

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 390 OF 2021
WITH
INTERIM APPLICATION NO. 1296 OF 2021

1. Deepak Annaraya Metakari
Age : 35, Occu. Agriculture.
2. Ramchandra Mhalappa Petaragi
Age : 40, Occu. Agriculture.
3. Kamalabai Siddhappa Kothe
Age : 32, Occu. Agriculture.
All R/o. Huljanti, Tal. Mangalwedha,
District - Solapur .. Appellants.

Versus

The State of Maharashtra .. Respondent.

-
- Mr. Manoj Mohite, Senior Advocate i/by Mr. Umesh Mankapure
alongwith Ms. Rui Danawala for the Appellant / Applicant.
 - Mr. V.B. Konde-Deshmukh, APP for Respondent - State.
-

**CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 22 DECEMBER, 2021.
PRONOUNCED ON : 10 FEBRUARY, 2022.
(Through Video Conferencing)**

JUDGMENT: (PER MILIND N. JADHAV,J.)

1. This is an Appeal against conviction of the Appellants by the Trial Court. The learned Additional Sessions Judge, Pandharpur, District Solapur, by judgment and order dated 31.01.2021 has

convicted Shri. Deepak Annaraya Metakari (**originally Accused No. 1**), Shri. Ramchandra Mhalappa Petaragi (**originally Accused No. 3**) and Smt. Kamalabai Siddhapa Kothe (**originally Accused No. 4**) of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "**IPC**"). The learned Additional Sessions Judge has sentenced the Appellants to suffer imprisonment for life, to pay a fine of Rs. 5,000.00 each and in default thereof, to undergo imprisonment for one year each.

2. We are informed by the learned Public Prosecutor across the bar that Shri. Birappa Jakraya Jakodari (**originally Accused No. 2**) has expired during the pendency of the trial. As such, the originally Accused Nos. 1, 3 and 4 are arrayed before us as Appellant Nos. 1, 2 and 3 respectively in the present appeal.

3. The Appellants have been convicted for the offence of murder for killing Shri. Siddhapa Dhondappa Kothe (hereinafter referred to as "**the deceased**") in furtherance of their common intention. Appellant No. 1 was acquainted with the deceased and used to cultivate the agricultural land of the deceased. Appellant No. 2 is a friend of Appellant No. 1. Appellant No. 3 was the wife of the deceased.

4. Before we advert to the submissions made by the respective advocates and to the reappraisal of the evidence on record, it will be apposite to refer to the relevant facts of the incident briefly.

4.1. On 26.04.2014, the deceased left his house to visit the nearby Huljanti Village to collect his agricultural dues. However, the deceased did not return to his house at night.

4.2. On 27.04.2014, at around 6.30 AM, Shri. Rayappa Dhondappa Kothe (P.W. 5, brother of the deceased) received a phone call from Shri. Malappa Yedde (P.W. 4, cousin of the deceased), who informed him that the deceased was found dead under an acacia tree in the agricultural land of Shri. Nagappa (a resident of the same village), located on Salgar Road. Rayappa (P.W. 5) immediately rushed to the spot of the incident and saw the body of the deceased, who seemed to have sustained injuries on his right ear and his right eye.

4.3. According to the Prosecution, it was Smt. Sayavva (P.W. 8, mother of the deceased) who first saw the body of the deceased at about 6:00 AM on 27.04.2014 while she was on her way back from her daughter's house. Sayavva, in her statement, has stated that she

had met the deceased on 26.04.2014 (one day prior to the incident), who handed over some documents to her and informed her that he would return in some time. Later on the same day, she had visited her daughter in a neighbouring village. While she was returning from her daughter's house on 27.04.2014 at about 6:00 AM, she saw some person lying under an acacia tree in the agricultural land of Nagappa. She approached the person and saw that it was the dead body of her son, the deceased, and observed that he had sustained injuries to his right eye and his right ear. Sayavva thereafter raised an alarm and people gathered around her.

4.4. At about 9:30 AM on 27.04.2014, a First Information Report (F.I.R.) was lodged by Rayappa (P.W. 5, brother of the deceased). Shri. Sunil Shivaji Chavan (P.W. 9, the Investigating Officer) recorded the complaint lodged by Rayappa and registered an offence against unknown persons.

4.5. The Investigating Officer then prepared a spot and inquest panchanama. Items such as blood-stained soil, a pair of *chappals*, a pouch of tobacco, etc. were seized from the spot of the incident and sent for chemical analysis. The Chemical Analysis report has been marked as Exhibit 57 and 58. Subsequently, a blood-stained stone and the clothes of the Appellant No. 1 (marked as Exhibit 40) were also

seized.

4.6. On 29.04.2014, the statement of Smt. Laxmi (P.W. 3, daughter of the deceased) was recorded during the course of investigation. She states that there was an illicit relationship between Appellant No. 1 and Appellant No. 4 (who was her mother and the wife of the deceased). Insofar as the incident itself is concerned, she states the following:

- i. That she was asleep in the house of the deceased on the night of 26.04.2014;
- ii. That she was awakened at about 11:30 PM on 26.04.2014 owing to the noise caused by a stone that was thrown on the rooftop of the house;
- iii. That she thereafter came out of the house and saw the Appellants and Accused No. 2 sitting and chatting amongst themselves outside;
- iv. That barring the Appellant No. 3, the other Appellants and the Accused No. 2 went away, after which the Appellant No. 4 switched the light off and went to answer nature's call and did not return back for some time;
- v. That she thereafter went back inside the house and went back to sleep till about 4:00 AM, where she woke up due

to some disturbance and asked Appellant No. 3 as to the time. She realized that her child was crying, so she took the child outside the house and slept it in the verandah until 6:00 AM;

- vi. That at 6:00 AM, she was awakened by the wailing of her grandmother (Savayya, P.W. 8, mother of the deceased and mother-in-law of the Appellant No. 3), who had just seen the body of the deceased at the time;

4.7. The statements of Shri. Siddhappa Kothe @ Bopanna Sagar (P.W. 6, brother of Smt. Laxmi and son of the deceased and Appellant No. 4) and Shri. Malappa Yedde (P.W. 4, cousin of the deceased) were also recorded during investigation.

4.8. The Investigating Officer concluded that the Appellants had hatched a conspiracy to eliminate the deceased owing to the illicit relationship between Appellant No. 1 (wife of the deceased) and Appellant No. 3.

4.9. On 27.07.2014, a chargesheet against the Appellants was filed in the Court of the Judicial Magistrate, First Class, Pandharpur. As the offence was punishable under Section 302 IPC and exclusively triable by the Court of Sessions, the learned Judicial Magistrate committed the case to the Court of Sessions under the provisions of

Section 209 of the Code of Criminal Procedure, 1973 (for short, “CrPC”). Charges were framed against the Appellants and the Accused No. 2, and were read out and explained to them in vernacular language. All four of them denied their complicity in the offence by a total denial, and stated that a false case was lodged against them.

5. No witnesses were produced by the Defence before the Trial Court. The Prosecution examined in all nine witnesses in support of its case:

- i. P.W. 1 is Shri. Govind Bhorakade and P.W. 2 is Shri. Samadhan Siddheshwar Gopalkar. Both of them are pancha witnesses;
- ii. P.W. 3 is Laxmi, who is the daughter of the deceased and the Appellant No. 3;
- iii. P.W. 4 is Malappa, who is the cousin of the deceased and had at about 6:00 AM on the date of the incident informed the brother of the deceased that the deceased was found dead under an acacia tree in the agricultural land of Shri. Nagappa;
- iv. P.W. 5 is Rayappa, who is the brother of the deceased and also the first informant in the present case;
- v. P.W. 6 is Bopanna, who is the son of the deceased and the Appellant No. 4 and the brother of Laxmi (P.W. 3);

- vi. P.W. 7 is Dr. Shrinivas Hari Kurulkar, who is the doctor who performed the autopsy of the body of the deceased;
- vii. P.W. 8 is Sayavva, mother of the deceased;
- viii. P.W. 9 is the Investigating Officer.

6. Shri. Manoj Mohite, learned Senior Advocate along with Ms. Rui Danawala, learned Advocate, appearing on behalf of the Appellants, submit that the impugned judgement and order suffers from grave infirmity as it convicts the Appellants of the offence punishable under Section 302 notwithstanding the fact that the chain of causation in the present case has not been established beyond reasonable doubt. Additionally, they submit that the entire case of the Prosecution is based entirely on circumstantial evidence as there was no eyewitness to the incident. They further submit that:

- i. the Trial Court's reliance solely on the evidence of Malappa (P.W. 4) – who is claimed to have seen the Appellants standing with weapons near a body lying on the ground in the light of his motorcycle's head lamp between 11:00 PM and 11: 15 PM on 26.04.2014 – is erroneous and is in contravention to well-settled principles of appreciation of circumstantial evidence;
- ii. the finding of the Trial Court upon the evidence given by Laxmi (P.W. 3) to the effect that the Appellants necessarily must have killed the deceased owing to the illicit relationship

between Appellant No. 1 and Appellant No. 4 is based on conjectures and surmises;

- iii. the Appellants have no criminal antecedents whatsoever;
- iv. Malappa (P.W. 4), despite having been claimed to have seen the Appellants at 11.15 PM on 26.04.2014 and having knowledge of the fact that the body of the deceased was at the incident site did not file an F.I.R. / complaint or report the incident to the police. Furthermore, the statement of Malappa (P.W. 4) was recorded two-and-a-half months after the incident, without there being any reason ascribed for such delay;
- v. despite the fact that Sayavva (P.W. 6) has been claimed to have been the first to see the body of the deceased, her statement was not recorded at the time of the lodging of the F.I.R.;
- vi. seven out of the nine prosecution witnesses are family members of the deceased, which makes them interested witnesses, especially because of the illicit relationship that Appellant No. 3 (wife of the deceased) had with the Appellant No. 1;
- vii. the theory of the illicit relationship between Appellant No. 3 (wife of the deceased) and Appellant No. 1 has been accepted by the Trial Court solely based on the evidence

given by Laxmi (P.W. 3, daughter of the deceased and Appellant No. 3) despite the fact that Laxmi was prejudiced against the Appellant No. 3 owing to Appellant No. 3's opposition to Laxmi's marriage with her husband as also her opposition to Laxmi visiting her natal house after marriage;

- viii. even though Dr. Shrinivas Hari Kurulkar (P.W. 7) has opined in his evidence that the injuries observed on the body of the deceased were not caused with a sharp object and could be sustained due to an accident also, the Trial Court has come to a conclusion that the death of the deceased did not occur due to an accident;
- ix. Malappa (P.W. 4) while giving evidence states that he had seen two of the accused with a weapon (sickle / sattur) and the other two accused holding a big stone in their hands between 11:00 PM and 11:15 PM on 26.04.2014. However, the said weapons have not been recovered by the Investigating Officer;
- x. owing to the above, both the motive of the Appellants vis-à-vis the theory of the illicit relationship and the actual act of killing the deceased, as well as the link between the two has not been established beyond reasonable doubt.

7. *PER CONTRA*, Shri. V. B. Konde Deshmukh, Assistant Public Prosecutor appearing on behalf of the Respondent-State, supports the

impugned judgement and order and submits that the same has been passed after establishing the chain of circumstances leading up to the death of the deceased beyond reasonable doubt. He submits that:

- i. the motive of the Appellants to commit the crime has been sufficiently established vis-à-vis the theory of the illicit relationship between the Appellant No. 3 and Appellant No. 1. For this purpose, he strongly relies on the evidence given by Laxmi (P.W. 3, daughter of the deceased and the Appellant No. 3), which he asserts is sufficiently corroborated by the evidence given by Bopanna (P.W. 6, brother of the deceased and the Appellant No. 3);
- ii. it has been sufficiently established that the Appellants have killed the deceased owing to the evidence given by Malappa (P.W. 4), who saw the four accused in the night of 26.04.2014 between 11:00 PM and 11:15 PM standing next to a person lying on the ground, which was the same spot where the body of the deceased was found the next morning on 27.04.2014;
- iii. the Appellant No. 3 had raised an alarm at around 6:30 AM on 27.04.2014 and started crying even before she was informed that the body found in the field by Sayavva (P.W. 6, mother of the deceased) was that of the deceased. He submits that this behaviour raises a clear suspicion on the

Appellant No. 3 as to her complicity in the crime.

8. We have perused all the evidence available on record with the help of the learned Senior Advocate appearing on behalf of the Appellants and the Assistant Public Prosecutor appearing on behalf of the Respondent-State and have considered their submissions.

9. We shall now outline and scrutinize the evidence given by the key prosecution witnesses to determine whether the culpability of the Appellants has been proved beyond reasonable doubt in the present case.

10. Shri. Govind Bhorkade (P.W. 1) and Shri. Samadhan Siddheshwar Gopalkar (P.W. 2) are the witnesses to the spot and inquest panchanama that was carried out at about 10:45 AM on 27.04.2014. Both have deposed of the items recovered from the spot of the incident. P.W. 2 has admitted that he is a habitual pancha and has been a pancha in seven to eight cases. The evidence given by P.W. 1 and P.W. 2 does not throw any light upon the culpability of the Appellants.

11. At this juncture, we may state that there are three distinct circumstances upon which the Prosecution makes out its case against the Appellants. We shall here onwards consider the evidence given by

the prosecution witnesses in conjunction with these circumstances.

The three circumstances are as follows:

- i. The Appellant No. 3 (wife of the deceased) and the Appellant No. 1 were in an illicit relationship and the same serves as a strong motive for the Appellants to commit the crime. For the sake of convenience, we shall refer to this as the **“illicit relationship / motive theory.”**
- ii. Malappa (P.W. 4, cousin of the deceased) (i) having seen the Appellants and the Accused No. 2 at the spot of the incident on 26.04.2014 between 11:00 PM and 11:15 PM; (ii) having seen that they were carrying weapons such as sickes (sattur) and big stones in their hands and were standing next to a person lying on the ground; and, (iii) Informing Rayappa (P.W. 5, brother of the deceased) about the presence of the dead body at 6:30 AM on 27.04.2014. For the sake of convenience, we shall refer to this as **“Malappa’s version of events.”**
- iii. The Appellant No. 3 had prior knowledge about the death of the deceased owing to the fact that she had started crying in her house 500 meters away from the spot of the incident even though nobody had informed

her that the deceased was dead. For the sake of convenience, we shall refer to this as the “**prior knowledge theory.**”

12. We shall first consider the evidence led by the Prosecution in support of its illicit relationship / motive theory, and gauge whether the motive of the Appellants has been established to the hilt.

12.1. It is the Prosecution’s case that Laxmi (P.W. 3, daughter of the deceased and the Appellant No. 3) has deposed about the illicit relationship between Appellant No. 3 and Appellant No. 1. She has also deposed that the deceased knew and disapproved of this illicit relationship. The Prosecution has also asserted that the evidence given by P.W.3 has been sufficiently corroborated by Bopanna (P.W. 6, son of the deceased and the Appellant No. 3).

12.2. The Trial Court has accepted the aforementioned contentions of the Prosecution and has relied upon several instances in support of the same, *inter alia*, that the Appellant No. 4 had left the house of the deceased owing to the dispute caused due to the Appellant No. 4’s illicit relationship with Appellant No. 1 and had returned to her natal home. She had returned only at the time of Laxmi (P.W. 3)’s marriage. Based on this, the Trial Court accepted the Prosecution’s illicit relationship / motive theory.

12.3. It is pertinent to note that in her examination-in-chief, Laxmi (P.W. 3, daughter of the deceased and the Appellant No. 3) states that her father had lodged a complaint against the Appellant No. 1 (the illicit partner of Appellant No. 3) with the Mangalwedha Police Station. However, she states that she has not documentary evidence in this regard. She states that there were several disputes between her parents because of the aforesaid issue. Paragraph 13 of her cross-examination is relevant and has been reproduced below:

"13. I am educated up to 7th Std. I myself have not complained in writing to the police about illicit relation of my mother and the accused Deepak. Even I have not issued any notice though an Advocate. My father owned 5 acres of agricultural land. It was dry land. I do not have any documentary evidence to show that, my father had let the agricultural land on share to accused Deepak. I do not have documentary evidence about the complaint lodged by my father against the accused Deepak with Mangalwedha Police Station."

12.4. Bopanna (P.W. 6, son of the deceased and the Appellant No. 3) has deposed that the Appellant No. 1 was cultivating the land of the deceased on lease and often used to come to their house and chat with the Appellant No. 3 (wife of the deceased). He states that on one day the deceased had noticed them chatting and had a dispute with the Appellant No. 1. However, in his cross-examination, P.W. 6 has also stated that the deceased had not issued any notice or lodged any complaint against the Appellant No. 1 in respect of the said dispute.

12.5. We are afraid that we are unable to concur with the findings of the Trial Court pertaining to the illicit relationship / motive theory for the following reasons:

- i. The illicit relationship / motive theory cannot be established solely based on the evidence given by Laxmi (P.W. 3, daughter of the deceased and the Appellant No. 3), especially because it has been brought on record that there was animosity between Laxmi (P.W. 3) and the Appellant No. 3 owing to Appellant No. 3's opposition to Laxmi (P.W. 3)'s marriage with Shri. Annaso Masal;
- ii. Laxmi (P.W. 3) also stated that her grandmother Sayavva (P.W. 8, mother of the deceased) also knew of the illicit relationship between the Appellant No. 3 and Appellant No. 1. However, no direct evidence about the same has been given by them. All that Sayavva (P.W. 8) has stated is that the Appellant No. 1 had provided a mobile phone to the Appellant No. 3 five years prior to the incident which was destroyed by her. In her cross-examination, P.W. 8 states that she had not lodged any complaint with the police in respect of the illicit relationship;
- iii. We may state that the Appellant No. 1's visitations to the deceased's house cannot be deemed unusual owing to the fact that the Appellant No. 1 was admittedly cultivating

the land of the deceased;

- iv. To establish the illicit relationship / motive theory, strong factual evidence in the nature of complaints or incidents should have been brought on record by the Prosecution, which has not been done in the present case;
- v. The Prosecution has also not led any direct factual evidence that demonstrates that the Appellant No. 1 and the Appellant No. 3 were in an illicit relationship. The instances relied upon by the Trial Court to establish the existence of the illicit relationship between the Appellant No. 1 and Appellant No. 3 is circumstantial at best;
- vi. It is important to highlight that the evidence of Laxmi (P.W. 3) has been recorded by the Trial Court almost five years after the incident.
- vii. In view of the above, the illicit relationship / motive theory propounded by the Prosecution and accepted by the Trial Court cannot be said have been established beyond reasonable doubt and thus falls to the ground.

13. We shall now consider the veracity of Malappa (P.W. 4)'s version of events, which is the second circumstance that the Prosecution has heavily relied on in support of its case. Malappa (P.W. 4) has been claimed by the Prosecution to be an eyewitness to the incident.

13.1. It is pertinent to note that though Malappa (P.W. 13) in his examination-in-chief deposed that he had seen the Appellants and the Accused No. 2 at the spot of the incident, he has not identified the person lying on the ground. That being the case, it is not known as to how Malappa (P.W. 4) had the knowledge that the person lying on the ground was the deceased so as to inform Rayappa (P.W. 5, brother of the deceased) at 6:30 AM on 27.04.2014 of the presence of the deceased's body in the agricultural land. This contradiction is extremely critical in respect of Mallappa's evidence.

13.2. It has come on record that when Malappa (P.W. 4) purportedly saw the Appellants and the Accused No. 2 at the spot of the incident, he was not alone. He was on his motorcycle along with one Shri. Madhukar. Malappa has deposed he, along with Madhukar, witnessed the presence of the Appellants and the Accused No. 2 at the spot of the incident *"in the light of headlamp of motorcycle."* Despite this, neither Madhukar's statement and evidence been recorded by the Investigating Officer nor has the Prosecution examined him so as to corroborate the evidence of Malappa (P.W. 4).

13.3. In Paragraph 4 of his examination-in-chief, Malappa (P.W. 4) has stated that he came to know that Siddhappa (the deceased) was dead at 9:00 AM on 27.04.2014. Contrary to this, the Rayappa (P.W.

5, brother of the deceased) in his complaint to the police (annexed at page no. 92 of the Appeal Paperbook) states that he was informed by P.W. 4 of the presence of the body of the deceased at the spot of the incident at 6:30 AM on 27.04.2014. An expert from Paragraph 4 of P.W. 4's examination-in-chief reads as under:

“4.In the next day morning at about 9:00 a.m., I came to know that, Siddhappa was dead. Hence, I stated to Rayappa about the persons to whom I had seen in the last night.....”

13.4. In view of the above, we may state that there is a glaring inconsistency in the evidence given by Malappa (P.W. 4). If it is true that at 6:30 AM on 27.04.2014, P.W. 4 had knowledge that the person he had witnessed lying on the ground on the preceding night was in fact the deceased, then there was no reason for P.W. 4 to not have informed Rayappa (P.W. 5, brother of the deceased) or the police authorities of the incident on the preceding night itself.

13.5. We are of the considered opinion that the very presence of Malappa (P.W. 4) at the spot of the incident in the night of 26.04.2014 has not been established adequately. A perusal of P.W. 4's cross-examination by the defence raises a serious doubt as to his presence near the spot of the incident in the night of 26.04.2014. In P.W. 4's cross-examination, several questions are put to him pertaining to his presence on Salgar Road on the night of 26.04.2014. P.W. 4 is

asked to give evidence of specific facts deposed by him to prove his presence near the spot of the incident at the time. The answers given by P.W. 4 in this regard do not inspire confidence of this Court.

Paragraph 8 of his cross-examination is reproduced as under:

"8. I cannot state the number of the tractor of Madhukar. That tractor was of Arjun Mahindra Make. I did not obtain receipt of purchase of diesel from the pump. Police recorded my statement as I stated. I had stated to the police that, Kamalabai and Birappa were having stones in their hands. I had stated to the police that, seeing those things I was frightened. I had also stated to the police that, the road from Nagappa's land is my usual road. I had stated to the police that, due to fear, I did not talk about the incident to any one I had also stated to Police that, I had stated to Rayappa about what I had seen. I cannot assign any reason for absence of mention of myself being frightened. I cannot assign any reason why it is not so mentioned in my statement that due to fear I did not state the incident to anyone."

13.6. Even if Malappa (P.W. 4) was present near the spot of the incident and saw the Appellants and the Accused No. 2 with weapons, one thing that is clearly borne out from the evidence given by him is that he has not seen the Appellants and the Accused No. 2 committing the act of killing the deceased. As such, P.W. 4 in any case cannot be deemed to be an eyewitness to the incident as claimed by the Prosecution.

13.7. It is important to highlight that the evidence of Malappa (P.W. 4) has been recorded by the Trial Court almost five years after the incident.

13.8. In view of the above, Malappa's version of events, which has come to be relied upon heavily both by the Prosecution in its case against the Appellants and the Trial Court in its findings is demonstrably unreliable.

13.9. A tangential observation arising from the deposition of Malappa (P.W. 4) is that though P.W. 4 deposed that he had seen the assailants carrying weapons such as sickles and big stones, no weapons whatsoever have been recovered by the Investigating Officer in the present case.

14. We shall now weigh the evidentiary value of the third circumstance that the Prosecution has relied upon i.e., the prior knowledge theory, to make out its case against the Appellants.

14.1. The Prosecution's case is that in the morning of 27.04.2014, Laxmi (P.W. 3, daughter of the deceased and the Appellant No. 4) and the Appellant No. 3 were both present in their house 500 meters away from the spot of the incident. At 6:30 AM, both heard the wailing of Sayavva (P.W. 8, mother of the deceased) upon which the Appellant No. 4 asked P.W. 3 and Bopanna (P.W. 6, son of the deceased and the Appellant No. 4) to go and find out the reason for the same.

14.2. Laxmi (P.W. 3), in Paragraph 9 of her examination-in-chief, has deposed that before Bopanna (P.W. 6) could even reach the spot of the incident and find out what had transpired, the Appellant No. 3 started shouting and crying, and started running towards the spot of the incident. On the basis of this, the Prosecution has asserted that the Appellant No. 3 had prior knowledge about the killing of the deceased. The Trial Court accepted this submission made by the Prosecution and has relied on it heavily in its findings.

14.3. We are of the firm opinion that it cannot be accepted that the Appellant No. 3 had prior knowledge about the killing of the deceased merely on the basis of the deposition by Laxmi (P.W. 3). It cannot be concluded that the crying and wailing of the Appellant No. 3 upon hearing that of her mother-in-law, Sayavva (P.W. 8) is a strong and overwhelming circumstance which demonstrates without a doubt that the Appellant No. 3 had prior knowledge about the incident. For any prudent person who hears the crying and wailing of a family member, it is natural for them to have a degree of anxiousness while going / running towards the family member. It may very well be that the person may start shouting to draw the attention of others towards the family member.

14.4. In view of the above, the prior knowledge theory propounded by the Prosecution cannot be ascribed a great degree of importance in determining the culpability of the Appellants.

15. Although we have discussed the key items of evidence that the Prosecution relies upon at length, there is another item of evidence on record that deserves the consideration of this Court i.e., the evidence given by Dr. Shrinivas Hari Kurulkar (P.W. 7), the Medical Superintendent who performed the autopsy of the body of the deceased. The Post-Mortem report is at page no. 108 of the Appeal Paperbook.

15.1. Although several injuries have been mentioned against column nos. 16, 17 and 18 of the post-mortem report, P.W. 7 has confirmed two important facts in his cross-examination. Paragraph 10 of his cross-examination is relevant and has been reproduced below:

"10. It is true to say that, in P.M. report Exh.61 for entries at Sr. Nos. 16, 17 and 18, there is different shade of inks. It is true to say that, it appear that, two different pens are used to fill in those entries. It is true to say that, at Sr. No. 17, about two injuries Nos. 3 and 4, I have not mentioned bone deep. Injuries mentioned at Sr. No. 19 are internal injuries. It is not true to say that, without opening I examined those injuries."

15.2. We have perused the Post-Mortem report and it *prima facie* appears that two different pens have been used for filling in the most important entries in column nos. 16 to 18 i.e., those pertaining to the wounds and injuries caused on the body of the deceased. P.W. 7 has not stated any reason for such tampering save and except stating that two different pens have been used to fill in those entries.

15.3. Paragraph 11 of P.W. 7's cross-examination is most relevant and is reproduced as under:

"11. It is true to say that, all the injuries mentioned in P.M. report Exh. 61 are even possible to be caused in any accident....."

15.4. In all the evidence given by P.W. 7, it has not been mentioned that the injuries to the deceased have been caused due to sharp weapons, much less by a sickle (sattur). In light of the evidence given by P.W. 7, one of the theories put forth by the Defence before the Trial Court was the that of the deceased meeting with an accident on Salgar Road. The Trial Court, however, on the basis of circumstantial evidence read with the deposition of Malappa (P.W. 4), has ruled out the aforesaid theory. In our considered opinion, one cannot brush aside the evidence given by P.W. 7, which is in the nature of expert medical evidence given after examining the body of the deceased within twenty-four hours of the incident. Reliance must

be placed on the evidence given by P.W. 7 in Paragraph 11 of his cross-examination unless it is proved beyond reasonable doubt that the injuries to the deceased were caused in a different manner.

16. On marshalling and reappraising the evidence on record, we are of the firm opinion that the chain of circumstances leading up to the killing of the deceased demonstrably have not been established beyond all reasonable doubt. We have considered and scrutinized each circumstance relied upon by the Prosecution to make out its case against the Appellants. However, there are significant shortcomings in the evidence led by the Prosecution to substantiate each of these circumstances. That apart, attempting to link these flawed circumstances so as to establish a chain of circumstances would demonstrably be an exercise in conjectures and surmises, as is the case with the judgement rendered by the Trial Court.

17. Section 386 of the CrPC defines the powers of an appellate court in dealing with appeals. Section 386 reads thus:

“386. Powers of the Appellate Court.— After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may

be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

17.1. Under Section 386 (b) (i), the power of an appellate court in an appeal from conviction, with which we are concerned in the present case, is stated. It states that in an appeal from conviction, an appellate court can reverse the finding and sentence of the trial court

and acquit or discharge the accused or order him to be re-tried. In view of our detailed findings alluded to hereinabove, we do not have the slightest doubt that the findings and sentence of the Trial Court is unsustainable.

18. For the aforesaid reasons, we allow the appeal and set aside the impugned judgement and order dated 31.01.2021 passed by the learned Additional Sessions Judge, Pandharpur, District Solapur. The findings and the sentence of the Trial Court convicting the Appellants of the offence under Section 302 IPC read with Section 34 IPC is reversed and the Appellants stand acquitted and discharged. The Appellants shall be released forthwith unless required in any other case / cases.

19. Criminal Appeal No. 390 of 2021 stands disposed of in the above terms. In view thereof, Interim Application No. 1296 of 2021 for bail is rendered infructuous and stands disposed of.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]