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

**CRIMINAL APPEAL NO.654 OF 2015
WITH
CRIMINAL APPEAL NO.782 OF 2015
WITH
CRIMINAL APPLICATION (APPA) NO.307 OF 2018**

CRIMINAL APPEAL NO.654 OF 2015

Parshuram Babu Balwad, age 22
years, Occ: Agricultural Labour ... **Appellant (Original**
R/o. Shirhatti, Tal. Athani, Dist. **Accused No.3**
Belgaon, (Karnataka State) (At
present in Sangli Dist. Prison

Versus

The State of Maharashtra
Through P.I. City Police Station
Sangli, District: Sangli ..**Respondent.**

**WITH
CRIMINAL APPEAL NO.782 OF 2015
WITH
CRIMINAL APPLICATION (APPA) NO.307 OF 2018**

Mr. Ramesh Babu Balwad, age 24
yrs, Occu: Agricultural Labourer. ... **Appellant (Original**
R/o. Shirhatti, Tal. Athani, Dist. **Accused No.2)**
Belgaon, (At present lodged in
Kolhapur Central Prison,
Kalamba, Kolhapur.)

Versus

The State of Maharashtra
..**Respondent.**

Ms Rebecca Gonsalvez i/by Dr. Yug Mohit Chaudhry for the Appellant in Criminal Appeal No.654 of 2015.

Mr S. A. Ingawale, Advocate for the Appellant in Appeal No.782 of 2015 and for the applicant in APPA No.307 of 2018.

Mr S. S. Hulke, APP for the Respondent State.

**CORAM: A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**Judgment reserved on : 13th February 2023.
Judgment pronounced on : 13th October 2023.**

JUDGMENT - (Per : Prakash D. Naik, J.) :-

1. The appellants (original accused no.2 and 3) are convicted vide judgment and order dated 06.01.2015 passed by District Judge & Additional Sessions Judge, Sangli for the offence punishable under Section 302 read with 34 IPC and sentenced to suffer life imprisonment and to pay a fine of Rs.2,000/- each. They were also convicted for offence under Section 404 read with 34 IPC and sentenced to suffer rigorous imprisonment for one year. Both sentences are directed to run concurrently.

2. The case of the prosecution is as under:-

On 21.03.2009, Shri Amit Akaram Kadam lodged a report with City Police Station, Sangli alleging that the complainant is having 10 acres land in the vicinity of Sangliwadi and Kadamwadi. His father and deceased brother Uday Kadam

were looking after the agricultural land. There was sugarcane crop in one and half acres of the land. Water was being supplied to the sugarcane. He used to go to his land from time to time. The accused no.1 Sanjay Kadam is the cousin of complainant. He used to visit his land for watering it after the turn of complainant. On 21.03.2009, it was the turn of the deceased for supplying water and at about 7:30am he had been to the land situated at Old Samdoli road on motorcycle. He left the house after taking breakfast. At 8:15am he made a phone call to his father asking him to look after the work of giving water to the land at Kadamwadi. He also informed that on completion of work he would return home for lunch. In the afternoon his father made phone call to Uday. He received the message that call was not reachable. Mohan Yedave who was working in the kiln was deputed. Complainant received call from Mohan Yedave who informed that Uday is not present. He also informed that one bag, chappal, spanner and sickle was lying near the water chamber. The complainant went to the spot. Uday was found in the land of Vilas Mahadev Patil. His face was stained with blood. He was not giving any response after touching him. The complainant called his father. Both of them again went to the spot. There were injuries on the head of Uday.

His right hand ring finger was cut. The police were informed about the incident. Report was lodged. Offence was registered under Section 302 of IPC against unknown persons. Statements of witnesses were recorded. During investigation it was revealed that, on 19.03.2009, a meeting was held in the house of accused no.1. Other family members were present. It was decided to kill Uday Kadam on account of his illicit relations with wife of accused no.1. The accused no.1 gave assurance to accused no.2 that he would give one lakh towards contract killing. Plan was designed. Accused no.3 was contacted through phone calls. He was called at Sangliwadi on 21.03.2009 as there was turn of giving water of accused no.1 and Uday Kadam. Message was given to Uday Kadam through accused no.2. Uday Kadam came to his land. Accused no.3 attacked him by giving forceful blow of spade on his month. Accused no.2 also gave blow of pickaxe on the head of Uday and killed him. They tied his legs and hands and threw his dead body in the sugarcane crop. Accused no.1 was present at the spot. He gave a gold chain and finger ring which was on the person of the deceased to accused no.2. On completing investigations, chargesheet was filed.

3. Charge was framed against accused for the offence under Section 302 read with 34 IPC. The prosecution examined 26

witnesses. The trial Court acquitted accused no.1 and 4 and convicted accused no.2 and 3 (appellants) for the offence under Section 302 read with 34 IPC.

4. Learned Advocate Ms Rebecca Gonsalvez, appearing for the appellant in Criminal Appeal no.654 of 2015 submitted that, the findings of the trial Court to convict the appellant are erroneous. There was no evidence to establish the charges against the appellant. The accused no.1 and 4 were acquitted. However, on the basis of same evidence the appellants were convicted. The judgment suffers from serious infirmities. The approach of the Sessions Court in appreciating the evidence was wrong. PW No.26, i.e. the Investigating Officer has stated that on 26.03.2009 he had knowledge about the mobile handset and amount of Rs.10,000/- and that accused no.2 had informed about the mobile handset and the cash of Rs.10,000/- out of Rs.12,000/- was allegedly given by him to accused no.1 which was kept in the house of accused no.2. The trial Court failed to consider that the purported recovery on 31.03.2009, shown at the instance of appellants is bogus. The recovery panchanama and the memorandum panchanama Exhibit 70 and 71 were fabricated. The memorandum statement of the appellants was recorded on 31.03.2009 to implicate the appellants. The

panchas in respect to the recovery stated that they did not know Kannada language. The appellants gave statement in Kannada and the same was translated by one Pujari who has not been examined by prosecution. PW2 had stated that, he did not know as to what talks took place between the appellants and the police constable. The prosecution failed to examine Constable Mr Pujari. There is no direct evidence to connect the appellants with the alleged offences. The prosecution failed to establish motive behind the alleged crime. The Court has given a finding that prosecution has failed to establish criminal conspiracy and acquitted the persons who allegedly hatched the conspiracy of contract killing but convicted the appellants. PW-16 and PW-17 had not expressed any suspicion against appellants. Evidence of PW-24 was not sufficient to establish that the appellant had received any amount for committing the alleged offence. There is no cogent evidence to prove the charges against the appellants.

5. Learned advocate Mr Ingawale appearing for the appellant in criminal appeal no.782 of 2015 submitted that there is no eye-witness to the incident. The case is based on circumstantial evidence. The charge of conspiracy has been disbelieved by the trial Court. The prosecution had primarily relied on the

evidence of PW-16 who is the complainant and brother of deceased, PW-17 Smt Suman Kadam (mother of deceased), PW24-Prakash Giri-Bank Officer in whose bank accused no.1 is having an account and PW no.26 Ashok Satpute who conducted the investigation. However, the prosecution could not produce any material to show that the accused no.1, Sanjay was suspicious about the illicit relations of deceased Uday with his wife Prajakta as the same was an omission in the statement of the complainant and his mother. Merely on the basis that certain amount was withdrawn by accused no.1 from his bank account, it cannot be inferred that the accused no.1 to 4 had entered into conspiracy to commit murder of deceased Uday and accordingly accused no.1 paid the amount to accused no.2 and 3 for killing deceased Uday. The trial Court has disbelieved the evidence on the point of conspiracy and motive to commit murder. The prosecution has relied upon the evidence of PW9-Ramchandra Tayappa Yamgar and PW No.10 Pandharinath Tukaram Jadhav on the theory of last seen together. PW No.11 Bajrang Mahadeo Chougule and his two servants working in the field and PW-12 Dnyandeo Pandurang Patil who is the adjacent land owner who had allegedly seen three persons running on the bandh of accused no.1. The evidence of these witnesses had

been discarded by the trial Court regarding last seen together theory. As far as the discovery of weapon and the ornaments and other articles, the prosecution has examined PW-1 to PW-5 and PW-26. None of the articles were sealed. The same were affixed with paper labels. The weapon had no blood stains. The police were aware about the nature of weapon used in the crime and the place from where the same are to be recovered. The Investigating Officer was aware about the place as well as the nature of weapons alleged to be recovered at the instance of the accused. The gold ornaments which were recovered at the instance of accused no.2 were reflected in the remand report dated 26.03.2009 as well as requisition letter dated 28.03.2009 for the panchas at Exhibit 230 which show that the police were aware about the articles as well as the gold ornaments from whom the same are to be recovered. There is difference between the two receipts Exhibit 101 and Exhibit 103. It is not clear as to who produced the original receipts which, according to PW24, were given to accused no.2. The person who translated the panchanama as per the narration of PW2 and 3 from Kannada to Marathi was not examined. Though the ornaments were seized on 31.03.2009, the same were shown to the complainant on 01.04.2009. There is no proof of opening the seal of the pack

and resealing the same. The original receipts of the ornaments from where the same were purchased were not on record. Discovery of articles like spade is suffering from illegalities. The Medical Officer admitted that if the weapon like sickle is used, it would result in puncture wound or incise wound. He has not stated about any incise wound in column no.17. Weapon like spade and pickaxe if used for assaulting on the head or face it would result in CLW or breaking of bone and not abrasions. Merely on the ground that accused no.2 gave his cycle to PW-13 thinking that the same is punctured which was actually not punctured no adverse inference can be drawn against the accused. On the ground that accused no.2 was seen with a bundle of Rs.10,000/- by a waiter of Priya Bar, no adverse inference can be drawn that he has received the money by selling the gold ornaments of the deceased. The statement of the witnesses were recorded after the arrest of accused no.1 to 3. The evidence is created for implicating the appellants. The CA report suffers from serious infirmities. The CA reports are based on the articles which were not sealed after its seizure.

6. Mr Ingawale has relied upon the following decisions:

a. Sagar Balwant Patil v/s. The State of Maharashtra ¹

¹ Appeal No.956 of 2011.

b. Shankarlal Gyarsilal Dixit v/s. State of Maharashtra².

7. The prosecution has examined PWNo.1 Ahmed Bashir Mulla in respect of panchanama for seizure of weapons used for offence i.e. spade and pickaxe. The recovery was made at the instance of accused no.1. He has deposed that he was called to act as a pancha. The accused no.1 stated that he would remove and produce the weapon used in the offence, i.e. spade and pickaxe. He led the police and the weapons were recovered. In the cross-examination he stated that he was under pressure when police called him at police station. When he reached the police station, Mr Satpute was standing in the parking area. He asked him his name but did not make any other inquiries. He also acted as Pancha to statement made by accused Ramesh Babu Balwad. He stated that Ramesh Balwad (accused no.2) was speaking in Kannada language. PW1 was not knowing Kannada language. Constable Pujari was knowing Kannada language. He interpreted statement of accused no.2 to Panchas. Accused no.2 made statement that he would remove sickle and clothes. Said articles were recovered from him. In cross examination he stated that accused no.2 was not knowing

² (1981) 2 SCC 35

Marathi language. He was not able to understand Marathi language. Prior to signing on the memorandum panchanama, he read and it is noted that the statement is recorded with the help of Kannada interpreter and thereafter he signed the memorandum statement. In memorandum Panchanama it is recorded that, memorandum Panchanama by interpreter in Kannada language.

8. PW-2 Sham Baburao Kalgutgi acted as pancha for seizure of mobile handset and currency notes on the basis of statement of accused no.3. He stated that he has studied in Marathi medium at Miraj. He does not know Marathi language. He does not know what talks took place between the accused and constable Pujari. The police did not ask him whether he knows Kannada. It is not noted in the statement of accused that accused gave statement in Kannada language and Pujari Constable translated in Marathi language to them. It is not noted in panchanama that Pujari translated the statement in Marathi language. The panchanama which was read by him does not record the said fact. It is not recorded in the panchanama that he knows Kannada language.

9. PW No.3 Chetan Hanmant Jadhav acted as pancha for seizure of gold ornaments, i.e. gold ring on the basis of

statement of accused no.2. In his evidence he stated that in the panchanama signed by him it is stated that Pujari Constable has translated and read over contents to the accused. After reading Exhibit 75 and 76 he stated that it is not mentioned in the panchanama that contents of panchanama which are written in Marathi were read over and explained to the accused in Kannada language. The work of writing memorandum statement was done by writer of Police Station. The thumb marks of the accused is attested by writer of documents.

10. PW No.4 Santosh Rayappa Bairgoun was pancha for seizure of clothes that accused no.1 wore on the day of incident. Statement of accused no.1 was recorded and he produced the clothes he wore which included white colour full shirt and ash coloured full pant. PW No.5 Umesh Datta Ingle is pancha with regards to place of incident. It is alleged that accused no.2 gave statement that he would show the place where the assault was caused on the deceased and where the body of the deceased was thrown. The police allegedly found dried blood stain marks. In the cross-examination the witness stated that the accused no.2 is not knowing Marathi language. He had no knowledge of Kannada language. It is not noted in the memorandum statement that he went there and accused was not knowing

Marathi language and the panchas were not knowing the Kannada language. It is not noted in memorandum statement that it was translated to accused in Kannada language by Mr Pujari and the accused accepted the contents by nodding his head and said panchanama was read over to them.

11. PW No.6 Sadashiv Bhimana Pujari was pancha witness for arrest of accused no.1 to 3 and seizure of clothes of accused no.3. The accused no.3 had handed over the white shirt and purple colour full pant. In the cross-examination he stated that it is not noted in the panchanama that Saidhu provided the clothes. No talk took place between him and the accused. PW-7 Ajay Prakash Khedkar is the pancha for recording the statement of Gunda Kale who is the owner of cycle repair shop and seizure of cycle. On the day of incident it is alleged that the accused no.2 came to the cycle repair shop around 12:15 to 12:30 noon to remove puncture even though there was no puncture. Thereafter, nobody came to collect the said cycle.

12. PW No.8 Mahesh Gangaram Walekar is a spot pancha. According to him Amit Kadam showed the place where dead body of Uday was lying. PW No.9-Ramchandra Tayappa Yamgar is the labourer. He has deposed that there is a group of five labourers. They do the work of preparation of land for

cultivation of sugarcane. They used to do agricultural work in the land situated at Sangliwadi and Kadamwadi. On 21.03.2009 he and his group of five people had gone to the land of Sanjay Kadam (accused no.1) to prepare the land for cultivation of sugarcane. He deposed that Sanjay Kadam came to the land at about 8:00am. Uday Kadam came in the said land and he was doing the work of providing water to his land with the help of canal through chamber and came near them. Uday spoke to them and sent to his another land for his own work. At about 9:00am their work was completed. Sanjay kadam (accused no.1) and Uday Kadam came there. When they left the land, Uday Kadam and Sanjay Kadam were present in the land. He identified Sanjay Kadam in Court. The witness was cross-examined at the instance of accused no.1 and 4. It is pertinent to note that the evidence of this witness does not show involvement of the appellants in any manner. On the contrary presence of accused no.1 and deceased Uday was a circumstance which was used against accused no.1 who has been acquitted by the trial Court.

13. PW No.10, Pandharinath Tukaram Jamdar is a supervisor of water supply scheme. On 21.03.2009 he started his work. He went to the land of Uday Akaram Kadam at 9:30am to 10:00am.

Uday Kadam was providing water to his land. He obtained his signature on his register. Adjacent to the land of Uday Kadam there is land of Sanjay Kadam who was working in his land along with his servant. He knows Sanjay Kadam and his servant who speaks Kannada language and both are present in Court. He produced a register on which he had obtained signature of Uday Kadam. It is pertinent to note that this witness has been examined to show the fact that accused no.1 and the deceased were present in their respective land on the day of incident. Accused no.1 has been acquitted by the trial Court. Although it is stated by him that Sanjay Kadam and his servant are present in Court, he did not point out at any accused as servant who was present at the land during water supplying on 21.03.2009. PW No.11-Bajrang Mahadeo Chougule is the adjacent land owner. According to him on 21.03.2009 he went to his land and saw that on the land of accused no.1 four servants were working with accused no.1. Around 10:30am to 10:45am he came near the water chamber and at that time accused no.1 and his servants were working and Uday and his servants were working in his land. Servants of Uday's brother thereafter made enquiry about Uday. At 1:45 noon accused no.1 was present in his land. Amit Kadam, Akaram and others were searching Uday. Dead body of

Uday was found. The two servants of accused no.1 to whom he noticed in the morning in the land are present in Court. Accused no.1 is present in Court. In the cross examination he stated that he has not stated before police that at 10:30am in the land of Sanjay, Say was doing work with two labourers. He had not stated description of those two persons. No identification parade was conducted. PW No.12 Dnyandeo Pandurang Patil is also adjacent land owner. According to him he reached the land at around 10:00am and saw three persons running from the bandh of land of accused no.1 from a distance of 200ft. In the cross-examination he stated that he came to his land. Bajrang Wani was working in his land and no talks took place between him and Bajrang Wani . To go to the land of Sanjay Kadam there are two ways. One way is Samdoli road and another road is from Sangli Islampur road. It is pertinent to note that though he referred to the three persons running from the bandh of land of Sanjay Kadam, he has not identified them as accused persons. PW No.13-Gundu Aganu Kalel is a cycle shop owner. According to him accused no.2 came to his shop with cycle. He told him that cycle is punctured. He was seemingly in fear and was sweating. Before anything could be asked he ran away. No puncture was found to cycle. Nobody came to collect the cycle.

Saidhu came with accused no.3 to collect cycle. It was handed over to him. He stated that he knows accused no.1. He has good relations with Uday Kadam and Amit Kadam. He knows the servants working with accused no.1 namely, Ramesh. He knows brother of Ramesh namely, Saidu. He knows them as they were visiting his shop. In the cross-examination he stated that he is doing the business of hiring cycles and cycle repairs since several years. His statement was recorded on 26.03.2009. He had not gone to Sangli police station prior to 26.03.2009 suo moto and police did not make any inquiries with him prior to 26.03.2009.

14. PW No.14- Tanaji Shankar Gurav is a goldsmith. He is the person to whom accused no.2 sold gold ornaments. The receipts were marked at Exhibit 101 and 103. He came to know from the police that it was stolen property. According to him, police came to his shop on 30.03.2009. Accused no.2 came to his shop along with police. On 22.03.2009 accused no.2 and one Basavraj who is his old customer had visited his shop. He also knows wife of Basavraj. It was informed to him that accused no.2 is in need of money and he was shown one ring and chain. These two articles were golden articles. He prepared the receipt and amount was given to the accused. He further stated that he came to know from the police that murder of Uday was committed and the

accused brought golden chain and the ring which was on the person of Uday. In the cross-examination it is stated that his original native place is village Kharsundi. The receipt brought by him before the Court and receipt which is before the Court on record are not having receipt numbers. He was shown the receipt of his shop which was brought by him before the Court. The receipt which is brought by witness was referred in cross-examination and it was marked Exhibit 103. He admitted that the word Javak is scored and word Avak is noted on it. It is true that Exhibit 103 does not bear thumb mark of accused no.2. In his O.C. receipt of shop No.103 he has mentioned Kirda page No.126 and 127. That Kirda page is not noted in receipt before Court Exhibit 101. In Exhibit 103 there are two signatures of Basavraj Itti at two places. Those are at different places and one signature is below the name of Basavraj Itti. On Exhibit 101 there are no signatures of Basavraj Itti at two places. In Exhibit 101 and 103 the signatures seems to be in original pen or using original ink and on Exhibit 103 one signature is carbon signature. In the light of the evidence it is doubtful to rely upon the said receipts.

15. PW No.15 Parshuram Kishor Sagar is waiter at Priya Bar. He stated that his mother tongue is Kannada. Police came along

with accused no.2. The police made enquiry with him whether accused no.2 and his companion had visited his bar. He told the police that accused no.2 and others had visited Priya Bar on 22.03.2009 at 11:00am and accused no.2 was in possession of cash of Rs.10,000/-. In the cross-examination he stated that people were visiting for lunch at lunch hours. The owner who is sitting at reception used to receive money of food and drink of customers. There is a curtain to every cabin and if curtain is scattered nobody can see what is going on inside cabin. After entry of customer waiter has to receive order and thereafter again scatter the curtain. Waiter has to provide drink and food as per order and after supply of drink and food unless customer calls the waiter he will not go to the customer. Manager has to do the work of receiving money from customer. That he has not stated before police that after having drink after gap of one and half hour accused gave order for lunch. He does not know accused no.2 and that police told him the name of accused no.2. Version of this witness is doubtful and in any case that the accused no.2 was found with cash any incriminating evidence can be drawn against him.

16. PW No.16 is the first informant and the brother of deceased. He deposed that on 21.03.2009 Uday had been to his

land. Uday gave call at 8:15am to his father to look after work of giving water. Uday's phone was not reachable in afternoon. Mohan Edve went to see Uday. Mohan informed that Uday is not found. He also informed that one sickle, spanner and chappal were found near chamber. They went to the spot. Body of Uday was found lying in land of Vilas Patil. He lodged complaint against unknown persons. His Supplementary Statement was recorded on 26.03.2009. Accused no.1 to 3 were arrested. He stated that accused no.1 had jealousy against his family due to their business and since his mother was member of Corporation. His Supplementary Statement was again recorded on 01.04.2009. He identified gold articles of Uday. Accused no.2 was working with accused no.1. Accused no.3 is brother of accused no.2. Accused no.4 is mother of accused no.1. Accused no.1 was suspicious about Uday and his wife. While recording his statement dated 26.03.2009 he stated that accused no.1 was suspicious about Prajakta and Uday. It is not mentioned in his statement. According to him some unknown persons committed murder for unknown reason. He did not show any suspicion. He was shown ornaments, i.e. gold chain, ring and mobile, etc. He did not inquire with the police about the status of the case. His supplementary statement was recorded on 26.03.2009. In

the said statement for the first time he informed about the suspicion and accordingly on the next date accused no.1 to 3 were arrested. He had stated about the incident that happened 5 years prior in 2004 between accused and father of deceased regarding a bullock cart. No complaint was filed. In 1991-92 partition took place and accused no.1 solely inherited the land. In the last ten years no civil suits or complaints were filed. Accused no.1 had never contested any election. Evidence of this witness appears to be afterthought. It was primarily to implicate accused no.1 and accused no.4.

17. PW No.17 Suman Kadam, is the mother of deceased. She is member of Corporation. She stated that on 20.03.2009 servant of accused no.1 came to her house. He inquired about Uday. She identified accused no.2 was same person. His Supplementary Statement was recorded on 26.03.2009. She stated that accused no.1 was jealous against her family. Accused no.1 was suspicious about Uday and his wife. In cross-examination she stated that no complaints were filed against accused no.1. On 22.03.2009 she did not disclose her suspicion against anybody. In her Supplementary Statement she did not refer to suspicion of accused no.1. From her evidence it can be seen that no complaint was filed against accused no.1 regarding

any suspicion against him. Police did not show the accused no.3 for the purpose of identification as servant of accused no.1. PW No.18 Mohan Gopal Yedave is the servant of deceased. He went to search for deceased when his phone was not reachable. He contacted complainant and his father as some articles were found. They reached the spot and found the dead body. Complainant's father asked accused no.1 to call the police. PW No.19 Dr Pandarinath Gama Sadakle has conducted post mortem report. He referred to the injuries suffered by deceased. PW No.20 Francis Patric Perara is the alternate nodal officer. He has furnished CDR. He was not sure whether he had personally generated CDR and also does not know about the format. PW No.21 is Ganesh Ramrao Pawar. He produced CDR of Anita Murlidhar Kadam and Sanjay Hambirarao Kadam. He issued statement about the calls. PW No.22 Mohammad Hanif Nabisaheb is Public Relation Officer of BSNL. He produced details of landline of accused no.1. PW No.23 Sanjay Madhuka Tambe is the shopkeeper who sold mobile phone to the deceased.

18. PW No.24 is the bank manager who provided the bank statement of accused no.1. PW No.25 Satish Tukaram Tule is the employer of accused no.2 and 3. According to him, accused

no.3 used to call Saidappa on the phone of PW No.25. Accused no.3 used to reside in Shirhatti and used to come to Sangalwadi to visit Sanidappa. He last saw him on 19.03.2009.

19. PW No.26 Ashok Laxman Satpute is the Investigating Officer. His evidence disclose that dead body was found lying in the sugarcane field when he reached the place of incident on 21.03.2009. On the disclosure statement of accused no.1 he found the weapon namely spade and pickaxe. He found clothes in the house and sim card. On the disclosure statement of accused no.2, the spot where assault had occurred was shown. He found gold ornaments and clothes which had human blood stains. He further stated that on Disclosure Statement of accused no.3 he found hand set and money in his possession. Clothes of the accused were recovered. He found that accused no.4 was involved with the other accused in hatching conspiracy. There was no suspicion till 25.03.2009. No enquiry regarding gold ornaments was conducted. Accused no.1 had been to LIC office during investigation. No reference of blood stains on clothes or articles was brought forthwith. There was no dispute between accused no.1 and complainant. There is no record of any complaint. He stated that thumb impression on the receipt of money received against gold was not sent to fingerprint

expert. No identification parade was conducted.

20. It is pertinent to note that accused no.1 and 4 were acquitted by the trial Court on the following grounds:-

(i) P.W.16-Amit Kadam (brother of deceased), complainant admitted that in 1991-92 there was a partition of land between his father and uncles and after that for the last 10 years there has not been any complaints filed by either him or accused 1 against each other. Fatal to prosecution in respect to criminal conspiracy, motive, and abetment.

(ii) P. W. 17 complainant's mother Suman Kadam never admitted during the police investigation that she had any suspicion against accused 1. She did not even discussed about the deceased and accused 1's wife's affair. It was also admitted that accused 1's family were a well to do family.

(iii) As accused 2 was working in accused 1 and 4's house call history with him cannot be suspicious. Calls between accused 3 and 1 does not prove conspiracy.

(iv) Last seen witnesses gave contradictory statements hence cannot be relied upon in full confidence.

(v) Prosecution fails to demonstrate that accused 1 was in exclusive possession of place of last seen.

(vi) Delay in recording the statement of sole witness who

claims to have seen deceased in the company of accused 1. Non-explanation of being last seen together cannot infer that he committed crime.

(vii) Accused 1 gave statement that he would produce pick axe and spade allegedly the weapons used for the murder. Human blood detected on spade and no blood on pick axe. However, going through the description of spade in Ex.66 there is no mention of blood stains. Hence variance in reports.

(viii) Clothes provided by accused 1 has no blood stains.

(ix) Prosecution failed to provide motive for conspiracy.

21. Surprisingly, accused no.2 and 3 were convicted although prosecution case is that they were hired at the instance of accused no.1. The prosecution had failed to prove the charge of conspiracy of accused. Accused no.1 and 4 are acquitted by the trial Court. The identity of the servants of accused no.1 has not been established beyond doubt. There is no cogent evidence to establish that the appellants were involved in commission of murder of deceased Uday Kadam. There is no eye witness to the incident. The circumstances relied upon by prosecution are not sufficient to convict appellants. The recovery panchanamas are full of discrepancies.

22. In the case relating to circumstantial evidence complete chain of circumstances must be established by the prosecution pointing out the culpability of accused persons. The chain should be such that no other conclusion except guilt of the accused persons is discernible without any doubt. The circumstances from which the conclusion of guilt is to be drawn should be established. The fact so established should be consistent only with the hypotheses of the guilt of the accused. The circumstances should be conclusive. The circumstances should exclude every possible hypothesis except the one to be proved. There must be a chain of complete evidence 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.

23. The Hon'ble Supreme Court in the case of ***Tulesh Kumar Sahu v/s. State of Chattisgarh (Criminal Appeal No.753 of 2021)*** which is relied upon by the learned Advocate for the appellant, reference was made to the earlier decision of the Apex Court in the case of ***Sunder Lal @ Sundera v/s. State of Madhya Pradesh***³ and ***Sanwant Khan v/s. State of Rajasthan***⁴ wherein it was observed that

³ AIR 1954 SC 28

⁴ AIR 1956 SC 54

in case of recovery of article from an accused when he stands accused of committing offences other than theft also, in this instance, murder, the first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the murderer. The Court shall also look into the nature of stolen article, the manner of its acquisition by the owner, the nature of evidence about its identification, the manner in which it was dealt with by the accused, the place and circumstances of its recovery, the length of the intervening period, the ability or otherwise of the accused to explain its possession.

24. The Supreme Court in the case of ***Shankarlal Gyarsilal Dixit v/s. State of Maharashtra*** (supra), it was held that the prosecution must be consistent with the guilt of the accused. In the test as to whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the shadow of doubt, the shadow of doubt even in cases which depend on direct evidence is shadow of reasonable doubt. In its practical application the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of

proof beyond reasonable doubt.

25. The motive qua accused no.1 and 4 has not been established. The charge of conspiracy between accused no.1, 2, 3 and 4 is not proved. The discovery of weapons, gold ornaments, cash, mobile phone and clothes suffers from serious discrepancies. The prosecution has failed to prove the said circumstances beyond doubt. The evidence of pancha witnesses and their cross-examination speaks volumes of doubt. The accused no.1 and 4 were acquitted. The evidence which was used against them was utilised for convicting the appellants. The Investigating Officer was aware about the cash of Rs.10,000/- which was allegedly found in possession of accused no.2. The recovery at the instance of accused no.2 is unbelievable. The recovery panchanama Exhibit 70 and 71 was suspicious. It is pertinent to note that the accused no.2 had allegedly made statement in Kannada language. The pancha witness does not know Kannada language. It was interpreted by Constable Pujari. He was not examined. Panch witness no.2 does not know what talks took place between accused and police constable. There is no direct evidence against the appellants. The prosecution failed to establish that there was conspiracy between all the accused. There was no semblance of suspicion

by the relatives of the victim against accused no.1 and 4. The motive attributed to accused no.1 and 4 is afterthought. Undisputably, the accused no.1 was acquitted as the prosecution failed to establish his link with the crime and the other accused. It was apparent that the police were aware about the nature of weapon used in the crime and the place from where the same are to be recovered. There are serious discrepancies in respect to recovery of gold ornaments. The accused are entitled for benefit of doubt. Such circumstances are not sufficient to prove the guilt of accused. The appellants can neither be convicted for offences under Section 302 of IPC nor for the offences under Section 404 of IPC. Hence, the conviction is required to be set aside.

ORDER

- i) Criminal Appeal No.654 of 2015 and Criminal Appeal No.782 of 2015 are allowed.
- ii) Impugned judgment and order dated 06.01.2015 passed by the District Judge-2 & Additional Sessions Judge, Sangli convicting the appellants for the offence under Section Sangli punishable under Section 302 read with 34 IPC and Section 404 read with 34 IPC is set aside and the appellants(original accused no.2 and 3) are acquitted of all

the charges.

iii) Criminal Application (APPA) No.307 of 2018 also stands disposed of.

(PRAKASH D. NAIK, J)

(A.S.GADKARI, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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