

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 702 OF 2014

Avdhoot Vithal Ghate
(C-16833) Age 19 years,
Occ. Labour, R/o. Kakaddati,
Tq. Pusad, Dist. Yeotmal,
(Presently in Yerwada Central Jail,
Pune – 06)

...Appellant
(Ori. Accused)

versus

The State of Maharashtra,
Through the Police Inspector,
Nagar Taluka police station
Tq. Nagar, Dist. Ahmednagar

...Respondent

.....
Mr. Sunil B. Jadhav, Advocate for the appellant (appointed)
Mr. R.V. Dasalkar, A.P.P. for respondent State
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

**Date of Reserving
the Judgment : 06.01.2022**

**Date of pronouncing
the Judgment : 25.01.2022**

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

1. This appeal is directed against the judgment and order passed by the Additional Sessions Judge, Ahmednagar dated 24.4.2014 in Sessions Case No. 78 of 2013.

2. Brief facts of the prosecution case are as follows:-

a) Deceased Pandurang Patil and the appellant-accused Avadhoot Ghate both were working as labourers. Deceased Pandurang was hailing from Jalgaon whereas appellant-accused Avadhoot is resident of Pusad, district Yeotmal. Both of them, in search of labour work, had come to Ahmednagar. On 12.10.2012, deceased Pandurang, appellant-accused and one other labourer started working in the field of P.W.4 Raosaheb Sonawane at Hingangaon. P.W.3 Vaijanath Kardile, a teacher, is also having agricultural land at village Jakhangaon situated near Hingangaon and he was also in need of labourers for cutting the crop of Bajra and thus he had requested P.W.4 Raosaheb Sonawane to send those three labourers to his field after his work is over. On 15.10.2012, P.W.3 Vaijanath Kardile brought those three labourers from the field of Raosaheb Sonawane. It further reveals from the prosecution story that on the next day, deceased Pandurang and the appellant-accused expressed their desire to attend one religious function at Hingangaon. Thus, they went to village Hingangaon. They had consumed liquor. Subsequently, a quarrel had taken place between them at Hingangaon. Deceased Pandurang was insisting the appellant-accused Avadhoot to do some more work and also abused him on that count. Consequently, the appellant-accused Avadhoot got annoyed and while returning after attending the religious function at Hingangaon, the appellant-accused Avadhoot had committed murder of deceased Pandurang by smashing his head with the help of one big stone.

b) On 19.10.2012, P.W. 1 Police Patil Ramesh Angre was informed by one Chandu Shaikh that near his field he has noticed some blood stains, some diaries, stones, one pant and also one dead body. Thus, on the same day at about 3.00 p.m., P.W.1 Police Patil Ramesh Angre went to the spot. He saw the dead body lying on the spot as well as there were blood stains. The said dead body was in crushed condition. One barmoda pant and a blue shirt were on the person of deceased. The said dead body was lying in thorny bushes. He then went to Nagar Taluka police station and lodged the report Exh.11. The police thereafter visited the spot and seized the articles. PW.16 A.P.I. Milind Patil has sized those articles by drawing panchanama and also sent the dead body to Civil Hospital for postmortem examination after preparing the inquest panchanama Exh.19. A.P.I. Milind Patil has recorded the statements of the witnesses. He has also effected arrest of the appellant-accused by preparing arrest panchanama Exh.62. On 5.12.2012, while the appellant-accused Avadhoot was in police custody, he made a voluntary statement to produce the clothes and also to show the spot of incident. Thus, memorandum panchanama was prepared at Exh.27 and thereafter his one shirt and one pant having stains of blood came to be seized from the spot as shown by him by drawing panchanama Exh.28. The said shirt and pant having blood stains are articles 18 and 19 before the Court. During the course of investigation, P.W.16 A.P.I. Milind Patil has also obtained the

confession of accused and the report of the identification parade from the Special Judicial Magistrate. The investigating officer has completed all the formalities and after completion of investigation, submitted the charge sheet against the appellant-accused.

c) The learned Additional Sessions Judge has framed charge against the appellant-accused for the offence punishable under Sections 302 and 201 of I.P.C. The appellant-accused has pleaded not guilty to the said charges and claimed to be tried. The defence of the accused is of total denial and false implication. The prosecution has examined in all 16 witnesses to substantiate the charges levelled against the accused. The appellant-accused has not examined any witness in defence. After recording the statement of the appellant-accused under section 313 of Cr.P.C. and after hearing both sides, learned Additional Sessions Judge, Ahmednagar has found the appellant-accused guilty of offence under Section 302 of I.P.C. Learned Additional Sessions Judge has thus passed the sentence against the appellant-accused. The operative part of the judgment and order of conviction dated 24.4.2014 is reproduced herein below:-

“1) Accused Avdhoot Ghate is hereby convicted of the offence punishable under Section 302 of Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for life.

2) Accused is hereby acquitted of the offence

punishable under Section 201 of the Indian Penal Code.

3) Muddemal Property namely clothes, stones, note books, books and other articles (article 1 to 19) being worthless be destroyed after the period of appeal is over."

3. Learned counsel for the appellant-accused submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. There is no chain of circumstantial evidence. The prosecution has failed to establish the motive on the part of the appellant-accused for commission of crime of murder. Learned counsel submits that P.W.3 Vaijanath Kardile, in whose field the appellant-accused was working as labourer alongwith deceased Pandurang, has admitted that there was no dispute or quarrel taken place amongst the labourers working in his field. Learned counsel submits that even there is no evidence about last seen together. P.W.3 Vaijanath Kardile has admitted in his cross examination that in his presence deceased Pandurang and appellant-accused Avdhoot had not gone to Darshan of Palkhi (religious function). Learned counsel submits that except the so called evidence about confession, there is no connecting evidence against the appellant-accused. Learned counsel submits that though P.W.11 Special Judicial Magistrate, Bhaskar Bhos was not empowered, he has conducted the identification parade. Furthermore, the so-called identification parade suffers from various deficiencies. Learned counsel submits that the confession Exh.42 is

also not free from suspicion. P.W.11 Bhaskar Bhos has not complied with the procedural mandate before recording the confession. He has not got satisfied himself as to whether the confession is voluntary. Learned counsel submits that at the most, suspicion is created against the appellant-accused. The said suspicion, however strong it may be, cannot take the form of legal proof. Learned counsel submits that the appellant-accused is entitled for the benefit of doubt.

Learned counsel for the appellant-accused, in order to substantiate his submissions, placed reliance on the following cases:-

- i) Judgment dated 22.11.2021 delivered by this Court in criminal appeal No. 342 of 2014 (***Varsha w/o Dadasaheb Amate v. The State of Maharashtra***).
- ii) ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat and another***, reported in (2019) 16 SCC 547
- iii) ***Haricharan Kurmi and Anr. vs. State of Bihar***, reported in AIR 1964 SC 1184
- iv) ***Sarwan Singh Rattan Singh and Anr. vs. State of Punjab***, reported in AIR 1957 SC 637
- v) ***Hari Om Alias Hero vs. State of Uttar Pradesh*** reported in (2021) 4 SCC 345

vi) ***Musheer Khan alias Badshah Khan and another vs. State of Madhya Pradesh***, reported in (2010) 2 SCC 748

4. Learned A.P.P. submits that the prosecution has proved the case by establishing the chain of circumstantial evidence. The prosecution has proved beyond doubt the homicidal death of deceased Pandurang. The prosecution has also proved that deceased Pandurang and appellant-accused Avdhoot were working in the field of P.W.3 Vaijanath Kardile prior to the death of Pandurang. Even though deceased Pandurang and appellant-accused Avdhoot had gone to village Hingangaon to attend the religious function, however, appellant-accused Avdhoot had returned to the field of P.W.3 Vaijanath Kardile alone. He had given evasive answers to the queries put forth by P.W.3 Vaijanath Kardile as to the whereabouts of deceased Pandurang. Furthermore, at the instance of the appellant-accused, his shirt and pant came to be seized from the hidden place and the C.A. report also indicates human blood stains on his clothes. Furthermore, P.W.11 Bhaskar Bhos, the Special Judicial Magistrate has recorded the confessional statement of the appellant-accused Part I Exh.37 and Part II Exh.42, respectively. He had given the appellant-accused 24 hours of time to rethink about the confession and in that way, also concluded about voluntarily nature of confession. P.W.11 Bhaskar Bhos, the Special Judicial Magistrate has completed all formalities as per the guidelines

given in the criminal manual. Further, the witnesses have identified the appellant during the course of identification parade. There is no substance in this appeal and the appeal is thus liable to be dismissed.

. Learned APP further submits that, the appellant has retracted the confession only at the time of recording the statement under Section 313 of Cr.P.C.. It has been done under legal advice, and as such, confession Exh.42 has been rightly relied upon by the trial court to convict the appellant-accused. The retracted confession may form the legal basis for conviction. In the present case, the confession was not changed during the stage of framing of charge and also during the course of examination of 16 prosecution witnesses.

The learned A.P.P., in order to substantiate his submissions, placed reliance on the judgment of the Supreme Court in the case of ***Manoharan vs. State by Inspector of Police, Variety Hall Police Station, Coimbatore***, in Review Petition (CRL.) Nos. 446-447 of 2019 in Criminal appeal Nos. 1174-1175 of 2019.

5. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses; the statement of the appellant-accused recorded under Section 313 of the Cr.P.C. and the impugned judgment.

6. The prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. So far as the homicidal death of deceased Pandurang is concerned, the same is not seriously disputed by the appellant-accused. The prosecution has examined P.W.12 Dr. Amol Shinde, who has conducted post mortem examination on the dead body of deceased Pandurang. In column No.17 he has noted the following two injuries:-

- 1) Fractures present over skull bones, brought separately, margins irregular, underlying meninges and brain absent, servical vertebrae No. 1, 2, 3 fractured in multiple pieces, margins irregular.
- 2) Mandible fractured in multiple pieces, margins irregular.

In his opinion, the final cause of death was head injury. Post mortem report bears his signature which is marked at Exh.39. He has also accepted that the said injuries are possible with the help of article 3 big stone before the Court. He has denied that the said injuries are possible by fall accidentally. Even considering the injuries as described in column No.17, it can be positively said that the said injuries are outcome of smashing and it is not possible by accident. The prosecution has proved homicidal death of deceased Pandurang.

7. It is well settled that if the prosecution case rests upon circumstantial evidence, the motive plays a great role. In the instant case, there is no motive. Deceased Pandurang and appellant-accused Avdhoot were from two different districts/regions and they had no previous acquaintance. In search of labour work, they left their respective native places and came to district Ahmednagar. Initially, they had worked in the field of P.W.4 Raosaheb Sonawane. P.W.4 Raosaheb Sonawane had picked up three labourers from Ahmednagar Railway station i.e. deceased Pandurang, appellant-accused Avdhoot and one another labourer for cutting Bajra crop in his field. Thereafter, by consent those three labourers went to the field of P.W.3 Vaijanath Kardile on 15.10.2012 for labour work. P.W.3 Vaijanath Kardile had also accepted that he had never witnessed any dispute or quarrel amongst those three labourers working in his field. Except guess work of the investigating officer about motive, there is no evidence.

8. P.W.3 Vaijanath Kardile has deposed that on 16.10.2012 he had informed the labourers working in his field that he was going for Darshan of Palkhi. On the same day at about 12.00 noon, after taking Darshan he returned back to his field. He has deposed that those two labours had also told him that they also wanted to take Darshan of Palkhi. P.W.3 Vaijanath Kardile has deposed that the third labourer had already gone to Mirawali Pahad to attend another

religious function. P.W.3 Vaijanath Kardile has deposed that after 5.00 p.m. the appellant-accused came alone. He appeared to be under the influence of liquor. P.W.3 Vaijanath Kardile had asked him as to where his colleague deceased Pandurang had gone. However, he has shown his ignorance about it. P.W.3 Vaijanath Kardile has deposed that on the next date, the appellant-accused Avadhoot was working in his field alone. However, after completing the day's work, the appellant-accused Avdhoot told him that he wanted to return. Thus, on 18.10.2012 in the evening, P.W.3 Vaijanath Kardile had handed over an amount of Rs.520/- to the appellant-accused towards the work which he had done and accordingly, appellant-accused Avdhoot had left his house. P.W.3 Vaijanath Kardile has also deposed that even for some time they had taken search of deceased Pandurang but he was not found.

a. The evidence of P.W.4 Raosaheb Sonawane may not be helpful to the prosecution. However, even if evidence of P.W.3 Vaijanath Kardile is considered, we do not find any evidence indicating that deceased Pandurang was lastly seen alive in the company of appellant-accused. It is necessary to repeat here that the dead body of deceased Pandurang was found on 19.10.2012. P.W.3 Vaijanath Kardile has also admitted in his cross-examination that on 16.10.2012 deceased Pandurang and appellant-accused Avdhoot had no occasion to go together for Darshan of Palkhi in his presence. Thus, there is no evidence to substantiate the prosecution

case that on 16.10.2012 deceased Pandurang left the field of P.W.3 Vaijanath Kardile in the company of the appellant-accused and he was lastly seen alive at that time. Further, there is a gap of near about 3 days when the dead body of Pandurang was found on 19.10.2012.

b) The prosecution has made one more attempt to prove that the deceased was lastly seen alive in the company of the appellant-accused. The prosecution has examined P.W.7 Natha Chaugula, who is a liquor shop owner at village Hingangaon. According to him, the appellant-accused had come to his shop at about 2.00 p.m. alongwith one more person and purchased two pouches of country liquor from his shop. The appellant-accused and his friend went to Jakhangaon. He claims to have identified the appellant-accused during the identification parade but the prosecution has neither put him any question as to who was that another person alongwith the appellant-accused, nor shown him the photograph of deceased Pandurang to substantiate its case that deceased Pandurang was the another person who accompanied the appellant-accused to his shop for purchase of country liquor pouches. P.W.7 Natha Chaugula has also admitted in his cross examination that prior to the said incident, the appellant-accused had never come to his shop for purchase of liquor. Thus, evidence of P.W.7 Natha Chaugula is also not helpful for the prosecution. At the most, evidence of P.W.7 Natha Chaugula only indicates that on 16.10.2012 at about 2.00 p.m. the

appellant-accused alongwith one other person had gone to his shop for purchase of two liquor pouches and nothing more than that. So far as identification of the appellant-accused in the identification parade by P.W.7 Natha Chaugula is concerned; the same will be discussed in the later part of the judgment.

c) The prosecution has tried to connect the appellant-accused with the commission of crime on the basis of one more circumstance that is seizure of blood stained clothes of the appellant-accused at his instance. The prosecution has examined P.W.9 Babasaheb Darekar. He has failed to give details of memorandum panchnama Exh.27. He has merely stated that the appellant-accused made a statement to produce the clothes. He has put signature on the memorandum at the instance of police. He has further deposed that they went to one bridge near Kalyan Road. There was a square ahead the bridge and also one gutter. He has further deposed that thereafter, the appellant-accused had produced clothes i.e. a T-shirt and a pant from the gutter. The police seized the same under recovery panchnama Exh.28. P.W.9 Babasaheb Darekar, the panch witness has admitted in his cross-examination that the police was telling the directions to the driver when they were proceeding towards the bridge and at that time he was sitting alongwith the appellant-accused in rear portion of vehicle. He has admitted that Patil Saheb (P.W.16 A.P.I. Milind Patil) told the driver to stop the vehicle near bridge. There was no water in the guttar and only clothes were there.

He has not deposed anything about blood stains on the clothes. P.W.16 A.P.I. Milind Patil, though deposed about seizure of blood stained clothes in presence of the panch witnesses, however, he has also not deposed about the blood stains on the clothes of the appellant-accused. Though the appellant-accused came to be arrested on 02.12.2012 as per the arrest panchnama Exh.62, however, the said memorandum and recovery panchnama shown to have been drawn on 5.12.2012. Furthermore, if P.W.16 A.P.I. Patil was giving directions as to where the clothes were hidden, memorandum and recovery panchnama which came to be drawn in terms of the provisions of Section 27 of the Evidence Act loses its significance. Even though the panch witness, so also the P.W. 16 A.P.I. Milind Patil have not disclosed about the blood stains, however, as per the report of the Chemical Analyzer Exh.73, human blood was found on the full shirt of the appellant-accused. We are not inclined to rely upon this circumstance at all. It appears to us that the investigating officer created this evidence with some oblique motive.

d) So far as the evidence about identification parade is concerned, the prosecution mainly relied upon the evidence of P.W.11 Bhaskar Bhos, the Special Judicial Magistrate. P.W.11 Bhaskar Bhos is not specifically empowered to conduct the identification parade. P.W.3 Vaijanath Kardile and P.W.4 Raosaheb Sonawane both were knowing the appellant-accused as he was

working in their field as a labour for a considerable period. We do not find any reason to conduct the identification parade of the appellant-accused by calling said P.W.3 Vaijanath Kardile and P.W.4 Raosaheb Sonawane.

e) So far as evidence of P.W.7 Natha Chaugula is concerned, the prosecution claims that he has identified the appellant-accused. P.W.7 Natha Chaugula has admitted in his cross-examination that on 16.10.2012 for the first time the appellant-accused had come to his shop for purchase of liquor. He has further deposed that during identification parade the persons who were alongwith the accused were not wearing red shirt. It does mean that the appellant-accused alone wore red shirt. He has further admitted that some persons were having short height and some persons were taller. He has also admitted that some persons in the row were having fair complexion and some of them were having dark complexion. It thus appears that no care was taken while choosing the persons to stand in the row. It is needless to say that the persons standing in the row alongwith the accused must be of same appearance and height as far as possible.

f) We have carefully perused the evidence of P.W.11 Bhaskar Bhos on the point of identification parade. He has not followed the guidelines laid down in the criminal manual for conducting the identification parade. The same is also evident from the identification parade Exh.36.

g) Even assuming that P.W.7 Natha Chaugula has identified the appellant as the person who purchased two pouches of liquor from his shop alongwith some other person, however, the prosecution has failed to establish the identity of the other persons. The prosecution case thus rests upon guess work and conjectures. The prosecution presumed that the said person who accompanied the appellant-accused while purchasing the pouches of liquor was none else but the deceased. The prosecution has failed to establish this circumstance against the appellant-accused.

9. Learned counsel for the appellant-accused has placed reliance on the following two cases for appreciation of circumstantial evidence:-

v) ***Hari Om Alias Hero vs. State of Uttar Pradesh*** reported in (2021) 4 SCC 345

vi) ***Musheer Khan alias Badshah Khan and another vs. State of Madhya Pradesh***, reported in (2010) 2 SCC 748

10. In the case of ***Hari Om Alias Hero vs. State of Uttar Pradesh*** (supra) the Supreme Court has observed that it is well settled that in case of circumstantial evidence, all the incriminating facts and circumstances should be fully established by cogent and reliable evidence and the facts so established must be consistent with the guilt of the accused and should not be capable of being

explained away on any other reasonable hypothesis than that of his guilt. The circumstantial evidence should unmistakably point to one and one conclusion only that the accused person and none other perpetrated the alleged crime. If the circumstances proved in a particular case are not inconsistent with the innocence of the accused and if they are susceptible of any rational explanation, no conviction can lie.

11. In the case of ***Musheer Khan alias Badshah Khan and another vs. State of Madhya Pradesh*** (supra) relied upon by learned counsel for the appellant, the Supreme court has observed that the prosecution must establish a complete chain of circumstances and not the snapped and scattered links. The Supreme Court has also considered the rule of prudence while appreciating the circumstantial evidence.

12. So far as the confession Exh.42 is concerned, it is well settled that the confessional statement is admissible in evidence and it is a relevant fact. However, the court may rely upon it if it is voluntarily made. It may also form the basis of conviction. The confession should not only be voluntary but also should be uninfluenced by any other factor. It is not open to a Magistrate recording the confession to lead the accused as if he is examining a witness. A confession cannot be used against an accused person unless the court is satisfied that it was voluntary.

a) In the instant case, P.W.11 Bhaskar Bhos, the Special Judicial Magistrate, on 15.12.2012 went to District Prison, Ahmednagar for conducting identification parade for which he is not empowered. He has merely acted on the basis of letter Exh.35 dated 14.12.2012 received from Nagar Taluka police station for conducting the identification parade. After completing the said so called identification parade, with quick succession he has proceeded for recording part-I of the confession statement Exh.37 of the appellant-accused. It is to be mentioned here that the said identification parade was conducted in respect of the appellant-accused only and for none else.

b) Exh.37 is part-I of the confession which contains record of questions put by P.W.11 Bhaskar Bhos, Special Judicial Magistrate to the appellant-accused. A great responsibility is thrown on the Magistrate while recording confession and it is not desirable that he should observe the formalities only given in the printed form. He should also observe the spirit and for that purpose he should not be in hurry in starting to record the confession. He should put forward every endeavour to satisfy by fully questioning the accused as to whether he is making the confession voluntarily. P.W.11 Bhaskar Bhos, the Special Judicial Magistrate has admitted in his cross-examination that part-I (Exh.37) of the confession was recorded in format. He was not aware even on 15.12.2012 that the appellant-

accused was going to give confession. P.W.11 Bhaskar Bhos has further stated in his cross-examination that he was having printed proforma of confession. He has also stated in the cross-examination that he has not personally conducted verification of person of accused before recording the confession. He has further stated in cross-examination that in part-I, he has not made a noting that the police from Taluka police station was not present.

c) So far as Part-II of the confession Exh.42 is concerned, though there is paper work indicating that after giving 24 hours to rethink, P.W.11 Bhaskar Bhos, Special Judicial Magistrate has recorded the part II statement of the appellant-accused voluntarily, however, he has accepted in his examination that he has not mentioned in the certificate at the bottom of confession that the statement given by the appellant-accused was true and correct. In the criminal manual, so far as the aspect of recording of confession is concerned, the following three certificates at the bottom of the confession are contemplated.

Certificate I :

“Certified that the above confession was recorded in my presence and hearing and the record contains a full and true account of the statement made by the accused.”

Certificate II :

“I have explained to (Name) that he is not bound to make confession and that, if he does so, any confession

he may make may be used as evidence against him, and I believe that his confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him.”

Certificate III :

“I certify that on the following grounds, I believe that the confession is genuine :

- (i)
- (ii)
- (iii)

I had taken the following precautions to remove the accused from the influence of police:

- (i)
- (ii)
- (iii)

I had given the accused ... hours time for reflection before recording the confession.”

d) P.W.11 Bhaskar Bhos, the Special Judicial Magistrate, has admitted in his cross-examination that he has not issued three certificates required to be given after completing recording of confession. Even he has admitted that in the certificate at the bottom of Exh.42, there is no mention that accused was giving confession in voluntary manner. Even there is no mention that the contents of the confession were read over to the accused and were admitted by him as true and correct. Furthermore, to our surprise, P.W.11 Bhaskar Bhos, Special Judicial Magistrate has accepted in his cross examination that he has not ascertained whether the accused was under pressure except by putting questions.

e) It is well settled that a confession, if voluntary and truthfully made is an efficacious proof of guilt. It is an important piece of evidence. It is necessary to examine whether or not the confession made by the appellant-accused was voluntary, true and trustworthy. These statutory provisions dealing with the recording of confessions, as contained in Section 164 of Cr.P.C. and the guidelines framed by the High Court for recording of confessions, are necessary to be followed while recording the confessional statement. In the instant case, except preparing the record of questions in format put to the appellant-accused, P.W.11 Bhaskar Bhosh admittedly has not carried out any exercise to ascertain himself about the voluntary nature of confession. We are not inclined to use such confession against the appellant-accused. We keep confession Exh.42 entirely out of consideration and as such, the issue about retraction of confession at the later stage loses its significance. Once the confession is kept out of consideration, we find no other connecting evidence against the appellant-accused for his conviction.

13. Learned counsel for the appellant-accused placed reliance on the cases of **Varsha Dadasaheb Amate** (supra), **Dipakbhai Jagdishchandra Patel** (supra), **Haricharan Kurmi & Another** (supra) and **Sarwan Singh s/o Rattan Singh** (supra) on the point of voluntary nature of confession. However, there is no reason to dispute the legal position about voluntary nature of recording of confession in the above cited cases.

14. Learned A.P.P. has relied upon the case **Manoharan vs. State by Inspector of Police** (supra). The Supreme court in para 23 and 24 of the judgment has made following observations:-

“23. In light of the vehement attempt at assailing the confessional statement as being non-voluntary and violative of the right guaranteed under Article 20(3) of the Constitution and in the alternate its reliance for having been retracted by the petitioner, it may be briefly noticed that on a conjoint reading of the confessional scheme comprising of Sections 163, 164 Cr.P.C. and Section 24 IEA as construed in a catena of decisions of this Court, it is obvious that even in the absence of an express provision for retracting a confessional statement once made, the Courts have preferred a rule of prudence whereby in case of retraction, the Court reduces the probative value of such confessional statements and seeks corroborating evidence.

24. Hence, the cornerstone of a valid confession in India is only whether such a statement was made in compliance with statutory provisions which mandate that the same must be before the Magistrate after compliance with certain safeguards meant to ensure voluntariness and lack of coercion by the police. This has been so noted by this Court in Bharat v. State of U.P.

“7. ... Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed a confession, if it

is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true. ..."

15. In para 29 of the judgment, the Supreme Court has observed about the use of retracted confession by referring the view expressed in ***Subramania Goundan v. State of Madras***, reported in AIR 1958 SC 66 as well as by a four-Judge Bench of the Court in ***Pyare Lal Bhargava vs. State of Rajasthan*** reported in AIR 1963 SC 1094. Para 29 of the judgment in ***Manoharan*** (supra) reads as under:-

"29. That apart, even if the confession dated 20.11.2010 were to be treated as being retracted vide letter dated 25.07.2012 (as adopted during examination under Section 313 of the Code), still the original confession can be relied upon. Coupled with corroborating evidence, conviction can also be secured on

the strength of such confession. The rule regarding use of such retracted confessions was noted by this Court in Subramania Goundan v. State of Madras, as well as by a four-Judge Bench of the Court in Pyare Lal Bhargava vs. State of Rajasthan, holding that:

“A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.”

16. In the instant case, we do not find the retracted confession as true and voluntary. Further, the same has not been corroborated in material particulars. The prosecution has failed to prove the case against the appellant-accused beyond reasonable doubt. We have observed in the foregoing paras as to how the prosecution has failed to establish the chain of circumstances.

17. In view of the above, in our considered opinion, the prosecution has failed to prove the case against the appellant-accused beyond reasonable doubt. The prosecution has failed to establish the chain of circumstances. We have observed in the

foregoing paras that, at the most suspicion is created against the appellant-accused, but the said suspicion, however strong it may be, cannot take the form of legal proof. The appellant-accused is thus entitled for benefit of doubt. Hence, we proceed to pass the following order:-

ORDER

- I. Criminal appeal is hereby allowed.
- II. The impugned judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No. 78 of 2013 dated 24.04.2014 thereby convicting the appellant-accused Avdhoot Vithal Ghatе for the offence punishable under Section 302 of I.P.C. and sentencing him to suffer rigorous imprisonment for life is hereby quashed and set aside.
- III. The appellant-accused Avdhoot Vithal Ghatе is hereby acquitted of all the charges. The appellant-accused shall be set at free forthwith, if not required in connection with any other case.
- IV. The appellant-accused Avdhoot Vithal Ghatе shall execute P.B. of Rs.15,000/- with one surety of the like amount to appear before the higher court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this Court. Such bail bonds shall remain in force for a period of six months from the date of its execution.

V. Criminal Appeal is accordingly disposed of.

18. We quantify the legal fees and expenses of the learned counsel Mr. S.B. Jadhav, appointed to represent the cause of the appellant, for Rs.15,000/- (Rupees Fifteen thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

rlj/