cell phone and asked him as to where he was. Deceased Govind told him that he was ahead of village Beltaroda. At that time, PW-5 Shankar had asked deceased Govind to give the cell phone to appellant-accused Digambar. However, appellant-accused Digambar switched off the said cell

phone without talking to PW-5 Shankar. After some time, the brother-in-law of PW-5 Shankar, namely, Santosh made a phone call from Bhokar on his mobile. Police had informed said Santosh that his brother Govind and Pooja were killed in between village Divshi and village Nigwa.

e. On 23.07.2017 at about 14.15 hours, PW-7 Police Head Constable Sudam Thakre of Police Station Bhokar, deputed at Kini Outpost, had received a phone call from Police Constable Munde (B. No. 2366) informing him that murder of one girl and one boy was committed in between Divshi to Nigwa road. He was told to go to the spot of incident. Thus, PW-7 Police Head Constable Sudam Thakre rushed to the spot. He saw one girl in injured condition and when he inquired her about the boy, she had pointed her fingers towards the river. PW-7 Police Head Constable Sudam Thakre searched towards the river and he found dead body of one boy soaked in blood on the bank of the river. When he has tried to take injured girl to hospital and waiting for a rickshaw, the injured girl has also died. He has also noticed certain articles lying on the spot. After some time. PI Shelke and other staff members also came on the spot of incident.

f. PW-8 PSI Sushilkumar Chavan attached to Bhokar Police Station was assigned with the investigation of crime no. 204/2007 on 23.07.2017 in the evening at about 18.06 hours. On 23.07.2017 at about 14.00 hours, appellant-accused Digambar had been to the Police Station on the motorcycle and informed to PW PSI Chavan and PI Shelke that he has committed murder of his sister and her lover beyond Divshi village. The said information was reduced into writing Exhibit 63.

g. PW-8 PSI Sushilkumar Chavan has drawn various panchanamas, arrested appellant-accused persons by drawing arrest panchanama, sent both the dead bodies for postmortem examination and also recorded the statements of witnesses. He has also caused to record statement of witnesses under Section 164 of the Criminal Procedure Code before the Magistrate at Himayatnagar. He has also forwarded various articles seized from the spot at the instance the appellant-accused to the C.A. for analysis. The weapon sickle was seized from the place of incident under the spot panchanama. He has also collected the call detail record (CDR) of the mobile phone of the accused. Finally, he has

submitted charge sheet against both the appellants-accused persons for the offence punishable under Sections 302, 201, 120-B r/w 34 of IPC.

h. The Additional Sessions Judge, Bhokar has framed charge against both the appellants-accused vide Exhibit 7 under Section 302 r/w 34, Section 201 r/w 34 and Section 120-B of IPC. The contents of the charge were read over to the appellants-accused in vernacular. Both the appellants-accused pleaded not guilty to the charge and claimed to be tried. In order to substantiate the charge levelled against the accused, the prosecution has examined in all eight witnesses. The learned Additional Sessions Judge has recorded the statement of the appellants-accused under Section 313 of Cr.P.C. by confronting them with the incriminating evidence. The defence of the accused is of total denial. In support of their defence, the appellants-accused have examined in all three witnesses.

i. The appellants-accused have raised the issue of jurisdiction and thus submitted an application Exhibit 99 under Section 310 of Cr.P.C. for spot visit. Learned Additional Sessions Judge has visited

the spot, drawn three rough maps as per the say of both the parties and prepared a memorandum inspection of the spot vide Exhibit 102. The appellants-accused have raised the issue about territorial jurisdiction of the court. According to them, the spot of incident comes under the jurisdiction of Telangana State whereas the Bhokar Police Station comes under the jurisdiction of the Maharashtra State. Thus, the Bhokar Police Station has no jurisdiction to investigate into the crime and consequently the trial court has also no territorial jurisdiction to conduct trial.

j. The Additional Sessions Judge, Bhokar, by the impugned judgment and order of conviction dated 18.07.2019, convicted both the appellants-accused for the offence punishable under Section 302 r/w 34 of IPC, Section 201 r/w 34 of IPC and Section 120-B of IPC. Learned Additional Sessions Judge, Bhokar has convicted the appellant-accused Digambar S/o Baburao Dasre for the offence punishable under Section 302 r/w 34 of IPC for committing murder of deceased Pooja and deceased Govind and sentenced him to suffer death penalty. The operative part of the order of sentence passed by the Additional Sessions Judge is reproduced herein-below :

- “01] Accused No. 01] Digambar S/o Baburao Dasre, Age 25 Years, Occu. Labour R/o Therban Tq. Bhokar is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 302 r.w. S.34 of I.P.C. for committing murder of deceased Pooja W/o Jethiba Varshewar, and he is sentenced to suffer death penalty.
- 02] Accused Digambar S/o Baburao Dasre, Age 25 Years, Occu. Labour R/o Therban Tq. Bhokar is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 302 r.w. S.34 of I.P.C. for committing murder of deceased Govind Vithal Karale and he is sentenced to suffer death penalty.
- 03] Accused Digambar S/o Baburao Dasre, Age 25 Years, Occu. Labour R/o Therban Tq. Bhokar Dist. Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 201 r.w. S.34 of I.P.C. and he is sentenced to suffer rigorous imprisonment for 7 [seven years] and to pay fine of Rs. 2,000/- (Rs. Two thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 months.
- 04] Accused Digambar S/o Baburao Dasre, Age 25 Years, Occu. Labour R/o Therban Tq. Bhokar Dist. Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the

offence punishable u/sec. 120-B of I.P.C. and he is sentenced to suffer life imprisonment and to pay fine of Rs. 3,000/- (Rs. Three thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 (six) months.

05] Accused No. 02] Mohan S/o Nagorao Dasre, Age 27 Years, Occu. Agril. R/o Therban Tq. Bhokar District Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 302 r.w. S.34 of I.P.C. for committing murder of deceased Pooja W/o Jethiba Varshewar, and he is sentenced to suffer imprisonment for life and to pay fine of Rs. 3,000/- (Rs. Three thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 (six) months.

06] Accused No. 02] Mohan S/o Nagorao Dasre, Age 27 Years, Occu. Agril. R/o Therban Tq. Bhokar District Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 302 r.w. S.34 of I.P.C. for committing murder of deceased Govind Vithal Karale, and he is sentenced to suffer imprisonment for life and to pay fine of Rs. 3,000/- (Rs. Three thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 (six) months.

- 07] Accused No. 02] Mohan S/o Nagorao Dasre, Age 27 Years, Occu. Agril. R/o Therban Tq. Bhokar District Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 201 r.w. S.34 and he is sentenced to suffer rigorous imprisonment for 7 [seven years] and to pay fine of Rs. 2,000/- (Rs. Two Thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 months.
- 08] Accused No. 02 Mohan S/o Nagorao Dasre, Age 27 Years, Occu. Agril. R/o Therban Tq. Bhokar District Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 120-B of I.P.C. and he is sentenced to suffer life imprisonment and to pay fine of Rs. 3,000/- (Rs. Three thousand only). In default of payment of fine, he shall suffer further rigorous imprisonment for 6 (six) months.
- 09] All the sentences imposed on the accused shall run concurrently.
- 10] Accused no.2 Mohan Nagorao Dasre is entitled to get benefit of section 428 of Cr.P.C.
- 11] Muddemal property i.e. three mobile handsets and one motorcycle bearing registration MH-26-AX-2264 be put to an auction and its sale price be credited to

the government, by giving intimation to Registry of Hon'ble Bombay High Court, Bench at Aurangabad.

- 12] The rest of seized Muddemal being worthless be destroyed as per rules by giving intimation to Registry of Hon'ble Bombay High Court, Bench at Aurangabad.
- 13] The aforesaid seized muddemal be disposed of after appeal period is over and after confirmation of death sentence by the Hon'ble High Court Bench at Aurangabad.
- 14] The record and proceedings of the present case be referred to the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad, for confirmation of sentence of death penalty of accused no.1 Digambar Baburao Dasare as provided under section 366 of Criminal Procedure Code.
- 15] After confirmation of the Hon'ble High Court accused no.1 Digambar Baburao Dasare be hanged by neck till he is dead as envisaged under section 354 (5) of Cr.PC.
- 16] Copy be sent to District Magistrate Nanded for compliance under section 365 of Cr.PC.

17] Copy of judgment be given to both accused free of costs forthwith.

18] Judgment is directly dictated on computer and pronounced in open Court.”

3. In terms of the provisions of Section 366 of Cr.P.C., the learned Sessions Judge has submitted the proceedings to this Court for confirmation of the death sentence vide Confirmation Case No. 1 of 2019. The appellant-accused Digambar S/o Baburao Dasre has preferred Criminal Appeal No. 810 of 2019 and the appellant-accused Mohan S/o Nagorao Dasre has preferred Criminal Appeal No. 808 of 2019 against the above judgment and order of conviction.

4. Heard Mr. Santosh C. Bhosale, learned counsel for the appellant in Criminal Appeal No. 810 of 2019 (original accused no.1), Mr. Sudarshan J. Salunke, learned counsel for the appellant in Criminal Appeal No. 808 of 2019 (original accused no.2) and Mr. R. V. Dasalkar, learned APP for the complainant in Confirmation Case no. 01 of 2019.

5. Learned counsel Mr. Bhosale appearing on behalf of the appellant-original accused no.1 Digambar submits that in the facts and circumstances of the case, the trial court has committed a grave error in holding the appellant guilty of the offence punishable under Section 302 of IPC. Learned counsel submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that in terms of the ratio laid down by the Supreme Court in the case ***Sharad Birdhichand Sarda v. State of Maharashtra***, reported in (1984) 4 SCC 116, certain conditions are necessary to be fulfilled before a case against an accused can be said to be fully established. Learned counsel submits that the circumstances from which the conclusion of guilt is to be drawn are to be fully established and the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that accused is guilty. The circumstances should be of a conclusive nature and tendency. The circumstances should exclude every possible hypothesis except the one to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

6. Learned counsel for the appellant-original accused no.1 Digambar submits that the prosecution mainly relies upon the following circumstances:

i) Jethiba Hashanna Varshewar, husband of deceased Pooja has lodged the missing report about Pooja Exhibit 66 on 22.07.2017.

ii) The appellant-accused Digambar had taken search of deceased Pooja and found that deceased Pooja was with deceased Govind at village Kharbala, taluka Mudhol, District Nirmal, (Telangana State).

iii) On 23.07.2017 at about 8.00 a.m. to 9.00 a.m., the appellant-accused Digambar had been to the house of PW 5 Shankar Gade situated at village Kharbala in search of Pooja. After meeting deceased Pooja, appellant-accused Digambar had assured her that he will perform her marriage with deceased Govind at village Basar. Thereupon deceased Pooja got convinced and

believed appellant-accused Digambar.

iv) The appellant-accused Digambar, on such false assurance, took deceased Pooja with him and at the instance of deceased Pooja, deceased Govind had also accompanied them. Appellant-accused Digambar, appellant-accused Mohan, deceased Govind and deceased Pooja left that place on motorcycle of appellant-accused Mohan.

v) On the way in between village Divshi and village Nigwa, appellant-accused Digambar and appellant-accused Mohan had committed murder of Pooja and Govind.

vi) On the same day at about 14.00 hours, appellant-accused Digambar had been to the police station and informed the police that he had committed murder of his sister and her lover beyond Divshi village. The said information was reduced in writing marked at Exhibit 63.

7(a). Learned counsel for the appellant-accused Digambar submits that as far as the first circumstance relied upon by the prosecution

about the missing report filed by the husband of deceased Pooja on 22.07.2017 Exhibit 66, the Police Officer had taken entry in the station diary at serial no. 15 and registered the same as missing report no. 18 of 2017. It is also brought on record that as per the directions of the Police Inspector Shelke, investigation was handed over to NPC Jadhav (B.No. 2401). Learned counsel submits that thereafter there is no evidence as to the investigation carried out in respect of the said missing report. The prosecution has not examined the said NPC Jadhav. Learned counsel submits that the prosecution at the first place fails to prove this circumstance.

7(b). Learned counsel submits that so far as the second circumstance, i.e. the appellant-accused Digambar had taken search of deceased Pooja, is concerned, the prosecution mainly relied upon the phone calls of appellant-accused Digambar to deceased Govind. Learned counsel submits that the prosecution has not led any evidence on phone calls nor examined the Nodal Officer of Idea Cellular Company to substantiate the same. The prosecution has thus failed to prove that the appellant-accused had made phone calls to deceased Govind and on the basis of the said phone calls, succeeded in finding out the whereabouts of deceased Pooja.

7(c). Learned counsel submits that so far as the third circumstance is concerned, PW 5 Shankar Gade and PW 6 Santosh Karale have deposed that on 23.07.2017 at about 8.00 a.m. to 9.00 a.m. the appellants-accused had arrived at Village Kharbala. Though these witnesses have deposed about arrival of accused persons, however, they had not said about their departure from village Kharbala. They have also not given call details except bare statement.

7(d). As regards the fourth and fifth circumstances are concerned, learned counsel submits that except the evidence of PW 5 Shankar Gade and PW 6 Santosh Karale, there is no evidence against the appellants-accused. There is no direct evidence as to who has committed murder of deceased Pooja and deceased Govind. There is no evidence about the specific role played by each of the accused in commission of the crime. Learned counsel submits that the approach of the trial court in picking up one person and observing that he had committed murder is erroneous. Learned counsel submits that on this count alone the appellants-accused are entitled for the benefit of doubt.

7(e). So far as the last circumstance is concerned, learned counsel submits that in terms of the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872 and the law laid down by the Supreme Court, the confession of the accused is inadmissible.

8. Learned counsel for the appellant-accused Digambar submits that it is well settled principle that the circumstance of last seen together cannot by itself be the basis of holding the accused guilty of the offence. Learned counsel submits that there must be something more establishing connectivity between the accused and the crime. Learned counsel submits that the evidence of PW 5 Shankar Gade and PW 6 Santosh Karale is silent about the time, place and occurrence of the incident. There is a gap of 4 to 5 hours after the accused persons allegedly left village Kharbala along with deceased Pooja and deceased Govind.

9. Learned counsel for appellant-accused Digambar submits that in a case based upon circumstantial evidence, motive plays great role. There is no positive, clear, cogent and reliable evidence about motive in this case. The prosecution has mainly relied upon the evidence of PW 5 Shankar and PW 6 Santosh to establish the

motive. However, both the witnesses are close relatives and highly interested. Learned Additional Sessions Judge, without there being any evidence, observed that deceased Pooja after her marriage fled away with deceased Govind and therefore the prestige of the accused persons lowered in the society. The said observations are based upon assumptions and presumptions of the learned Judge of the trial court.

10. Learned counsel for appellant-accused Digambar submits that the trial court has not considered the mitigating and aggravated factors while awarding the death sentence. Learned counsel submits that in terms of the provisions of Section 354 of the Criminal Procedure Code, the provisions of sub-section (3) of Section 354 are mandatory. As per Section 354 (3), when the conviction is for an offence punishable with death or, in the alternate, with imprisonment for life or imprisonment for a term of years, the judgment shall state reasons for the sentence awarded, and, in case of death, special reasons for such a sentence. Learned counsel submits that in the instant case, learned Additional Sessions Judge has not taken into consideration the mandatory provisions of Section 354 (3) of the Code of Criminal Procedure.

Learned Additional Sessions Judge has not assigned any special reasons for awarding the death sentence. Learned counsel submits that on this sole ground the impugned judgment and order is liable to be quashed and set aside.

11. Learned counsel for appellant-accused Digambar submits that the trial court has not considered the following mitigating factors which are in favour of the accused:

- i. The offence allegedly committed by the appellant-accused Digambar was not preplanned.
- ii. There is no previous enmity between the accused and deceased Govind.
- iii. Learned Judge of the trial court has solely looked into the factum of death of two persons for imposing the death penalty.
- iv. There is no positive evidence indicating the honour killing.
- v. The appellant-accused Digambar is a young person and at present 25 years of age.

vi. The alleged offence appears to have been committed under the influence of extreme mental and emotional disturbance.

vii. There is every chance of reformation and rehabilitation of the appellant-accused Digambar if the death sentence is converted into life imprisonment.

viii. There are no criminal antecedents and therefore the appellant-accused has good prospect of rehabilitation.

ix. The appellant-accused Digambar is a person of good character and he has responsibilities of his old aged parents.

12. Learned counsel for appellant-accused Digambar submits that comparatively, there are less aggravating factors. Learned counsel submits that this is not a rarest of rare case to award death punishment. Learned counsel submits that appellant-accused Digambar is entitled for acquittal for the offence punishable under Sections 302, 201 and 120-B of IPC. Learned counsel submits that the death confirmation case is thus liable to be dismissed. Learned

counsel, in the alternate, submits that considering the mitigating circumstances, the death sentence awarded to the appellant-accused Digambar may be converted into imprisonment for life.

13. Learned counsel for the appellant-accused Digambar, in order to substantiate his submissions, placed his reliance on the following cases on the point of circumstantial evidence/last seen theory.

1. *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in (1984) 4 SCC 116.
2. *Ramreddy Rajesh Khanna Reddy and another v. State of A.P.*, reported in (2006) 10 SCC 172.
3. *Mustkeem alias Sirajudeen v. State of Rajasthan*, reported in (2011) 11 SCC 724.
4. *Sangili alias Sanganathan v. State of Tamil Nadu represented by Inspector of Police*, reported in (2014) 10 SCC 264.
5. *State of Himachal Pradesh v. Raj Kumar*, reported in (2014) 14 SCC 22.
6. *Vijay Shankar v. State of Haryana*, reported in (2015) 12 SCC 644.

7. *Anjan Kumar Sarma and others v. State of Assam*, reported in (2017) 14 SCC 359.
 8. *Ganpat Singh v. State of Madhya Pradesh*, reported in (2017) 16 SCC 353.
 9. *Digamber Vaishnav and another v. State of Chhattisgarh*, reported in (2019) 4 SCC 522.
 10. *State of Rajasthan v. Mahesh Kumar alias Mahesh Dhaulpuria and another*, reported in (2019) 7 SCC 678.
 11. *Devilal v. State of Rajasthan*, reported in (2019) 19 SCC 447.
 12. *Shailendra Rajdev Pasvan and others v. State of Gujarat and others*, reported in (2020) 14 SCC 750.
14. Learned counsel for appellant-accused Digambar placed his reliance on the following cases on the point of confessional information by accused and the bar of Sections 25 and 26 of the Indian Evidence Act.
13. *Aghnoo Nagesia v. State of Bihar*, reported in AIR 1966 SC 119.

14. *Bheru Singh s/o Kalyan Singh v. State of Rajasthan*, reported in (1994) 2 SCC 467.

15. *Vistari Narayan Shebe v. The State of Maharashtra*, reported in 1978 Cri.L.J. 891.

16. *Mandesan v. State of Kerala*, reported in 1995 Cri.L.J. 61.

15. Learned counsel for appellant-accused Digambar placed his reliance on the following cases on the point of death sentence, procedure for awarding death sentence etc.

17. *Bachan Singh v. State of Punjab*, reported in (1980) 2 SCC 684.

18. *Machhi Singh and Others v. State of Punjab*, reported in (1983) 3 SCC 470 / AIR 1983 SC 957.

19. *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, reported in (2009) 6 SCC 498.

20. *Ramesh and others v. State of Rajasthan*, reported in (2011) 3 SCC 685.

21. *Absar Alam alias Afsar Alam v. State of Bihar*, reported in (2012) 2 SCC 728.

22. ***Manoj Suryavanshi v. State of Chhattisgarh***, reported in (2020) 4 SCC 451.

16. Learned counsel for appellant-accused Digambar placed his reliance on the following cases on the point that PW 5 Shankar and PW 6 Santosh are not reliable witnesses as they have refreshed their memory outside of the court;

23. ***Sharad s/o Namdeorao Shirbhate v. State of Maharashtra***, reported in 2006 (2) Mh.L.J. (Cri.) 1210.

24. ***Suresh s/o Purushottam Astankar v. State of Maharashtra and another***, reported in 2015 (3) Mh.L.J. (Cri.) 424.

17. Learned counsel Mr. Sudarshan J. Salunke, appearing for the appellant in Criminal Appeal No. 808 of 2019, namely, Mohan S/o Nagorao Dasre (original accused no.2), submits that the appellant-accused Mohan is convicted for the offence punishable under Section 302 r/w Section 34 of I.P.C. for committing murder of deceased Pooja W/o Jethiba Varshewar and sentenced to suffer imprisonment for life and to pay fine of Rs. 3,000/- i/d to suffer

further rigorous imprisonment for 6 (six) months. The appellant-accused no.2 Mohan is convicted for the offence punishable u/sec. 302 r/w Section 34 of I.P.C. for committing murder of deceased Govind Vithal Karale and sentenced to suffer imprisonment for life and to pay fine of Rs. 3,000/- i/d to suffer further rigorous imprisonment for 6 (six) months. Appellant-accused no.2 Mohan is further convicted for the offence punishable u/sec. 201 r/w Section 34 and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2,000/- i/d to suffer further rigorous imprisonment for 6 months and also convicted for the offence punishable u/sec. 120-B of I.P.C. and sentenced to suffer life imprisonment and to pay fine of Rs. 3,000/- i/d to suffer further rigorous imprisonment for 6 (six) months. All the sentences are directed to run concurrently.

18. Learned counsel submits that the prosecution case as against the appellant-accused Mohan rests upon circumstantial evidence and there is no direct evidence against him. The prosecution has failed to establish the chain of circumstantial evidence. Learned counsel submits that the circumstances on record are not conclusive in nature and tendency. The appellant-accused Mohan is

convicted only on the basis of suspicion. Learned counsel submits that there is no evidence about conspiracy hatched by appellant-accused no.2 Mohan along with accused no.1 Digambar. Learned counsel submits that even though the prosecution story is accepted as it is, appellant-accused no.2 Mohan has not played any active/aggressive role. Learned counsel submits that even in the confessional FIR Exhibit 63 allegedly lodged by co-accused Digambar, name of appellant-accused Mohan is not mentioned. Learned counsel submits that the contents of the confessional FIR can be used in favour of the accused though not against him. Learned counsel submits that there are no circumstances to connect appellant-accused Mohan with the alleged offence. There is no recovery at his instance. There is no seizure of any incriminating material at his instance. Appellant-accused Mohan has no motive to commit murder of deceased Pooja and deceased Govind. Learned counsel submits that though the Investigating Officer has seized the motorcycle belonging to the appellant-accused Mohan by drawing panchanama Exhibit 38, however, the same was taken to the police station by co-accused Digambar. There is no evidence on record to show that the said vehicle belongs to the appellant-accused Mohan and it has been used in commission of the crime. PW 5 Shankar

and PW 6 Santosh have not deposed about registration number of the vehicle and even the Investigating Officer has not conducted any investigation about identification of the vehicle.

19. Learned counsel for appellant-accused no.2 Mohan submits that on perusal of the evidence of PW 5 Shankar and PW 6 Santosh, it appears that none of the accused had insisted deceased Govind to accompany them or forced him to travel with them. Deceased Govind had allegedly accompanied them at the instance of deceased Pooja. Learned counsel submits that this fact itself disproves the charge of common intention or conspiracy before the alleged offence. Learned counsel submits that the evidence on record indicates that four persons have travelled on motorcycle including the deceased persons. It is impossible to hatch conspiracy or to form a common intention while travelling on motorcycle. Learned counsel submits that neither the words nor the gestures of the accused persons indicate conspiracy or the common intention. Learned counsel submits that the charge of conspiracy must be proved like any other circumstance. A clear link has to be established and a chain has to be completed, otherwise it would be hazardous to support the charge of conspiracy. Learned counsel

submits that in order to make out the offence under Section 120-B of IPC, the prosecution must lead evidence to prove the existence of some agreement between the accused persons.

20. Learned counsel for the appellant-accused no.2 Mohan submits that PW 5 Shankar and PW 6 Santosh have admitted that their statements were read over to them before recording of evidence. Learned counsel submits that this admission itself indicates that the prosecution has adopted the method not permissible under law.

21. Learned counsel for appellant-accused Mohan submits that the prosecution case rests upon the sole circumstance of last seen theory. However, the same is not sufficient to convict the appellant-accused. Failure to explain the circumstances cannot be used to convict the accused. Section 106 of the Indian Evidence Act does not absolve the prosecution from proving the prosecution case beyond reasonable doubt.

22. Learned counsel for appellant-accused Mohan submits that PW 5 Shankar and PW 6 Santosh have deposed that appellant-

accused no.2 Mohan uttered the following words; “वाट लावून देत असाल तर द्या, नाही तर आम्ही भोकर येथील जातीचे वडार आहोत, भोकर येथील लोक खराब आहेत, ते जर आले तर तुमच्या बायकोचे कुंकु पुसून जातील, आम्ही आमच्या बायकांचे कुंकु पुसून आलो आहोत.” [*If you want to send, you may, otherwise we belong to Wadar Caste of Bhokar, people of Bhokar are worst, if they come to know, they will turn your wives into widows. We have prepared to turn our wives into widows.*]¹ Learned counsel submits that a careful reading of these sentences indicate that the same was not in the manner of threat but a sort of intimation and fear expressed by the appellant-accused Mohan that if members of Wadar community knew about Govind and Pooja, they would come and there would be an untoward incident. PW 6 Santosh has also admitted that appellant-accused Mohan had expressed his fear that the persons of Bhokar are of bad character and if they come, they will wipe out the *kumkum* of their wives. Thus, the alleged statement of appellant-accused Mohan cannot be used as a link to rope him in the alleged commission of crime. Learned counsel submits that the prosecution has failed to prove the case against the appellant-accused no. 2 Mohan beyond reasonable doubt. His conviction

¹ English translation by the Dy. Chief Translator of this Court.

is based upon suspicion and conjectures. Further, the evidence on record shows that the assault against the deceased was random, quick and sudden. PW 1 Dr. Ashok Mundhe, who has conducted postmortem examination, has admitted that injuries over the neck of both the dead bodies were not multiple. The appellant-accused Mohan is thus entitled for acquittal by giving him benefit of doubt.

23. Learned counsel for appellant-accused no.2 Mohan, in order to substantiate his contention, placed reliance on the following cases :

1. ***Hanumant son of Govind Nargundkar v. State of Madhya Pradesh***, reported in AIR 1952 SC 343.
2. ***Param Hans Yadav and Sadanand Tripathi v. State of Bihar and Others***, reported in (1987) 2 SCC 197.
3. ***Subhash alias Dhillu v. State of Haryana***, reported in (2015) 12 SCC 444.
4. ***Balu @ Bala Subramaniam & another v. State (U.T. of Pondicherry)***, reported in 2015 All MR (Cri) 4537 (S.C.).

5. *Kanhaiya Lal v. State of Rajasthan*, reported in 2014 AIR SCW 1828.
6. *Shivaji Chintappa Patil v. State of Maharashtra*, reported in AIR 2021 SC 1249.
7. *Saurabh @ Dabba s/o. Vilas Adlag & another v. State of Maharashtra*, reported in 2019 All MR (Cri) 4740.
8. *Madhavgir s/o Gururatangir v. State of Maharashtra*, reported in 2003 All MR (Cri) 2219.

24. Learned APP Mr. R. V. Dasalkar submits that in the facts and circumstances of the case, the trial court has rightly convicted both the appellants-accused for the offence punishable under Section 302, 201 r/w 34 of IPC and Section 120-B of IPC for having killed Pooja and Govind. The trial court has rightly awarded the death sentence to appellant-accused no.1 Digambar. Learned APP submits that the impugned judgment and order passed by the trial court is well reasoned. Learned APP submits that though the present case is based on circumstantial evidence, however, the prosecution has established the chain of events which leads to the only conclusion that it is the accused alone who have killed two persons. Learned

APP submits that the prosecution has been successful in proving the motive. The appellants-accused have committed murder of deceased Pooja and deceased Govind which is commonly known as 'honour killing'. Learned APP submits that the prosecution has been successful in establishing that deceased Pooja and deceased Govind were lastly seen alive in the company of appellants-accused persons. Learned APP submits that there are following material circumstances against the appellants-accused:

- i. The missing report filed by deceased Pooja's husband Jethiba Varshewar on 22.07.2017 Exhibit 66.
- ii. Appellant-accused No.1 Digambar took search of Pooja by making phone calls to deceased Govind and he was sure that deceased Pooja was at village Kharbala, Taluka Mudhol with deceased Govind.
- iii. Both the appellants-accused visited the house of PW 5 Shankar at village Kharbala on 23.07.2017.

- iv. Appellant-accused no.1 Digambar gave assurance to deceased Pooja that he would perform her marriage with deceased Govind.
- v. Both accused took deceased Pooja and deceased Govind along with them on a motorcycle on 23.07.2017 at about 10.00 a.m. and deceased Pooja and deceased Govind were lastly seen alive in the company of the accused persons by PW 5 Shankar and PW 6 Santosh.
- vi. PW 5 Shankar contacted on mobile phone and asked deceased Govind about his location. Deceased Govind told that they were at Beltaroda. PW 5 Shankar had asked deceased Govind to give mobile to accused Digambar to ask him as to why he deceived them, however the mobile phone was switched off.
- vii. PW 5 Shankar and PW 6 Santosh have followed them in the auto rickshaw. PW 6 Santosh had received a call from Bhokar Police Station informing him about murder of Govind and Pooja.

- viii. Appellant-accused no.1 Digambar surrendered at Bhokar Police Station on 23.07.2017 at about 14.00 hours and gave information about deceased Pooja and deceased Govind.
- ix. PW 7 PHC Thakre has received phone call from LPC Mundhe B. No. 2366 at about 14.15 hours about murder of a girl and a boy.
- x. PW 7 PHC Thakre has visited the spot of incident and found Pooja in injured condition. Deceased Pooja pointed out to PW 7 PHC Thakre to look at the river side and after seeing there, PW 7 PHC Thakre found the dead body of Govind whose throat was slit.
- xi. Police Inspector Shelke visited the spot of incident to verify and to draw spot panchanama. He has seized 13 articles including a sickle and a wooden handle of the sickle on 23.07.2017 itself.

- xii. The blood stained clothes of appellant-accused Digambar came to be seized and also the motorcycle used in commission of the crime.
- xiii. The blood group "A" belonging to both the deceased was found on the sickle, wooden handle of the sickle, jeans pant of the appellant-accused Digambar, his rumal and his shoes.
- xiv. The blood group "A" belonging to deceased Govind and Pooja was also found on Pooja's top and pant and also on the T-shirt, baniyan and handkerchief of deceased Govind.
- xv. The motive for committing honour killing of Pooja and Govind by real brother of deceased Pooja because even after being married, deceased Pooja had eloped with deceased Govind who was her former lover.
- xvi. PW 1 Dr. Ashok Mundhe has given clear opinion regarding homicidal death of both the deceased due to haemorrhagic shock due to cut throat injuries.

25(a). Learned APP submits that to find out the proximity between the last seen and the death, it is necessary to understand location of the villages. Therban is the village of both the accused as well as both the deceased. PW 5 Shankar, who is the brother-in-law of deceased Govind, hails from village Kharbala. The spot of incident is on Divshi-Nigwa road. Village Beltaroda lies between Kharbala and the spot of incident. The police station is at village Tanur which lies between Kharbala and the spot of incident. Taluka Mudhol lies between Kharbala and the spot of incident and is a taluka place in Telangana State having police station. Taluka Bhokar is in Maharashtra State having police station and rural hospital.

25(b). Learned APP submits that it has come in the evidence of PW 5 Shankar that both the accused had been to village Kharbala between 8.00 a.m. to 9 a.m. on 23.07.2017. PW 5 Shankar had offered them tea. After some time, both the accused along with deceased proceeded towards Daulatabad road on motorcycle. PW 5 Shankar when called deceased Govind on his mobile phone, deceased Govind told him that they were ahead of village Beltaroda. PW 5 Shankar deposed that village Tanur is at a

distance of 4 Kms. from village Kharbala. PW 5 Shankar has deposed that the distance between his village Kharbala and the spot of incident is 30 to 35 Kms. and the distance between Therban and Bhokar is less than 7 Kms. PW 6 Santosh has received a phone call from Bhokar poice Station about murders. It has also come in the evidence that Therban is towards the northern side of Bhokar and village Kharbala is towards southern side of Bhoka and the distance between Therban and Bhokar is about 7 Kms. PW 5 Shankar and PW 6 Santosh had gone to the spot of incident via Nigwa.

26. Learned APP submits that the prosecution has been successful in completing the chain of events. Learned APP submits that the trial court has dealt with the jurisdiction issue by visiting the spot of incident and there is no substance in the submissions made on behalf of the appellants-accused that the trial was without jurisdiction. Learned APP submits that the defence witnesses are mainly on the point of territorial jurisdiction. However, the trial court has dealt with the said issue by visiting the spot and as such, no weightage can be given to the defence evidence on the point of jurisdiction.

27. Learned APP Mr. R. V. Dasalkar submits that following are the aggravated circumstances to confirm the death sentence:

- i. The murders of deceased Pooja and deceased Govind were preplanned, calculated and cold blooded.
- ii. Both murders were diabolically conceived and cruelly executed.
- iii. Dangerous weapon like sickle was used for committing both murders.
- iv. The sickle was used to slit the throat of both the victims which is vital part of the body and thus shows the intention of committing murder.
- v. Both the victims were hapless, helpless and unaware that they had been deceived by the accused.
- vi. Both murders were preplanned as accused assured the victims that they would perform victims' marriage.
- vii. Both murders were committed after gaining confidence of the victims who have shown trust in the accused as deceased Pooja was sister of accused Digambar and deceased Govind was his childhood friend.

- viii. Both the murders involve extreme brutality and exceptional depravity.
- ix. The murders were committed in secluded place without any provocation.
- x. Thus, twin murders are 'honour killings' of both the victims as they were trying to perform inter-caste marriage of their own free will. There is nothing honourable in such killings and in fact they were nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment.

28. Learned APP, in order to substantiate his submissions, placed reliance on the following cases:

1. ***Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*** [Review Petition (Crl.) Nos. 446-447 of 2019 in Criminal Appeal Nos. 1174-1175 of 2019 decided by the Supreme Court on 07.11.2019]
2. ***Bachan Singh v. State of Punjab***, reported in AIR 1980 SC 898 / MANU/SC/0055/1982.

3. *Machhi Singh and Others v. State of Punjab*, reported in AIR 1983 SC 957 / MANU/SC/0211/1983.
4. *Dhananjoy Chatterjee v. State of West Bengal*, reported in (1994) 2 SCC 220 / MANU/SC/0626/1994.
5. *Shankar Kisanrao Khade v. State of Maharashtra*, reported in 2013 CriLJ 2595 / MANU/SC/0476/2013.
6. *Birbal Choudhary v. State of Bihar*, reported in (2018) 12 SCC 440 / MANU/SC/1314/2017.
7. *Khushwinder Singh v. State of Punjab*, reported in AIR 2019 SC 2639 / MANU/SC/0318/2019.
8. *Bhagwan Dass v. State (NCT) of Delhi*, reported in 2011 DGLS (SC) 421.
9. *Vetal Bhagwan Mandle v. State of Maharashtra*, reported in 2006 (2) Bom.C.R.(Cri.) 886 / 2006 ALL MR (Cri) 367.

29. We have heard Mr. S. C. Bhosale and Mr. S. J. Salunke, learned counsel for the respective appellants and learned APP for

the State. With their able assistance, we have perused the material exhibits tendered by the prosecution, evidence of the prosecution witnesses, the statements of the appellants-accused recorded under Section 313 of Cr.P.C., evidence of the appellants-accused themselves and the impugned judgment.

30. In order to substantiate the charge levelled against the accused, the prosecution has examined eight witnesses as below:

PW No.	Name of witness	Exhibit No.	Particulars
1	Dr. Ashok Dhondiba Mundhe	20	Medical Officer
2	Sk. Majid Sk. Wajid	26	Panch Witness
3	Sayyed Juned Sayyad Mukaram Ali Patel	30	Panch Witness
4	Abdul Latif Abdul Majid	36	Panch Witness
5.	Shankar Pundlik Gade	46	Witness
6	Santosh Vithalrao Karale	54	Witness
7	Sudam Kishanrao Thakre	56	Witness
8	Sushilkumar Pralhad Chavan	62	I.O.

31. During trial, the prosecution has brought on record the documentary evidence. Some of the relevant documents are as below:

1. Postmortem report of deceased Govind (Exhibit 21)
2. Postmortem report of deceased Pooja (Exhibit 22)
3. Panchanama dated 26.07.2017 showing the weapon sickle to the Medical Officer Mundhe by descaling it and sealing it after showing it to the medical officer. (Exhibit 74)
4. Seizure panchanama of mobile of accused Digambar (Exhibit 68)
5. Spot panchanama (Exhibit 37)
6. Seizure panchanama of the clothes of accused, shoes, Samsung mobile and motorcycle (Exhibit 38)
7. Inquest panchanama of dead body of Pooja (Exhibit 39)
8. Inquest panchanama of dead body of Govind (Exhibit 40)
9. Seizure panchanama of clothes of deceased Govind and deceased Pooja (Exhibit 41)
10. Complaint (confessional FIR) lodged by accused Digambar (Exhibit 63)

11. Arrest panchanama of accused no.1 Digambar
(Exhibit 64)
12. Arrest panchanama of accused no.2 Mohan (Exhibit
65)
13. Missing report of deceased Pooja addressed to the
PI, Police Station Bhokar dated 22.07.2017 (Exhibit
66)
14. C.A. report (Exhibit 75) pertaining to the following
articles:

Exhibit 1 – earth.
Exhibit 2 – earth.
Exhibit 3 – tree leaf.
Exhibit 4 – guaze piece.
Exhibit 5 - guaze piece.
Exhibit 6 – sickle.
Exhibit 7 – wooden stick.
Exhibit 8 – sandle (men).
Exhibit 9 – sandle (women).
Exhibits 10 to 21 - clothes of both deceased persons
and accused Digambar.
15. CA report pertaining to blood group of deceased
Govind (Exhibit 76).
16. CA report pertaining to blood group of deceased
Pooja (Exhibit 77).

17. CA report pertaining to blood group of accused Digambar (Exhibit 78).

18. CA report pertaining to blood group of accused Mohan (Exhibit 79).

The Prosecution has also produced various articles i.e. sickle (article 1), one black coloured H.P make bag of deceased (article 2), ladies purse (article 3), two ladies sandle (article 4), one wooden handle having iron handle (article 5), two male sandles of deceased (article 6), one bag (article 7), green leaf (article 8), guage piece blood sample of male (article 9), sample of blood mixed soil (article 10), Samsung make 4G mobile (article 11), guage piece of blood sample of female (article 12) and twelve photographs (article 13).

Jurisdiction

32. Learned counsel appearing for the appellants in both the appeals have raised the issue of territorial jurisdiction. Learned Judge of the trial court has dealt with the said issue elaborately in para 19 to para 31 of the judgment. According to learned counsel appearing for the appellants, the incident had taken place within the jurisdiction of the State of Telangana. The defence has

examined three defence witnesses before the trial court in order to substantiate the same. Furthermore, the defence has also submitted an application Exhibit 99 for visiting the spot under Section 310 of the Criminal Procedure Code. The learned Judge of the trial court has allowed the said application Exhibit 99 and visited the spot. Learned Judge of the trial court has drawn three rough maps as per the say of both the parties and on the basis of the maps and points, also prepared memorandum of inspection of spot vide Exhibit 102. Learned Judge of the trial court has made it clear that the maps and the memorandum of statement is not an opinion recorded by the Presiding Officer or collection of evidence in any manner, but it is merely prepared on the basis of which spot shown by the prosecution and the defence. It is the defence case that the spot of incident comes under the jurisdiction of the Telangana State and the Bhokar Police Station comes under the jurisdiction of the Maharashtra State. DW 2 Narayan Poshatti Katurwad, who is the Police Patil of Divshi (Bk.), has deposed that two murders have been committed on the boundary of Maharashtra and Telangana State in the jurisdiction of Mahagaon and one dead body was lying on Divshi to Nigwa tar road and the dead body of one male person was lying at the southern side

towards bank of the river. In cross-examination, he has stated that he has been working as Police Patil since last 27 years and he has admitted in his cross-examination that the spot of incident where the murders have been committed comes under the jurisdiction of Bhokar Police Station. Being a Police Patil, he is aware of the area of Mahagaon and Divshi. He was also subjected to cross-examination by the defence counsel, however, he has denied that due to pressure of police officer and the threatening of dismissal from service, he has deposed about jurisdiction in favour of the prosecution.

33. We have carefully gone through the contents of the spot panchanama Exhibit 37 and also the evidence of the defence witnesses. It appears from Exhibit 37 and the memorandum of inspection of spot prepared by the Presiding Officer vide Exhibit 102, that deceased Pooja was lying on Divshi-Nigwa road towards eastern side from Maharashtra and Telangana border and the another spot situated at northern side of the road in the Palaj-Mahagaon river near 4 to 5 feet from bandh and in between shivari tree. The said spot is near the confluence (sangam). We agree with the observations recorded by the trial court that the

inspection notes, the defence evidence and the spot panchanama Exhibit 37, if considered, then the spot where the dead body of deceased Pooja was lying comes under the jurisdiction of Telangana State. However, the spot where the actual incident of murder is committed is situated in the river towards southern side of Mahagaon-Palaj river confluence (sangam) which comes under the jurisdiction of Maharashtra State. It has also come in the prosecution evidence that PW Police Head Constable Thakre when visited the spot, deceased Pooja was lying and she had shown the spot by raising her finger where the dead body of Govind was lying. The said spot where the dead body of Govind was lying was towards the river side. It further appears that the objection about territorial jurisdiction has not been taken by the defence at the initial stage before commencement of the trial. Learned Judge of the trial court has also rightly considered that the appellant-accused no.1 Digambar has surrendered himself before Bhokar Police Station. Learned Judge of the trial court has also considered the issue of conspiracy while dealing with the jurisdiction. Thus, considering the act of conspiracy or the series of the acts before executing the actual plan, the trial court is having territorial jurisdiction to conduct trial. We find no fault in the observation

and the finding recorded by the trial court that the court has territorial jurisdiction to try and entertain the matter.

34. The prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel appearing for the appellant-accused Digambar placed reliance on the case of ***Sharad Birdhichand Sarda*** (supra) as to the appreciation of circumstantial evidence. In para 153 of the judgment, the Supreme Court has observed that the following conditions must be fulfilled before the case against the accused can be said to be fully established:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and

“must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
- (3) the circumstances should be of a conclusive nature and tendency,*
- (4) they should exclude every possible hypothesis except the one to be proved, and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

The Supreme Court has further observed that these are the five golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence.

35. In the matter in hand, the prosecution case mainly rests upon the following circumstances:

- I. Homicidal death.
- II. Motive.
- III. Deceased Pooja and Deceased Govind were in love with each other. Deceased Pooja, even after her marriage with one Jethiba Hashanna Varshewar, R/o Bhokar, Taluka Bhokar, District Nanded, was interested in her love affair with deceased Govind.
- IV. Deceased Govind had gone to village Kharbala, Taluka Mudhol, District Nirmal (Telangana) at the request of PW 5 Shankar. PW 5 Shankar has tried to convince deceased Govind that deceased Pooja is married and it will not be proper to continue the love affair with her. Deceased Govind stayed at the house of PW 5 Shankar, who is his brother-in-law, for one month prior to the incident.

- V. On 22.07.2017, deceased Pooja left her matrimonial home without giving intimation to anyone in the house including her husband Jethiba Varshewar and reached to Nanded to meet deceased Govind and also contacted deceased Govind on his mobile.
- VI. Deceased Govind had given his address to deceased Pooja and accordingly, at about 6.00 p.m. on 22.07.2017, deceased Pooja had reached to the house of PW 5 Shankar situated at village Kharbala, Taluka Mudhol, District Nirmal (Telangana) and met deceased Govind.
- VII. Though PW 5 Shankar and his family members tried to convince both, i.e. deceased Pooja and deceased Govind, however, they did not listen them. Deceased Pooja told him that she had come for deceased Govind and she will not leave deceased Govind.
- VIII. On the next day, i.e. on 23.07.2017, at about 8/9 a.m., appellant-accused Digambar and appellant-accused Mohan both had reached to the house of PW 5 Shankar situated at village Kharbala, Taluka Mudhol.
- IX. Appellant-accused Digambar had given assurance to perform marriage of deceased Pooja with deceased Govind at village Basar.

- X. Appellant-accused Digambar, appellant-accused Mohan, deceased Govind and deceased Pooja left village Kharbala on one motorcycle. Appellant-accused Mohan had driven the said motorcycle at that time.
- XI. Deceased Pooja and deceased Govind when left village Kharbala on motorcycle along with appellant-accused Digambar and appellant-accused Mohan, they were lastly seen alive in the company of both the appellants-accused.
- XII. Recovery of incriminating articles, like blood-stained clothes of appellant-accused Digambar and the weapon sickle used in the assault, from the spot and C.A. reports.
- XIII. Confessional FIR lodged by the appellant-accused Digambar Exhibit 63.

Point-wise discussion about the above circumstances is as under:

I. Homicidal death.

36.(a) So far as homicidal death is concerned, it seems that learned counsel for the appellants-accused in both the appeals have not seriously disputed the homicidal death of Pooja and

Govind. The prosecution has examined PW 1 Dr. Ashok Mundhe. He is a well experienced medical officer having 22 years of service period. He has conducted more than 500 postmortems. On 23.07.2017, he was on duty as medical officer. On that date the police from Bhokar Police Station had brought two dead bodies, namely of Govind Vithal Karale, r/o Therban and Pooja Jethiba Varshewar, r/o Bhokar. PW 1 Dr. Ashok Mundhe has firstly conducted postmortem of Govind Vithal Karale and noted the following external injuries on the dead body:

- “1. Deep incised wound cut throat wound over anterior aspect of neck at level of thyroid cartilage extending laterally on each side measuring about 17 cm x 7 cm x 6 cm deep to bone. Evidence of transection of neurovascular structure - (carotid artery, jugular vein, muscles and nerves).
2. Incised wound on dorsal aspect of left wrist 3x1x1 cm.”

36(b). On internal examination, he has noted the injury “Taracheal ring exposed partial damage.” In the opinion of PW 1 Dr. Ashok Mundhe, the cause of death is due to haemorrhagic shock due to cut throat injury. All the injuries are sufficient to

cause death in ordinary course of nature. The said postmortem report of dead body of Govind Vithal Karale is duly proved by the prosecution and the same is marked at Exhibit 21.

36(c). Thereafter, PW 1 Dr. Ashok Mundhe has performed postmortem on the dead body of Pooja and noted the following external injuries:

“Deep incised wound cut throat wound over anterior aspect of neck at level of thyroid cartilage extending laterally on each side measuring about 14 cm x 6 cm x 5.5 cms deep to bone. Evidence of transection of neurovascular structure (carotid artery, jugular vein, muscles and nerves).”

36(d). PW 1 Dr. Ashok Mundhe has not seen any internal injury. In his opinion, the above external injury is sufficient to cause death in ordinary course of nature. The cause of death is due to haemorrhagic shock due to cut throat injury. The postmortem report of deceased Pooja is marked at Exhibit 22. The prosecution has duly proved the same.

36(e). PW 1 Dr. Ashok Mundhe has further deposed that on 26.07.2017, he has received a letter from PW PSI Chavan calling upon his opinion whether the said injuries on both the dead bodies are possible by the weapon seized in the crime. PW 1 Dr. Ashok Mundhe has asked the police to produce the weapon. Accordingly, the police has produced the sealed weapon along with two pancha witnesses. The said weapon was shown to him after de-sealing and again it was sealed after the purpose was over. On 04.08.2017, PW 1 Dr. Ashok Mundhe has given his opinion that the injuries found on both the dead bodies are possible by the seized weapon i.e. sickle. He has given his opinion in writing which bears his signature. The same is marked at Exhibit 24. He was shown the weapon sickle (article 1) before the court which he has identified. There is nothing in the cross-examination to disbelieve his expert opinion for coming to any other conclusion about the cause of death. However, PW 1 Dr. Ashok Mundhe has admitted in his cross-examination that the injuries over the neck on both the dead bodies were not multiple. Learned counsel for the appellants have insisted to treat this admission as a mitigating circumstance. The same is dealt with in the later part of the judgment.

Circumstances at serial nos. II to XI

37(a). PW 5 Shankar Gade is the husband of sister of deceased Govind. Before one month of the incident, PW 5 Shankar's another brother-in-law Maroti had come to his house situated at village Kharbala, taluka Mudhol and informed him that deceased Govind has love affair with deceased Pooja, r/o of Therban and that marriage of Pooja is performed with a boy resident of Bhokar. Deceased Pooja is interested in Govind. Thus, PW 5 Shankar had asked his brother-in-law Maroti to call Govind on his mobile. PW 5 Shankar had talked with deceased Govind. Deceased Govind had informed him that he is at Nanded railway station. Thereafter, PW 5 Shankar had gone to railway station, Nanded and brought Govind to his village. He had abused deceased Govind. However, deceased Govind told him that he is in love with deceased Pooja since last five years and he will not leave her. PW 5 Shankar had tried to convince deceased Govind that Pooja is married and it would not be proper to continue the affair with Pooja and requested him to stay with him. Accordingly, deceased Govind had stayed in his house at village Kharbala. PW 5 Shankar and PW 6 Santosh have deposed about the love affair of deceased Govind and Pooja.

37(b). Deceased Pooja was given in marriage to one Jethiba Varshewar, R/o Bhokar and their marriage was performed on 10.03.2017. However, one month and twelve days after the marriage, deceased Pooja left her matrimonial home without giving intimation to any one in the house, including her husband Jethiba. On 22.07.2017 itself, her husband Jethiba has lodged the missing report at Bhokar Police Station, Taluka Bhokar, District Nanded. The said missing report is marked at Exhibit 66. It has been stated in the said missing report that on that day at about 5.15 a.m., deceased Pooja left the house without giving intimation to any one. It has been mentioned in the missing report that said Jethiba has searched his wife deceased Pooja even at her parents' house at Therban. On perusal of the said missing report Exhibit 66, it appears that said Jethiba has also submitted the photographs of deceased Pooja in the concerned police station with further information that deceased Pooja used to get frequent calls from one particular phone number. The said phone number is also mentioned below the missing report. On the basis of the said missing report, an entry was taken in the missing register vide entry no. 18/2017 and the inquiry was given to Police Constable

Jadhav (B.No.2401). There is no reason to discard this evidence. The missing entry was taken by Bhokar Police Station on the basis of the missing report submitted by Jethiba Varshewar, husband of deceased Pooja. Learned counsel appearing for the appellants-accused vehemently submitted that the prosecution has not examined the husband of deceased Pooja, nor duly proved the said missing report Exhibit 66. However, we find no substance in it. The entry about missing report was taken as entry no. 18/2017 at Bhokar Police Station on the basis of the missing report filed by Jethiba Varshewar, husband of deceased Pooja. On 22.07.2017, at about 5.15 a.m., deceased Pooja had left her matrimonial home without giving intimation to any one.

37(c). On the same day, i.e. on 22.07.2017, at about 6.00 a.m., deceased Govind informed to PW 5 Shankar that deceased Pooja called him on his mobile phone and informed him that she had come to Nanded from her matrimonial home. Though PW 5 Shankar had directed deceased Govind to switch off his cell phone, it appears from the evidence of PW 5 Shankar that deceased Govind had informed to deceased Pooja about his whereabouts and address of his brother-in-law, i.e. PW 5 Shankar, of village

Kharbala, Taluka Mudhol, District Nirmal (Telangana). On 22.07.2017 itself, at about 6.00 p.m., deceased Pooja had reached to the house of PW 5 Shankar situated at village Kharbala and met deceased Govind there. PW 5 Shankar had tried to convince deceased Pooja that her parents are not well persons and they may kill Govind and his family members who are very poor. However, deceased Pooja had assured him that nobody will do anything and if kill them, she will be ready to die. In the night at about 11.00 p.m., the mother of deceased Govind, his brother Santosh, his brother's wife Shilpa had also come to village Kharbala. They all stayed together and tried to convince Pooja and Govind. However, they were not ready to listen them. The evidence of PW 5 Shankar in this regard is cogent and reliable. deceased Pooja was so desperate that she not only left the matrimonial home without giving intimation to any one, but went to Nanded to find out deceased Govind and after she got the address of deceased Govind, on the same day till 6.00 p.m. she reached village Kharbala at the house of PW 5 Shankar to meet deceased Govind. The prosecution has established this link as to how even after marriage, deceased Pooja could not forget her love with deceased Govind and in consequence thereof, within one month and twelve days of her

marriage with said Jethiba Varshewar, she left her matrimonial home and went to the house of PW 5 Shankar situated at village Kharbala, Taluka Mudhol, District Nirmal (Telangana) to meet deceased Govind. Deceased Pooja left her matrimonial home with a determination to join the company of deceased Govind. Though learned counsel for the appellant-accused Digambar vehemently submitted that the Investigating Officer has not collected the call detail records, however, the evidence of PW 5 Shankar Gade and PW 6 Santosh Karale on this point cannot be disbelieved merely for want of CDR.

37(d). PW 5 Shankar Gade and PW 6 Santosh Karale have deposed, and their evidence is consistent, that on 23.07.2018, in the morning at about 8.00 a.m. to 9.00 a.m., both the appellants-accused had come to the house of PW 5 Shankar situated at village Kharbala. PW 5 Shankar has given the details as to how the conversation between them begun. The appellant-accused Digambar told PW 5 Shankar by referring him as “Daji” (treating him as husband of his sister) that “*दाजी मी कसा आहे हे तुम्हाला माहिती आहे*” [*Daji you know I am a person of what nature*]. It appears from the said statement made by the appellant-accused

Digambar that it was in the form of a threat. Thereupon, PW 5 Shankar Gade disclosed to him that deceased Pooja was present in his house. The appellant-accused Digambar, as it appears from the evidence of PW 5 Shankar Gade and PW 6 Santosh Karale, told PW 5 Shankar Gade that he was aware that Pooja and Govind are in love since last five years and therefore their marriage will be performed. PW 5 Shankar however told the appellant-accused Digambar that such type of marriage is not possible because deceased Pooja is already married. However, appellant-accused Digambar assured PW 5 Shankar that deceased Govind is his friend since childhood. Further, deceased Pooja, impressed by the said assurance from her brother, told that appellant-accused Digambar is her brother and she has faith in him and he will perform her marriage with Govind. Thereupon, appellant-accused Digambar told her that he will perform their marriage at Basar. It is thus clear that appellant-accused Digambar wanted to take Pooja and Govind away. Even PW 5 Shankar told appellant-accused Digambar that he may take his sister with him and he himself will bring deceased Govind. However, at that time, deceased Pooja told that she will not leave Govind.

37(e). Learned counsel for both the appellants-accused vehemently submitted that there was no intention to take deceased Govind with them and to commit his murder. However, we find not substance in it. Appellant-accused Digambar had given promise to perform the marriage of deceased Pooja with deceased Govind and the conspiracy could not have been executed by leaving that place by taking deceased Pooja alone. Deceased Pooja had joined the company of deceased Govind with a determination, even by leaving her matrimonial home, and thus appellant-accused Digambar was expecting the reaction from deceased Pooja and accordingly, to his expectation, deceased Pooja told him that she will not leave without Govind. Further, appellant-accused Mohan had said that “वाट लावून देत असाल तर द्या, नाही तर आम्ही भोकर येथील जातीचे वडार आहोत, भोकर येथील लोक खराब आहेत, ते जर आले तर तुमच्या बायकोचे कुंकु पसुन जातील, आम्ही आमच्या बायकांचे कुंकु पसुन आलो आहोत” [*If you want to send, you may, otherwise we belong to Wadar Caste of Bhokar, people of Bhokar are worst, if they come to know, they will turn your wives into widows. We have prepared to turn our wives into widows.*] The said statement of appellant-accused Mohan was also in the form of threat. PW 5

Shankar Gade was thus left with no other choice but to send both, i.e. deceased Pooja and deceased Govind, along with them.

37(f). The four persons left village Kharbala on one motorcycle. Appellant-accused Mohan was driving the motorcycle and next to him Pooja sat on the motorcycle. Thereafter, deceased Govind and appellant-accused Digambar sat on the motorcycle. It thus appears that both the appellants-accused left village Kharbala on one motorcycle by keeping both the deceased persons in the middle portion of the motorcycle in between them. Said motorcycle proceeded towards Daulatabad road. Deceased Pooja and deceased Govind were lastly seen alive in the company of both the appellants-accused. The evidence of PW 5 Shankar Gade and PW 6 Santosh Karale is consistent, reliable and trustworthy. We find no reason to discard their evidence as being interested witnesses. We have carefully and closely scrutinized their evidence. Their evidence is natural and consistent.

37(g). It is thus clear from the evidence of PW 5 Shankar and PW 6 Santosh that both the appellants-accused had been to village Kharbala in exercise of the conspiracy hatched by them to

eliminate Pooja and Govind. Further, the manner in which the throats of both the deceased persons were slit, also indicates and gives a message that if the honour of family is lowered down, the guilty thereof are liable to be punished in this manner. In our considered opinion, the prosecution has established the motive.

XII. Recovery of incriminating articles, like blood-stained clothes of appellant-accused Digambar and the weapon sickle used in the assault, from the spot.

38(a). The prosecution has examined PW 4 Abdul Latif Abdul Majid to prove the contents of the spot panchanama Exhibit 37. there are near about 13 articles which came to be seized form the spot including the weapon sickle lying on the spot. Article (1) sickle, article (2) a black colour bag, article (3) a red colour ladies purse, article (4) a pair of ladies sandle, article (5) a wooden handle of the sickle, article (6) a pair of gents sandle, article (7) a chocolate colour bag, article (8) green leaf having blood stains, article (9) a guage piece having specimen blood from male dead body, article (10) blood mixed soil from the spot, article (11) a broken mobile of Samsung company, article (12) a guage piece of blood sample of female dead body and article (13) photographs of

the spot and of both the dead bodies are the articles seized from the spot and PW 4 Abdul Latif Abdul Majid has identified the said articles before the court.

38(b). PW 4 Abdul Latif Abdul Majid is also the *pancha* witness of the panchanama Exhibit 38. Appellant-accused Digambar was present in the Police Station. He had gone to the police station for lodging confessional FIR Exhibit 63. The clothes on his person were having blood stains. PW 4 Abdul Latif Abdul Majid (the *pancha* witness) has deposed that the a shirt of white colour and number 77 was written on it having blood stains and a sky blue jeans pant having blood stains, which were on the person of appellant-accused Digambar, came to be seized under panchanama Exhibit 38. In addition to that, one orange colour *rumal* having blood stains and one mobile handset of Samsung company also came to be seized from the appellant-accused Digambar. PW 4 Abdul Latif Abdul Majid has also identified article 14 shirt, article 15 blue colour jeans pant, article 16 *rumal* , article 17 a pair of black colour shoes and article 18 one mobile of Samsung company.

38(c). PW 4 Abdul Latif Abdul Majid is also the *pancha* of the inquest panchanama of the dead body of Pooja Exhibit 39 and the inquest panchanama of the dead body of Govind Exhibit 40.

38(d). PW 4 Abdul Latif Abdul Majid is also the *pancha* of the panchanama Exhibit 41 about seizure of the clothes of deceased persons. He has deposed that the Police Constable Patre had brought the clothes of both the dead bodies from the hospital, i.e. a salwar of pink colour, a red colour top and nicker, all the cloths having full blood, a blue colour jeans pant, a banian, a chocolate colour underwear and *rumal* having full blood. Those are articles 19 to 25. All the clothes were seized and sealed in pockets by drawing panchanama Exhibit 41. PW 4 Abdul Latif Abdul Majid has also identified those articles 19 to 25 when shown to him in the court. There is nothing in the cross-examination to disbelieve this witness. Though this witness is the Government servant and admitted in his cross-examination that if a Government servant fails to depose in terms of the panchanama, he has to face departmental enquiry, however, he has denied that all the panchanamas have been drawn falsely and also denied that

nothing has been seized in his presence. He has also denied that his signatures were obtained by the Police in the police station.

38(e). The C.A. report Exhibit 76 is about the test of the blood sample of deceased Govind. The same is of blood group "A".

38(f). As per C.A. report Exhibit 77, the blood group of deceased Pooja is also "A".

38(g). The C.A. report Exhibit 75 is important, which is regarding articles Exhibits 1 to 21. So far as Exhibits 1 to 9 are concerned, those are the articles found on the spot, including Exhibit 6-sickle. Exhibits 1, 3, 4, 5, 6 and 7 are found stained with blood. Human blood is detected on Exhibit 1 – earth wrapped in cloth, Exhibit 3 – tree leaf wrapped in cloth, Exhibit 4 – guage piece wrapped in cloth, Exhibit 5 – guage piece wrapped in cloth, Exhibit 6 – sickle wrapped in cloth and Exhibit 7 – wooden stick wrapped in cloth. So far as Exhibit 1- sample earth, Exhibit 6 sickle and Exhibit 7 wooden stick are concerned, the human blood detected on it is of group "A".

38(h). The Investigating Officer has sent the letter Exhibit 70 to the C.A., mentioning Exhibits of all the seized articles forwarded for analysis. On perusal of the same, it appears that Exhibit 10- full T shirt, Exhibit 11- blue colour full jeans pant, Exhibit 12- *Gamcha* (a piece of cloth) and Exhibit 13-Men shoe are of appellant-accused Digambar. Human blood is detected on Exhibits 10 to 13. So far as Exhibit 11- full jeans pant, Exhibit 12- *Gamcha* (a piece of cloth) and Exhibit 13-Men shoe are concerned, they are found stained with blood of group “A”.

38(i).The prosecution has thus proved the another link of circumstantial evidence that the blood on the weapon sickle and on the cloths of the appellant-accused Digambar are of blood group “A”. There is no explanation form the appellant-accused Digambar about the same.

39. In the case of *Ramreddy Rajesh Khanna Reddy* (supra), relied upon by learned counsel for the appellant-accused Digambar, in para 27 and 28, the Supreme Court by referring the view expressed by the Supreme Court on the earlier occasion in

State of U.P. v. Satish [(2005) 3 SCC 114], has made the following observations:

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

28. In *State of U.P. v. Satish* [(2005) 3 SCC 114], this Court observed:

"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen

together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

40. In the case of ***Sangili alias Sanganathan*** (supra), relied upon by learned counsel for the appellant-accused Digambar, in the facts of the said case, the Supreme Court has observed that the evidence of last seen is also not established and further observed that suspicion however strong, cannot be a substitute for proof and accordingly held that the accused is entitled to get benefit of doubt.

41. In the case of ***Vijay Shankar v. State of Haryana*** (supra), relied upon by learned counsel for the appellant-accused Digambar, in the facts of the said case, the Supreme Court has disbelieved the last seen theory.

42. In the case of ***Anjan Kumar Sarma*** (supra), relied upon by learned counsel for the appellant-accused Digambar, in para 23, the Supreme Court has made the following observations:

“23. It is clear from the above that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction. The other judgments on this point that are cited by Mr. Venkataramani do not take a different view and, thus, need not be adverted to. He also relied upon the judgment of this Court in State of Goa v. Sanjay Thakran (2007) 3 SCC 755 in support of his submission that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was held in the above judgment as under:-

“34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty

of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the

accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

43. In the case of **Ganpat Singh** (supra), relied upon by learned counsel for appellant-accused Digambar, in para 10, the Supreme Court has made the following observations:

“10. Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The settled formulation of law is as follows:

“The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”

44. In the case of ***Digamber Vaishnav*** (supra), relied upon by learned counsel for the appellant-accused Digambar, in para 40, the Supreme Court has made the following observations:

“40. The prosecution has relied upon the evidence of PW 8 to show that the accused and victims were last seen together. It is settled that the circumstance of last seen together cannot by itself form the basis of holding accused guilty of offence. If there is any credible evidence that just before or immediately prior to the death of the victims, they were last seen along with the accused at or near about the place of occurrence, the needle of suspicion would certainly point to the accused being the culprits and this would be one of the strong factors or circumstances inculcating them with the alleged crime purported on the victims. However, if the last seen evidence does not inspire the confidence or is not trustworthy, there can be no conviction. To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.”

45. From the cases cited above, it is clear that in a case where

the other links have been satisfactorily made out and the circumstances point the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.

46. The circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other person meeting or approaching the deceased at the place of incident or before commission of crime in the intervening period. It cannot be said that evidence of last seen together is to be rejected merely because the time gap between the accused person and the deceased last seen together and the crime coming to light is after a considerably long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period.

47. In the instant case, the last seen theory is acceptable as the time gap between the point of time when the appellants-accused and both the deceased were last seen alive and both the deceased found dead is so small that the possibility of any other person than the accused being the author of the crime becomes impossible. Furthermore, both the appellants-accused took deceased Pooja with them by giving her false assurance of her marriage with deceased Govind and also took deceased Govind with them. Both the appellants-accused along with deceased Pooja and Govind left the house of PW 5 Shankar situated at village Kharbala, taluka Mudhol on one motorcycle being driven by appellant-accused no.2 Mohan leaving no chance for both the deceased persons to find out any other way of escape in case emergency so arises. PW 5 Shankar when made a phone call to find out the location after the appellants-accused left the place along with both the deceased persons on their motorcycle, the appellant-accused Digambar switched off the cell phone of deceased Govind. Furthermore, immediately thereafter, the Police Station, Bhokar had informed PW 6 Santosh, who was with PW 5 Shankar, about murder of Pooja and Govind on the road in between village Divshi and village Nigwa. Though the confessional FIR lodged by the appellant-

accused Digambar may not be admissible in evidence, we have discussed in detail the said circumstance in the later part of the judgment, however, the conduct of the appellant-accused is relevant by lodging the compliant Exhibit 63 in the concerned police station. The CA report Exhibit 75 points out that blood group "A" which is the blood group of both the deceased not only appeared on the weapon sickle but also on the cloths of the appellant-accused Digambar. There is positive evidence about homicidal death, motive, so also the connecting evidence in the form of blood group of deceased appearing on the weapon and also on the cloths of the appellant-accused Digambar and thus, the circumstance of last seen together and the absence of satisfactory explanation on the part of the appellant-accused completes the chain of circumstantial evidence. There was no possibility of any other person meeting or approaching the deceased at the place of incident or before commission of crime in the intervening period.

48. In the instant case, as discussed in detail in the foregoing paragraphs, the prosecution has proved the other links of circumstantial evidence satisfactorily. The circumstance of last seen is thus an additional link.

XIII. Confessional FIR lodged by the appellant-accused Digambar Exhibit 63.

49. PW 8 Sushilkumar Chavan, PSI, Bhokar Police Station, has deposed that on 23.07.2017 at about 14.00 hrs., appellant-accused Digambar had been to the police station on motorcycle. He himself and PI Shelke were present in the police station. Appellant-accused Digambar has lodged the confessional F.I.R. at Bhokar Police Station and it was reduced into writing as per his say. The said confessional FIR is marked at Exhibit 63. On the basis of this confessional FIR, crime no. 204 of 2017 for the offences punishable under Section 302 of IPC came to be registered.

50. learned counsel for appellant-accused Digambar relied upon the case of *Aghnoo Nagesia* (supra) to substantiate his submission that confessional first information report to a police officer cannot be used against the accused in view of section 25 of the Evidence Act. In para 11 to 18 of the judgment, the Supreme Court has made the following observations:

11. The Indian Evidence Act does not define "confession". For a long time, the Courts in India adopted the definition of "confession" given in Art. 22 of Stephen's Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in *Pakala Narayanaswami v. Emperor*, 66 Ind App 66 at p.81: (AIR 1939 PC 47 at p.52). Lord Atkin observed :

"no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

These observations received the approval of this Court in *Palvinder Kaur v. The State of Punjab* (1), 1953 SCR 94 at p.104 ; In *State of U.P. v. Deoman Upadhyaya*, [(1961) 1 SCR 14 at p.21. Shah, J. referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See *Hanumant Govind v. State of M.P.* 1952 SCR 1091 at p.1111 and *Palvinder Kaur v. The State of Punjab* 1953 SCR 94. The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non- confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.
14. If proof of the confession is excluded by any provision of law such as S.24, S.25 and S.26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section under as S.27 of the Evidence Act. Little substance and content would be left in

Ss.24, 25 and 26 if proof of admission of incriminating facts in a confessional statement is permitted.

15. Sometimes, a single sentence in a statement may not amount to a confession at all. Take a case of a person charged under S.301-A of the Indian Penal Code and a statement made by him to a police officer that "I was drunk; I was driving a car at a speed of 80 miles per hour. I could see A on the road at a distance of 80 yards; I did not blow the horn; I made no attempt to stop the car; the car knocked down A". No single sentence in this statement amounts to a confession; but the statement read as a whole amounts to a confession of an offence under S.304-A of the Indian Penal Code, and it would not be permissible to admit in evidence each sentence separately as a non-confessional statement. Again, take a case where a single sentence in a statement amounts to an admission of an offence. 'A' states "I struck 'B' with a tangi and hurt him". In consequence of the injury 'B' died. 'A' committed an offence and is chargeable under various sections of the Indian Penal Code. Unless he brings his case within one of the recognised exceptions, his statement amounts to an admission of an offence, but the other parts of the statement such as the motive, the preparation, the absence of provocation, concealment of the weapon and the

subsequent conduct, all throw light upon the gravity of the offence and the intention and knowledge of the accused, and negatives the right of private defence, accident and other possible defences. Each and every admission of an incriminating fact contained in the confessional statement is part of the confession.

16. If the confession is caused by an inducement, threat or promise as contemplated by S.24 of the Evidence Act, the whole of the confession is excluded by S.24. Proof of not only the admission of the offence but also the admission of every other incriminating fact such as the motive, the preparation and the subsequent conduct is excluded by S.24. To hold that the proof of the admission of other incriminating facts is not barred by S.24 is to rob the section of its practical utility and content. It may be suggested that the bar of S.24 does not apply to the other admissions, but though receivable in evidence, they are of no weight, as they were caused by inducement, threat or promise. According to this suggestion, the other admissions are relevant but are of no value. But we think that on a plain construction of S.24, proof of all the admissions of incriminating facts contained in a confessional statement is excluded by the section. Similarly, Ss.25 and 26 bar not only proof of admissions of an offence by an accused to a police

officer or made by him while in the custody of a police officer but also admissions contained in the confessional statement of all incriminating facts related to the offence.

- 17 A little reflection will show that the expression "confession" in Ss.24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Ss.24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of Ss. 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, S.30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters

affecting other persons may from part of the confession.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S.25 is lifted by S.27.”

51. It is thus clear from the observations made by the Supreme Court in the case of *Aghnoo Nagesia* (supra) that where the FIR is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement is receivable in evidence. The test of severability namely, that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence, is misleading, and the entire confessional statement is hit by Section 25, save and except as provided by Section 27. It is well

settled that where the accused himself gives the first information report, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. Learned Judge of the trial court has rightly observed that the said circumstance of confessional FIR Exhibit 63 is considered to the extent of the conduct of the appellant-accused Digambar under Section 8 of the Evidence Act.

52. Learned counsel for the appellant-accused Digambar has assailed the evidence of PW 5 Shankar and PW 6 Santosh as both the witnesses have admitted in their cross-examination that their statements were read over to them after they come in the court and they have deposed in the court as per the averments in the statement. Learned counsel for appellant-accused Digambar has placed reliance in the case of ***Sharad s/o Namdeorao Shirbhate*** (supra). In the identical facts of the case, in para 10, the following observations are made by the learned Single Judge of this Court, Bench at Nagpur:

10. The learned counsel for the appellant further submitted that in this case, the evidence of

complainant PW 1 Pundlik in respect of demand and acceptance of the bribe on 14-7-1987 did not receive any trustworthy corroboration from the evidence of PW 2 Prabhakar, the panch witness. In para 11 of his deposition, the said Prabhakar admitted that he was attending the Court for giving evidence since 1-7-1996. His evidence was recorded on 4-7-1996. He admitted that the police had read over his statement to him and also told him to tender evidence as per his statement. He admitted that he was giving evidence as per his police statement. In view of this, the learned counsel for the appellant submitted that since the witness was not stating the facts from his memory, the entire evidence of this witness Prabhakar would be inadequate to provide any corroboration to that of PW 1 Pundlik. The learned Additional Public Prosecutor submitted that since the incident was nine years' old, there was nothing wrong in the witness refreshing his memory by reading his statement before deposing about the incident giving minute details. There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect, he could be allowed to

refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such a witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of PW 2 Prabhakar taken by the learned counsel for the appellant is valid.

53. Learned counsel for appellant-accused Digambar has further pointed out that in a case of **Suresh s/o Purushottam Astankar** (supra), the Division Bench of this Court, Bench at Nagpur has approved the dictum of the learned Single Judge in the case of **Sharad s/o Namdeorao Shirbhate** (supra). The Division Bench in para 32 has made the following observations:

“32. In para 10 of the said reported Judgment, the learned Single Judge found that Pundlik (PW1) has admitted that the police had read over his statement to him and also told him to tender the evidence as per his statement. The learned Single Judge has observed thus :

“There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect, he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of PW2 Prabhakar taken by learned Counsel for the appellant is valid.” (emphasis is supplied by us).

We approve the dictum of the learned Single Judge in that behalf.”

54. Learned counsel thus submits that there is nothing wrong if the witness refreshing his memory. But it ought to have been

before the court and not outside the court. The witness has to recollect the incident out of his own memory. It would not be permissible for such witness to refresh his memory before entering the court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory.

55. In the case of *Devilal and others v. State of Madhya Pradesh* [(2021) 5 SCC 292], the Supreme Court has dealt with the issue of probability of tutoring of the eye witness. The Supreme Court has held that mere assertion on the part of the witness that her earlier statement recorded during the course of investigation was read over to her does not mean that she was tutored to follow the line of prosecution. Para 24 of the judgment read as under:

“24. The FIR itself referred to the presence of PW1 Sajan Bai and PW 2 Saman Bai. The substantive testimony of both these witnesses clearly discloses that the appellants had opened an assault on Ganeshram which led to his death. The assertion on the part of PW1 Sajan Bai that her earlier statement recorded during investigation was read over to her does not mean that she was tutored to follow the line of prosecution. It is relevant to note that no such questions were put to PW 2 Saman Bai.”

56. In view of the above discussion and for the reasons stated, we are of the considered opinion that there is positive evidence of homicidal death. The prosecution has established the chain of circumstantial evidence as discussed in the foregoing paragraphs. The prosecution has also established the motive on the part of the appellant to commit-murder. Thus, the prosecution has proved the circumstance of last seen together. Both the appellants have failed to give satisfactory explanation about the death of both the deceased persons when they were seen alive lastly in their company while leaving village Kharbala. The trial court has not committed any error in convicting the appellants-accused for the offence punishable under Sections 302, 201 read with 34 of IPC and Section 120-B of IPC. We are in agreement with the view taken by the trial court.

Confirmation of death sentence.

57. So far as the capital punishment imposed by the trial court is concerned, learned counsel for the appellant-accused Digambar submits that the trial court has not considered the mitigating

circumstances, particularly the age and the possibility of reformation of the appellant-accused Digambar. Learned counsel submits that the trial court has solely looked in to the factum of double murder and awarded capital punishment. Learned counsel submits that the trial court has not considered as to whether the offence was committed under the influence of extreme mental or emotional disturbance. There are no antecedents and the accused would not commit criminal acts of violence as would constitute a continuing threat to the society. The accused is a young person and there is possibility that the accused can be reformed and rehabilitated. Learned counsel submits that in the facts and circumstances of the case, the possibility that accused no.1 Digambar believed that he was morally justified in committing the offence is totally overlooked by the trial court.

58. In the case of ***Bachan Singh v. State of Punjab*** (supra), relied upon by learned counsel for the appellant-accused no.1 Digambar so also the learned APP for the State, the Constitution Bench while answering the reference, dealt with the issue of constitutional validity of death penalty for murder provided under Section 302 of IPC and the sentence procedure embodied under Section 354(3) of

the Criminal Procedure Code, 1973. The Hon'ble Supreme Court has indicated broad criteria which should guide the courts in the matter of sentencing a person convicted of murder under Section 302 of IPC. The Supreme Court has also taken into consideration the ratio laid down in the case of *Jagmohan Sing v. State of U.P* [(1973) 1 SCC 20], wherein it is held that this sentencing discretion is to be exercised judicially on well recognized principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well recognized principles" the court obviously meant the principles crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. It is observed that the only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely, (1) the extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender, also.

In para 198 and 199 of the judgment, the Supreme Court has first discussed about the aggravating circumstances which, in the absence of any mitigating circumstances, have been regarded as an indication for imposition of the extreme penalty. Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. The Supreme Court has again referred the view taken in *Jagmohan Singh's* case (supra) that if a murder is “diabolically conceived and cruelly executed”, it would justify the imposition of the death penalty on the murderer. In para 201, the Supreme Court has observed that for making the choice of punishment or for ascertaining the existence or absence of “special reasons” in that context, the court must pay due regard both to the crime and the criminal. In the same para, the Supreme Court has further observed that “It is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that “special reasons” can legitimately be said to exist.

In para 206, the Supreme Court has considered the suggestions given by Dr. Chitale on mitigating factors. Those are as follows:

“206. Dr. Chitale has suggested these mitigating factors:

***Mitigating circumstances:-** In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:-*

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.*
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.*
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*
- (4) The probability that the accused can be reformed and rehabilitated.*

The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.*
- (6) That the accused acted under the duress or domination of another person.*
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”*

In para 209, the Supreme Court has made the concluding remarks which are as follows:

“209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in

accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

59. In the case of ***Machhi Singh and others v. State of Punjab*** (supra) relied upon by learned counsel for the appellant-accused no.1 Digambar, so also learned APP for the State, the Supreme

Court after referring the guidelines indicated in ***Bachan Sing*** (supra), in para 39, has made the following observations:

“39. In order to apply these guidelines inter alia the following questions may be asked and answered :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?”

60. In ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*** (supra) relied upon by learned counsel for the appellant-accused Digambar, the Supreme Court by referring various decisions including the view taken in ***Bachan Sing*** (supra), also considered (i) nature of content of the rarest of rare dictum, (ii) alternative option is foreclosed, (iii) role and responsibility of courts, (iv) sentencing justification in heinous crimes, (v) public opinion in capital sentencing, (vi) principled sentencing etc. In

addition to this, the Supreme Court has considered the doctrine of proportionality and also the issue of deterrence. In this case, the Supreme Court has reiterated the basic principle that life imprisonment is the rule and death penalty is an exception. Each case must therefore be analysed and the appropriateness of punishment determined on a case-by-case basis with death sentence not to be awarded save in the “rarest of the rare” case where reform is not possible. In para 172 of the judgment, the Supreme Court has made the observations in this regard.

61. In *Manoj Suryavanshi v. State of Chhattisgarh* (supra) relied upon by learned counsel for the appellant, the Supreme Court has dealt with the issue in the facts of said case that the offence was committed under the influence of extreme mental or emotional disturbance. The Supreme Court has further considered that there are no criminal antecedents and also the age of the offender for converting death sentence into imprisonment till the end of life with remission only after the accused completes 25 years of imprisonment.

62. In the case of *Dhananjoy Chatterjee v. State of West Bengal* (supra), relied upon by learned APP for the State, in para 14 and 15, the Supreme Court has made the following observations:

“14. In recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility.

Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an over-all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot

be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

63. In the case of ***Shankar Kisanrao Khade v. State of Maharashtra*** (supra), relied upon by learned APP for the State, the Supreme Court in para 102, has laid down the broad principles for confirming the death penalty and in para 103 the Supreme Court has referred the cases wherein young age of the accused was not taken into consideration or held irrelevant. Para 102 and 103 read as under:

*“102. The principal reasons for confirming the death penalty in the above cases include (1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (**Jumman Khan, Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Nirmal Singh, Jai Kumar, Satish, Bantu, Ankush Maruti Shinde, B.A. Umesh, Mohd. Mannan and Rajendra Pralhadrao Wasnik**); (2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (**Dhananjoy Chatterjee, Jai Kumar, Ankush Maruti Shinde and Mohd. Mannan**); (3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (**Jai Kumar, B.A. Umesh and Mohd. Mannan**); (4) the victims were defenceless (**Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Ankush Maruti Shinde, Mohd. Mannan and Rajendra Pralhadrao Wasnik**); (5) the crime was either unprovoked or that it was premeditated (**Dhananjoy Chatterjee, Laxman Naik, Kamta Tewari, Nirmal Singh, Jai Kumar, Ankush Maruti Shinde, B.A. Umesh and Mohd. Mannan**) and in three cases the antecedents or the prior history of the convict was taken into consideration (**Shivu, B.A. Umesh and Rajendra Pralhadrao Wasnik**).*

103. However, what is more significant is that there are cases where the factors taken into consideration for commuting the death penalty were given a go-bye in cases and the death penalty was confirmed. The young age of the accused was not taken into consideration or held irrelevant in **Dhananjoy Chatterjee** aged about 27 years, **Jai Kumar** aged about 22 years and **Shivu and Anr.** aged about 20 and 22 years while it was given importance in **Amit v. State of Maharashtra, Rahul, Santosh Kumar Singh, Rameshbhai Chandubhai Rathod (2) and Amit v. State of Uttar Pradesh**. The possibility of reformation or rehabilitation was ruled out, without any expert evidence, in **Jai Kumar, B.A. Umesh and Mohd. Mannan** in much the same manner, without any expert evidence, as the benefit thereof was given in **Nirmal Singh, Mohd. Chaman, Raju, Bantu, Surendra Pal Shivbalakpal, Rahul and Amit v. State of Uttar Pradesh**. Acquittal or life sentence awarded by the High Court was considered not good enough reason to convert the death sentence in **Satish, Ankush Maruti Shinde and B.A. Umesh** but it was good enough in **State of Tamil Nadu v. Suresh, State of Maharashtra v. Suresh, Bharat Fakira Dhiwar and Santosh Kumar Singh**. Even though the crime was not premeditated, the death penalty was confirmed in **Molai** notwithstanding the view expressed in **Akhtar, Raju and Amrit Singh**. Circumstantial

*evidence was held not to be a ‘mitigating’ factor in **Jumman Khan, Kamta Tewari, Molai and Shivaji** but it was so held in **Bishnu Prasad Sinha**.”*

64. The Government of India had referred the question of retention or abolition of capital punishment to the Law Commission which presented its report to the Government of India in 1967. The Law Commission, in the 35th Report, observed:

“Having regard to the condition of India, to the variety of the social upbringing of its inhabitants, to the disparity of the level of morality and education in the country, to the vastness of its areas, to diversity of population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the abolition of capital punishment. Arguments, which will be valid in respect of one area of the world may not hold good in respect of another area in this context. Similarly, even if abolition in some parts of India may not make a material difference, it may be fraught with serious consequences in other parts. On a consideration of all the issues involved, the Commission is of the opinion that capital punishment should be retained in the present state of the country.”

The Law Commission in its subsequent reports, i.e. 42nd and 43rd

Reports, supported the retention of capital punishment and observed:

“Even after all the arguments in support of abolition of capital punishment are taken into account, there does not remain a residuum of cases where it is absolutely impossible to enlist any sympathy on the side of the criminal. -The retribution involved in capital punishment does not connote the primitive concept of ‘eye for an eye’, but it is an expression of public indignation at a shocking crime, which can better be disrupted as reprobation.”

The Commission, therefore, expressed a view that it does not recommend any change in the offences which at present are punishable with death under the Indian Penal Code, 1860. It strongly felt that capital punishment is an effective deterrent, which provides sufficient rational basis for its retention. In its concluding observations, the Law Commission held that having regard to the peculiar conditions prevalent in India and the paramount need for maintaining law and order in this country, it is not worthwhile to risk the experiment of abolition of capital punishment.

The Main points that weighed with the Law Commission in reaching the conclusion in favour of retention and against abolition of capital punishment may be summarised below:

1. It is an effective deterrent as every human being fears death;
2. It is a penalty which is quite different from life imprisonment, not merely in degree but also in quality;
3. It is doubtful whether any other punishment can possess all the advantages of capital punishment;
4. The sentence of death also possesses some element of retribution inherent in it in a subtle form;
5. There is general consensus among Judges, lawyers, criminal law administrators, jurists, legislators that keeping in view the Indian conditions and increasing rape and murder cases, retention of death penalty is justified.

65. In the case of *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*, reported in (2020) 5 SCC 782, the Supreme Court in para 65 of the judgment, has made the observations as below:

65. Even observed devoid of any aggravating circumstances, mere young age and presence of aged parents cannot be grounds for commutation. One may view that such young age poses a continuous burden on the State and presents a longer risk to society, hence warranting more serious intervention by courts. Similarly, just because the now deceased co-accused Mohanakrishnan was the mastermind whose offence was comparatively more egregious, we cannot commute the otherwise barbarically shocking offences of the petitioner. We are also not inclined to give leeway of the lack of criminal record, considering that the current crime was not just one offence, but comprised of multiple offences over the series of many hours.”

66. In the instant case also, the incident has not occurred on the spur of moment or a crime of passion; but craftily planned and meticulously executed. The present crime is so grave as to shock the conscience of the society and would amount to the rarest of the rare.

67. In the case of *Vasanta Sampat Dupare v. State of Maharashtra*, reported in (2015) 1 SCC 253, the Supreme Court in

the facts of the said case held, 'it is rarest of rare case and fit for imposition of death sentence. There are no mitigating circumstances. It is an act of taking advantage of absolute innocence. It is not only betrayal of individual trust but also betrayal of social trust. The act is an anathema to social balance. The act of the appellant shocks judicial conscience, conscience of the society and has a menacing effect on the society. His conduct and criminal antecedents reveal that he is and will be a menace to the society and cannot be reformed. Thus, there are no mitigating circumstances'.

68. In ***Bhagwan Dass v. State (NCT) of Delhi*** (supra) relied upon by learned APP, The supreme Court has considered as to whether the death punishment can be awarded when the prosecution case rests on circumstantial evidence and particularly dealt with the issue of honour killing. The Supreme Court has observed as under:

"Before parting with this case we would like to state that honour killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan. Often young couples who fall in love have to seek shelter in the police

lines or protection homes, to avoid the wrath of kangaroo courts. We have held in Lata Singh's case (supra) that there is nothing honourable in honour killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds.

In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate honour killings should know that the gallows await them."

69. The instant case is of honour killing. Deceased Pooja was in love with deceased Govind. However, her marriage was performed with one Jethiba Hashanna Varshewar on 10.06.2017 and on 22.07.2017 deceased Pooja left her matrimonial home without informing anybody. Her husband Jethiba had lodged missing report Exhibit 66 in the concerned police station to that effect. It appears that deceased Pooja could not forget her love. Consequently, she had not only left her matrimonial home without informing anyone, however, she had called deceased Govind on his mobile. Against

the advice of the brother-in-law PW 5 Shankar Gade, deceased Govind had given his address to deceased Pooja. It is to be noted here that PW 5 Shankar Gade had kept deceased Govind in his house at village Kharbala, taluka Mudhol, district Nirmal (Telangana) since one month prior to the incident apprehending some untoward incident. On 22.07.2017 itself, at about 6.00 a.m., deceased Pooja went to village Kharbala at the house of PW 5 Shankar Gade and joined the company of deceased Govind. Meanwhile, appellant-accused Digambar was searching deceased Pooja and Govind. He was suspecting that both of them are together. He had made phone call to that effect to deceased Govind. On 23.07.2017 in the morning at about 8.00 a.m. to 9.00 a.m. both the appellants-accused went to village Kharbala at the house of PW 5 Shankar Gade. On reaching there, appellant-accused Digambar had made a statement before all of them including deceased Pooja and deceased Govind that he will perform their marriage. PW 5 Shankar Gade had however told appellant-accused Digambar that marriage is not possible because Pooja is already married. However, appellant-accused Digambar told him that deceased Govind is his childhood friend. Deceased Pooja had also made a statement that she has faith on her brother accused

Digambar that he would perform her marriage with deceased Govind. Even appellant-accused Digambar told PW 5 Shankar Gade that he will perform their marriage at village Basar. Thus, appellant-accused Digambar, appellant-accused Mohan, deceased Pooja and deceased Govind left that place on one motorcycle being driven by appellant-accused Mohan.

70. PW 5 Shankar Gade has deposed that both the accused had been to his house at village Kharbala, taluka Mudhol, district Nirmal (Telangana) at about 8.00 a.m. to 9.00 a.m. on 23.07.2017. He had offered them tea and there were certain talks between them including deceased Pooja, which is discussed above. It must have taken about one and half hour to leave the house of PW 5 Shankar Gade situated at village Kharbala. The spot of incident is between village Divshi and village Nigwa. It has come in the evidence that the distance between village Kharbala and the spot of incident is 30 to 35 Kms. PW 7 PHC Sudam Thakre has received a phone call from LPC Munde at about 14.15 hours that murder of a girl and a boy was committed between Divshi to Nigwa road. PW 8 PSI Shushilkumar Chavan has deposed that appellant-accused Digambar had come to the police station at about 14.00 hours and

lodged the confessional FIR Exhibit 63. Thus, considering the distance between village Kharbala and the spot of incident which is near about 30 to 35 Kms., it appears that within two to three hours the appellants-accused have executed their pre-plan in a barbaric manner. The appellants-accused planned the strategy to take Pooja and Govind with them. Deceased Pooja had trusted her real brother Digambar and Govind was his childhood friend. We are not inclined to accept the submission that the offence has been committed under the influence of extreme mental and emotional disturbance. We are also shocked to see the manner in which deceased Pooja and deceased Govind were subjected to death. It was done not only with the sole intention to protect the honour of the family, and it was done by hatching conspiracy to punish both of them. The manner in which the throats were slit indicate the same. It was done with an intention to punish them so also to make it as a lesson for those who could dare to disobey the family. Deceased Pooja and deceased Govind both were hapless and helpless. The appellants-accused were in the dominant position. Furthermore, the conduct of the appellant-accused Digambar under Section 8 is important that he himself went to the police station for lodging complaint Exhibit 63. Learned Judge of the trial court has

also observed that his face was expressionless when the court declared him guilty and there was no repentance at all. We are not inclined to consider the young age of appellant-accused no.1 Digambar and the possibility of his reformation.

71. In the case *Bhagwan Dass v. State (NCT) of Delhi* (supra) relied upon by learned APP for the State, the Supreme Court has observed that honour killings, for whatever reasons, come within the category of rarest of rare cases and as such deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour.

72. The appellants-accused could have cut-off the social relations with Pooja and Govind. However, they have committed cold blooded murder of Pooja and Govind in a pre-planned and calculated manner. The appellant-accused Digambar had cruelly executed his plan of murder. We are not inclined to convert the death punishment of appellant-accused Digambar into life imprisonment. Hence, we proceed to pass the following order:

ORDER

- I. The judgment and order of conviction dated 18th July, 2019 passed by the Additional Sessions Judge, Bhokar in Session Case No. 24 of 2017, convicting thereby accused no. 1 Digambar S/o Baburao Dasre for the offence punishable under Section 302 r/w Section 34 of I.P.C. for committing murder of deceased Pooja W/o Jethiba Varshewar and for committing murder of deceased Govind Vithal Karale and sentencing accused no. 1 Digambar S/o Baburao Dasre to suffer death penalty is hereby confirmed. We uphold the sentence of death penalty.

- II. The judgment and order of conviction dated 18th July, 2019 passed by the Additional Sessions Judge, Bhokar in Session Case No. 24 of 2017, convicting thereby accused no. 1 Digambar S/o Baburao Dasre for the offence punishable under Section 201 r/w Section 34 of I.P.C. and sentencing accused no. 1 Digambar S/o Baburao Dasre to suffer rigorous imprisonment for 7

[seven years] and to pay fine of Rs. 2,000/- (Rs. Two thousand only), in default of payment of fine, to suffer further rigorous imprisonment for 6 months, and further convicting accused no. 1 Digambar S/o Baburao Dasre for the offence punishable under Section 120-B of I.P.C. and sentencing him to suffer life imprisonment and to pay fine of Rs. 3,000/- (Rs. Three thousand only), in default of payment of fine, to suffer further rigorous imprisonment for 6 (six) months, hereby stands confirmed.

III. Criminal Appeal No. 810 of 2019 [Digambar S/o Baburao Dasre v. The State of Maharashtra] is hereby dismissed and disposed off accordingly.

IV. The judgment in so far as appellant-accused no.1 Digambar S/o Baburao Dasre is concerned, shall not be given effect to till expiry of appeal period as stipulated under Section 415 (3) of the Criminal Procedure Code, 1973.

- V. Criminal Appeal No. 808 of 2019 [Mohan S/o Nagorao Dasre v. The State of Maharashtra] is hereby dismissed and the judgment and order of conviction dated 18th July, 2019 passed by the Additional Sessions Judge, Bhokar in Session Case No. 24 of 2017, convicting thereby accused no. 2 Mohan S/o Nagorao Dasre for the offence punishable under Section 302 r/w Section 34 of I.P.C. for committing murder of deceased Pooja W/o Jethiba Varshewar and for committing murder of deceased Govind Vithal Karale, and sentencing accused no. 2 Mohan S/o Nagorao Dasre to suffer imprisonment for life and to pay fine of Rs. 3,000/- (Rs. Three thousand only), in default of payment of fine, to suffer further rigorous imprisonment for 6 (six) months, for the offence punishable under Section 201 r/w Section 34 of IPC and sentencing him to suffer rigorous imprisonment for 7 [seven years] and to pay fine of Rs. 2,000/- (Rs. Two Thousand only), in default of payment of fine, to suffer further rigorous imprisonment for 6 months and for the offence punishable under Section 120-B of I.P.C. and sentencing him to suffer life imprisonment and to

pay fine of Rs. 3,000/- (Rs. Three thousand only), in default of payment of fine to suffer further rigorous imprisonment for 6 (six) months stands confirmed.

VI. Rest of the judgment and order of conviction dated 18th July, 2019 passed by the Additional Sessions Judge, Bhokar in Sessions Case No. 24 of 2017 also stands confirmed.

VII. The order of confirmation be forwarded to the Court of Sessions.

VIII. Muddemal property may be disposed of after a period of three months.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)