

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 02 OF 2016

Sudam s/o Pandurang Sabale ... **Appellant**
 Age 36 years, Occu: Agriculture
 R/o Village Karajgaon Tq. Chalisgaon
 District Jalgaon (At present- Nashik Road
 Central Prison, Nashik)

VERSUS

The State of Maharashtra,
Through the Chalisgaon Police Station
District Jalgaon (CR No.284/2012)

... Respondent

Mr. Govind Kulkarni and Mr. S.V. Deshmukh, Advocates for appellant,
Mr. A. M. Phule, APP for respondent-State
Mr. D. B. Thoke, Advocate assists to P.P.

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 28.03.2023

PRONOUNCED ON : 26.04.2023

JUDGMENT (Per Y. G. Khobragade, J.):

1. The present appeal under section 374 of the Criminal Procedure Code is filed by the appellant/convict against the judgment and order dated 07.11.2015 passed by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.256 of 2012, whereby the present appellant- accused is convicted for the offence punishable under sections 302 and 447 of the Indian Penal Code in Crime No. 284 of 2012 registered with Chalisgaon Police Station on 29.08.2012.

2. In nutshell, the prosecution story is that, the informant Manoj Sharad Sabale lodged a FIR with Chalisgaon Police Station on 28.08.2012 stating that, his father Sharad Avadaji Sabale, Pandurang Avadaji Sabale and Anandrao Avadaji Sabale are real brothers. During life time of their father Avadaji Balaji Sable, their ancestral fields situated at village Sindi and Karajgaon Shivars were partitioned between his father and uncles. Agricultural land situated at Karajgaon Shivar was given to Padurang in the said partition. His grandfather Shri Avadaji died on 26.06.1996, but since then his uncle Pandurang has started claiming share in agricultural field Gat No. 126 situated at Sindi Shivar. There were frequent quarrels between them on the point. Informant's father - deceased Sharad Sable had gone to his field Gat No. 126 situated at Sindi on his bullock-cart, at about 11.30 a.m., on 29.08.2012. His sister Sadhana informed him that the accused persons have assaulted their father with sticks, iron rod in the field and his father has been brought in bullock-cart by his cousin Prakash Kashinath Sanap. At that time his father was not in position to talk and there were injuries on the person of his father, hence, he took his injured father to Deore Hospital, Chalisgaon. After reaching the hospital, his father was declared dead. Matter was informed to police and informant lodged First Information Report. After conducting inquest panchanama Exh.49, the body of his father was sent for autopsy to Sub District Hospital, Chalisgaon. On the basis FIR, Crime No.286 of 2012 was registered against the accused persons for the offences punishable under section 302, 447 read with section 34 of the Indian Penal Code with Chalisgaon Police Station.

3. The investigating officer recorded supplementary statement of the informant Manoj Sabale, wherein he disclosed that on the day of incident, accused Pandurang Sable was riding bullock-cart on which his father was brought in sleeping condition and the accused Pandurang asked Prakash Sanap to take deceased Sharad in bullock-cart to his house. At that time, accused Sudam was following bullock-cart on his motorcycle. According to the informant, he came to know from Prakash Sanap (PW-5) that his father Sharad had disclosed to Prakash Sanap that the accused persons had assaulted him.

4. PW-11 PSI Shri K.S. Khambat, the investigating officer, had arrested accused No. 1 Pandurang Avadaji Sable, accused No. 2 Sudam Pandurang Sabale and accused No. 3 Sumanbai Pandurang Sable under separate arrest memos and recorded the statements of witnesses. Investigating officer visited the spot of incident i.e. field Gat no. 126 at Karajgaon Shivar and drawn the spot panchanama Exh.57 on 30.08.2012. He had seized motorcycle of accused under panchanama Exh.110. On the basis of memorandum statement of accused No.2 Sudam, two sticks were recovered under seizure panchanama Exh. 93 and Exh.94, so also, iron rod seized under seizure panchanama Exh. 96 at the instance of accused No.4 Punjaram Pandurang Sable. During the course of investigation, the investigating officer had collected postmortem report of deceased (Exh. 68) and certified copies of judgments in previous criminal cases between the deceased and the accused persons as well as CDR regarding phone calls. He had sent the seized articles for chemicals analysis and obtained opinion of medical officer Exh. 120. On completion of investigation, charge sheet was filed against the accused persons before the learned Judicial Magistrate First

Class, Chalisgaon. On compliance of section 207 of Cr.PC., the learned Judicial Magistrate, passed order under section 209 of Cr.PC. and committed the case to the Court of Sessions.

5. Learned trial court framed charge at Exh. 9 on 11.11.2014 against the accused persons for the offence punishable under sections 302, 447 read with section 34 of IPC and plea of the accused was recorded. The accused pleaded not guilty and claimed for trial.

6. In order to prove the charge, the prosecution has examined following witnesses:

Name of Witnesses		Exh. No.
PW-1	Gangadhar Ravji Nagar, Panch witness to inquest panchanama Exh.49	Exh. 48
PW-2	Balu Walmik Darade, Panch to the Spot Panchanama Exh 57	Exh. 56
PW-3	Dr. Sachin Nanasaheb Kumawar, on postmortem report Exh .68	Exh 67
PW-4	Manoj Sharad Sable -informant, proved FIR Exh. 83 and oral report Exh. 82	Exh. 81
PW-5	Prakash Kashinath Sanap	Exh. 90
PW-6	Dinesh Ukhaji Kale to prove memorandum panchanama Exh. 93, seizure Panchanama of two sticks Ex. 94, Article B and C, Seizure, Memorandum Exh. 95 Seizure Panchanama of Iron rod Exh. 96,	Exh. 92
PW-7	Madhav Bakaji Ippar	Exh. 101

PW-8	Pravin Rajaram Lodhe	Exh. 107
PW-9	Investigating Officer Kailash Khambhat	Exh. 109

7. Besides oral evidence, the prosecution proved documentary evidence including Inquest Panchanama Exh. 49, Spot Panchanama Exh. 57, Postmortem report Exh. 68, Memorandum Exh. 93, Seizure panchanama Exh.94, Memorandum and seizure panchanama of iron rod Panchanama Exh. 95 and Exh. 96, oral report Exh. 82, FIR Exh. 83, station diary entry Exh. 111,111A, 112 and 112A, letter to C.A. by Police Station Exh. 118 and request letter for opinion Exh. 119, medical expert's opinion Exh. 120, CA report Exh. 122 and other documents.

8. After conclusion of trial, the learned trial court recorded statement of accused under section 313 of Cr.PC. The defence of the accused of total denial and their false implication in crime. After hearing both sides, the learned trial court passed the judgment and order on 07.11.2015, and convicted accused No.2/appellant for the offence punishable under section 302 and 447 of IPC and sentenced him to suffer life imprisonment and to pay fine of Rs.10,000/- for offence punishable under section 302 and simple imprisonment of three months for offence under section 447 of IPC. However, the learned trial court acquitted accused Nos. 3 Sumanbai and accused No. 4 Punjaram. Since the accused No.1 Pandurang Sabale died after recording of evidence but prior to recording of statement under section 313 of Cr.PC., the trial against accused No.1 was abated. Therefore, present appeal filed by the appellant/accused No.2 challenging his conviction.

9. Mr. Govind Kulkarni, learned Advocate appearing for the appellant accused submitted that, to prove homicidal death of deceased Sharad Sable, the prosecution examined PW-3 Dr. Sachin Kumawat, however, he has admitted about not mentioning age of injuries in column No. 17 of postmortem report Exh. 68. He had not found any bleeding injury on the dead body of deceased Sharad and no fracture was noticed while conducting postmortem. So also, PW-3 did not mention the presence or absence of inflammation. PW-3 stated that cerebellum is main part of brain and cerebrum is a small brain to the back side of main brain. However, PW-3 has not mentioned in Exh. 68 whether the hemorrhage in cerebellum or cerebrum though it was necessary. Therefore, as per testimony of PW-3 Dr. Sachin, though seven injuries were found on the dead body of deceased Sharad but as per the opinion of PW-3, cause of death of deceased was due to cardio respiratory failure. PW-3 Dr. Sachin did not mention damage to vagus nerve in postmortem report. Further, though the PW-3 conducted postmortem report on 30.08.2012, but he mentioned date 29.08.2012, hence, the prosecution failed to prove the homicidal death of the deceased Sharad. Therefore, the learned trial court ought to have held that, the prosecution failed to prove homicidal death of deceased Sharad and accused No.2/appellant could have been acquitted.

10. The learned counsel appearing for the appellant further canvassed that, the learned trial judge ought not to have convicted the appellant on the basis of evidence laid by the prosecution, as he had acquitted accused Nos. 3 and 4 holding that the same evidence has not proved their guilt. There is no cogent and trustworthy evidence to hold that the appellant is guilty of the offence, however, the learned trial

judge passed the impugned judgment and order without considering evidence in positive manner and overlooked the omissions, contradictions, which are certainly fatal to the prosecution case and the appellant - accused is entitled for acquittal.

11. Learned counsel appearing for the appellant further canvassed that deceased Sharad Avadaji Sabale was younger brother of the appellant's father and some civil dispute on account of share in field Gat No. 126 of Sindi Shivar was going on. On that score, the appellant has been falsely implicated. It was ignored that the appellant was helping his uncle- deceased because on the day of incident, the deceased was found in unconscious state on the bandh of Gat No. 126. Further, the learned trial court ought not to have considered the testimony of PW-5 Prakash Sanap, as his testimony suffers from several contradictions, omissions and exaggerations. Learned trial court wrongly relied upon the testimony of prosecution witnesses and held the accused guilty. The impugned judgment and order is perverse, illegal and bad in law, hence, learned Advocate for appellant has prayed for quashing and setting aside the same.

12. On the other hand, the learned Mr. A. M. Phule, the APP supported the findings recorded by the learned trial judge and submitted that PW-5 Prakash Sanap is the son of sister of deceased Sharad as well as aunt of the present appellant/ accused and he is independent witness. He is related to both and there was no reason for him to implicate accused. The PW-5 deposed that, when he was returning towards his house from his filed, at about 11.30 a.m. on 29.08.2012, he saw Sharad while proceedings towards field by bullock-cart. Later on, when PW-5 was working in his filed, he saw accused no.1

Pandurang coming from the field in bullock-cart. Accused No. 2 Sudam was following that bullock-cart on his motorcycle and when the said bullock-cart reached near the corner of field of PW-5, he found the deceased Sharad was lying in bullock-cart. Therefore, he inquired with accused No.1 Pandurang as to what has happened to Sharad and accused No.1 Pandurang replied him that there is snake bite to Sharad and asked him to take Sharad with bullock-cart at his house. Thereafter, accused No.1 Pandurang proceeded on motorcycle of his son and left for his house.

13. Learned APP further submitted that, as per testimony of PW-8 Pravin Rajaram Lodhe, he, and one Madhav Bakaji Ippar were searching fodder at about 10.30 a.m. on 29.08.2012. They reached near the spot of incident and at that time, they heard hue and cry, hence, he and Madhav visited the spot and found that accused No.1 Pandurang Sabale, accused No.2 Sudam Sabale, accused No.3 Sumanbai and accused No.4 Punjaram Sabale were assaulting the Sharad by means of sticks and iron rod and Sharad was laying on the ground in prone position. When accused persons saw them, they proceeded towards him and threatened to do the same thing with him and Madhav, if they disclose the incident to anyone. Though the defence conducted cross examination of these witnesses but nothing has been solicited to discard the testimony of the prosecution witnesses.

14. The learned APP further canvassed that testimony of PW-3 Dr.Sachin Kumawat conducted autopsy on dead body of Sharad Sable would show that the probable cause of death of deceased is “due to cardio respiratory failure due to injuries on vital organ i.e. brain”. Accordingly, PW-3 issued postmortem report Exh. 68. Therefore,

injuries sustained by deceased on vital part were sufficient to cause death in ordinary course. It is homicidal and the appellant accused is the author of the injuries described in postmortem report Exh. 68. Therefore, findings recorded by the learned trial Court are based on evidence and no interference is called for to disturb the same, hence, prayed for dismissal of the appeal.

15. In order to prove the homicidal death of deceased Sharad Avadaji Sabale, the prosecution examined PW-3, Medical Officer Dr.Sachin Kumawat at Exh.67. The PW-3 has deposed that, he conducted autopsy on dead body of Sharad Sabale on 30.08.2012, and found following injuries:

(1) There was swelling at occipital region of head of size 4 cm x 2 cm horizontally noted.

(2) Contusion at back of neck 3 in nos. of size 5 cm. x 2 cms reddish black in colour.

(3) Superficial abrasion at back of right side ear.

(4) Contusion at right side shoulder with arm of the size 5 cms x 2 cms. reddish black in colour.

(5) Contusionat left side shoulder with arm of the size 6 cms x 2 cms each reddish black in colour.

(6) contusion at middle part of thigh of the size 12 cms x 2 cms right side and 10 cms x 6 cms at left side of the thigh reddish black in colour noted.

(7) Contusion at left side buttock of the size 6 cms x 2 cms reddish black in colour.

On internal examination, there was swelling at occipital region of head of size 4 cms x 2 cms horizontally noted.

In brain intra cerebral bleeding was noted.

The medical officer PW-3 opined that death of the deceased might have occurred 12 to 16 hours preceding to postmortem and probable cause of death of deceased was due to cardio respiratory failure due to injuries to vital organ i.e. brain. As per testimony of PW-3 injury No.1 in column No.17 of postmortem report Exh. 68 corresponds to internal injuries on head and brain. The injuries described in column Nos. 17 of postmortem report are possible by assault with sticks (Articles B & C) or iron rod(Articles A).

17. It would be worthwhile to mention here that, PW-3 Medical Officer did not mention the age and cause of external injuries in column No.17 of Exh. 68, but PW-3 has stated that inadvertently he has not mentioned the age and cause of injuries in column No.17 and he did not notice fracture injuries while conducting postmortem. The Medical Officer P-3 admitted that if the injuries are ante mortem, then inflammation appears and if injuries are post mortem, then inflammation does not appear. He has not mentioned the presence or absence of inflammation in postmortem report Exh. 68. However, PW-3 gave explanation in his cross examination that due to inadvertence he did not mention presence or absence of inflammation in postmortem report Exh.68. Injury No.1 in column No. 17 corresponds to internal injury on head and brain due to assault by iron rod Article- A and sticks Articles B & C. The prosecution proved inquest panchanama Exh.49 which shows about presence of injuries on several parts of the body of the deceased and blood was oozing out from the back side of right ear. Injuries on occipital region were found on the deceased.

18. It is to be noted that the evidence of medical expert is based on fact, though he gives opinion on certain aspects of the case. In the case of **Smt. Nagindra Bala Mitra and Vs. Sunil Chandra Roy & anr., reported in 1960 SCR (3)1**, the Hon'ble Supreme Court observed as under:

"The value of medical witness is not merely a check upon the testimony of eye witness; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot at close range, the marks of tattooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence, it is often direct evidence of the fact found upon the victim's person."

Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence of the medical officer is in corroboration with the inquest panchanama Exh. 49 which shows that the death of deceased is homicidal. The probable cause of death is due to cardio respiratory failure due to injury to the vital organs i.e. brain. It is not the defence of accused that the deceased sustained injuries described in postmortem report Exh.68 due to fall down from considerable height and no suggestion has been given to the medical officer PW-3 about causing injuries described in Exh. 68 on account of any other reasons.

19. The prosecution examined PW-7 Madhav Bakaji and PW-8 Pravin Ippar who are supposed to be eye witnesses to the incident. As per testimony of both PW-7 and PW-8, they were searching fodder near by the spot of incident at about 10.30 a.m. on 29.08.2012, and at that time, they saw the accused No.1 Pandurang, accused no.2 Sudam, accused No.3 Sumanbai and accused No.4 Punjaram while assaulting deceased Sharad by means of sticks and iron rod. According to both of them they had tried to pacify the quarrel but accused No.1 Pandurang and accused no.2 Sudam rushed to them and threatened that they would not be spared if the incident would be disclosed to anyone else. However, both these witnesses have not deposed that which of the accused assaulted the deceased by which weapon. As per the testimony of informant PW-4 Manoj, Sadhana- his sister had received information from one Tanaji Kashinath Nagare about assault at the hands of the accused to deceased Sharad, however, the prosecution failed to examine Sadhana and Tanaji Kashinath Nagare. The alleged eye witnesses PW-7 Madhav and PW-8 Pravin disclosed about assault at the hands of the accused persons to deceased Sharad after lapse of approximately 18 days. Informant has not stated that these two witnesses had informed about the incident to him. It has come on record that PW-7 and PW-8 were on visiting terms at the house of deceased. In his cross, PW 7 Madhav has admitted that Vimal is his real sister. Vimal is the wife of deceased Sharad. How he could have kept quiet for so many days (if he had seen the incidence), when husband of his real sister was murdered? It was expected that both the alleged eye-witness ought to have disclosed about the incident to the family members of deceased either on the same day or at least on next day. PW 7 Madhav admits that he had attended the funeral as well as other ceremonies for 10 days at the

house of deceased. He had not disclosed to any of his relatives that he had seen the incident. The investigating officer failed to give explanation about recording of statement of PW-7 and PW-8 after lapse of about 18 days from the date of incident. Further question arises as to how the investigating officer had received the information that the incident was seen by PW 7 and PW 8. Therefore, the testimony of both these witnesses is highly doubtful and possibility of they are tutored or they being the got up witnesses cannot be ruled out.

20. It appears that case of the prosecution is also based on the circumstantial evidence i.e. discovery of weapons. As per the prosecution story, the deceased and accused persons had gone to their respective fields. Thereafter the Sharad was found lying in injured condition, but there were no bleeding injuries. As per testimony of PW-6 Dinesh Kale, the accused No.2 Sudam had voluntarily disclosed about concealment of two sticks under the Memorandum Panchanama at Exh. 93 and at his instance Article B and C seized under seizure Panchanama Exh. 94. The evidence of Investigating officer PW-9 appears that, he had sent seized articles for chemical analysis under letter Exh. 118 and obtained CA report Exh.122. On perusal of CA report Exh. 122 it appears that, weapon sticks (Article B &C) found earth and tallied with the earth collected by the investigating officer from the spot of incident. The iron rod Article-A was seized under seizure Panchanama Exh.96 at the instance of accused No.1 who died after conclusion of the trial but prior to recording of statement under section 313 of Cr.PC. Both the panchas to the discovery panchnamas are the relatives of deceased. However, mere recovery of Articles B and C sticks under section 27 of the Indian Evidence Act, even if accepted to have been proved at the instance of the appellant-accused, is not sufficient to prove that, the

appellant accused is the author of injuries sustained to deceased Sharad Sabale and caused homicidal death. The prosecution has not brought substantial material on record to prove intention of the appellant accused to cause death of the deceased. The prosecution failed to bring substantial evidence on record to show which of the injuries described in Exh. 68 can be caused due to assault by iron rod Article A or sticks Article B and C. The evidence of PW-7 and PW-8 does not show which weapon/article was used by the present appellant-accused while assaulting to the deceased causing his death.

21. In the case of **Satye Singh & Anr. Vs. State of Uttarakhand, (2022) 5 SCC 438**, that Hon'ble Supreme Court held that "while appreciating circumstantial evidence court must adopt a very cautious approach and should record conviction, only if all links in the chain are complete pointing to guilt of accused. The Hon'ble Apex Court observed that:

"14. On the totality of circumstances and evidence on record, at the most it could be said from the evidence of the parents of the deceased that there was harassment by the accused to the deceased, though no charge under [section 498A](#) of IPC was framed by the trial court against the accused. It could be further inferred from the evidence on record that the deceased Shashi had left the house on the previous evening of the alleged incident and that she was not found during the whole night, nonetheless such circumstance itself could not be said to be sufficient proof to come to a conclusion that accused had murdered and burnt Shashi as alleged. It is settled position of law that circumstances howsoever strong cannot take place of proof and that the guilt of the accused have to be proved by the prosecution beyond reasonable doubt.

15. At this juncture, let us regurgitate, the golden principles laid down by this Court in Sharad Birdhichand Sarda vs. State of Maharashtra reported in 1984 (4) SCC 116. This court while drawing the distinction between "must be" and "may be" observed as under in para 153:

“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 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the 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.”

16. It was further observed in Para-158 to 160 as under:

“158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in [Deonandan Mishra v. State of Bihar](#) [AIR 1955 SC 801 : (1955) 2 SCR 570, 582 : 1955 Cri LJ 1647] to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

“But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation,. . . such absence of explanation or false explanation would itself be an additional link which completes the chain.”

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case [(1981) 2 SCC 35, 39 : 1981 SCC (Cri) 315, 318-19 : (1981) 2 SCR 384, 390 : 1981 Cri LJ 325] where this Court observed thus : [SCC para 30, p. 43 : SCC (Cri) p. 322]”

“Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused.”

17. The said principles have been restated in catena of decisions. [In State of U.P. vs. Ashok Kumar Srivastava](#) (1992) 2 SCC 86, it has been observed in para 9 that:

”9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The

circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.”

18. Again in [Majendran Langeswaran vs. State \(NCT of Delhi\) & Anr.](#) (2013) 7 SCC 192, this court having found the material relied upon by the prosecution inconsistent and the infirmities in the case of the prosecution, considered number of earlier decisions, and held that the conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else."

(Emphasis supplied)

22. The prosecution has brought substantial evidence on record about pendency of civil dispute pertaining to land between the deceased Sharad Sabale and father of the present appellant accused. Deceased Sharad Sabale filed RCS No. 119 of 2006 which was decided on 17.11.2006 by the competent court. Appeal MCA No. 11/2006 was filed before the learned District Court, Jalgaon. The prosecution has produced certified copies of the judgment in RCS No. 101/2005 Exh. 113, certified copy of the judgment in MCA No. 11/2010 Exh. 114, certified copy of FRI of Crime No. 206 of 2007, extract of Crime Register 139/2012 Exh. 115, 116 and 117. Therefore, all the said documentary evidence depicts that some civil as well as criminal dispute pertaining to partition of property was going on between the appellant's father and deceased Sharad Sabale. Therefore, there is substance in the point about inimical terms between the deceased and accused persons.

23. To prove the offence of murder, culpable homicide amounting to murder as contemplated under section 300 of IPC, the prosecution is required to prove strong motive and intention of the appellant accused. Here the evidence adduced would show that both the parties had adopted legal proceedings to get their rights ascertained. Even accused were also pursuing the legal rights in competent Court. Then why they would commit murder is a question. The alleged eye-witnesses are not trustworthy and only recovery is not sufficient prove the offence beyond reasonable doubt. Therefore, the learned trial court ought to have acquitted the accused for the offences punishable under section 302 and 447 of the IPC on the basis on which the other accused i.e accused Nos. 3 and accused no. 4 are acquitted.

24. Upon consideration of evidence available on record, we are of the opinion that, the findings recorded by the learned trial court are not consistent with the material produced on record. It is not the case that, as two views are possible, we are taking second view. There is no substantial evidence available on record to hold that the appellant/accused No.2 is guilty of committing murder of deceased. The learned Trial Judge committed wrong in appreciation of evidence, hence, the impugned judgment and order is liable to be quashed and set aside and present appeal deserves to be allowed.

25. In view of above discussion, we pass the following order:

ORDER

- i. Criminal appeal stands allowed.
- ii. The judgment of conviction awarded to the appellant Sudam s/o Pandurang Sabale in Sessions Case No. 256 of 2012 by the learned Additional Sessions Judge, Jalgaon on 07.11.2015

under sections 302 and 447 of the Indian Penal Code stands set aside.

- iii. The appellant Sudam s/o Pandurang Sabale stands acquitted of the offence punishable under sections 302 and 447 of the Indian Penal Code. He be set at liberty, if not required in other case.
- iv. The amount of fine, if deposited be refunded to the appellant after the statutory period.
- v. We clarify that there is no change as regards order in respect of disposal of Muddemal.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan