

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 816 OF 2014**

Subhash Shamrao Gaikwad,
Age -28 years, Occupation - Nil,
Residing at - Gulab Kate Chawl,
Ward No.5, Dapod, Pune - 411 012.
(At present detained in Yerawada
Central Prison, Pune 411 006.)

... Appellant
(Original Accused)

V/s.

State of Maharashtra,
(Through Officer-in-charge,
Sangvi Police Station, Dist.Pune)

... Respondent

Mr Mohit Rajan Salvi i/b. Mr. Prashant Raul for Appellant.
Mrs. M. M. Deshmukh, APP for Respondent-State.

CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.

DATE OF RESERVING : 13th JUNE, 2023.

DATE OF PRONOUNCEMENT : 4th AUGUST, 2023.

Judgment (Per Justice Shivkumar Dige, J.) :

1. Appellant, Original Accused (for short "Appellant") impugns Judgment and Order dated 12th September 2014 in Sessions Case No.80 of 2011 passed by learned Additional Sessions Judge, Pune, whereby Appellant is convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC"). Appellant is sentenced to suffer life imprisonment and to pay fine of Rs.2000/-, in default of payment of

fine, to suffer rigorous imprisonment for three months. Appellant is acquitted for the offence punishable under Section 404 of IPC.

2. Brief facts of the case are as under :

Deceased - Sudhakar Tribhuvan was residing along with his wife - Jyoti, daughter - Shilpa and son - Shubham in Flat No.26A, Shukwani Residency, Dapodi, Pune. The said flat was owned by Sudhakar. In the year 2010, Shilpa was taking education in Ferguson College, Pune, and Shubham was taking education in 11th Standard in Kendriya Vidyalaya, Range-Hills, Khadaki, Pune. Mother of Sudhakar was suffering from cancer. One Christian person gave an oil bottle for treatment of mother of Sudhakar. After using that oil, mother of Sudhakar recovered from cancer, so Sudhakar developed faith in Christian Religion and his family accepted Christian Religion. Sudhakar and his family used to go to Church at Dapodi for prayers. In the Church, Sudhakar came in contact with Appellant a resident of Dapodi. Appellant used to come to the house of Sudhakar for prayer. In the month of August-September 2010, Jyoti, wife of Sudhakar went to her maternal house at Panvel to see a new born child of her brother, Yogesh Borade. Sudhakar was deeply in debt, so he sold his flat at Sukhwani Residency to Sanjay Bangar and also sold his car to other person. Appellant arranged a flat on rent for the family of Sudhakar at Williamnagar, Pimple Gurav, Pune. owned by Shivanand Kale. On 1st October 2010, Sudhakar took voluntary retirement from his service. After

going to her brother's house at Panvel, wife of Sudhakar was not having any contact with her daughter and son but she was staying with Appellant.

On 12th October 2010, at about 1.30 pm., when Shilpa was returning from her college, she got a call on her mobile from her father. He told her that, her mother met with an accident at Panvel and he intends to go to Panvel. When she got down from bus at Ramkrishna Mangal Karyalaya, she received phone call from Appellant, he told her that her father had gone to Panvel due to accident of her mother by locking house at Williamnagar. Appellant told her that, he has made an arrangement for her stay at Swapanapark, Katepuram Chowk, Pimple Gurav, so she should go there. Shilpa went at the address given by Appellant and after some time, Appellant came there and gave key of flat to Shilpa and some food for eating. After some time, Shubham returned from his college at Swapanapark flat. On 15th October 2010, the Police informed Shilpa about murder of her father at Williamnagar house. After receiving information, Shilpa and Shubham went to house at Williamnagar. They identified the dead body of their father. Shilpa lodged complaint against Appellant alleging that, he was having close relationship with her mother and to remove Sudhakar from their way of close relationship, he committed murder of her father. Accordingly, FIR was registered against Appellant.

During investigation, Appellant was arrested from a bungalow at Gulabnagar. The police seized Rs.98,545/- from his pant pockets and shirt pocket under seizure panchanama. Thereafter, on the disclosure statement

of Appellant, the Investigating Officer seized Rs.2,52,500/-and Rs.7,00,000/- under seizure panchanama. After completion of investigation, charge-sheet was submitted against Appellant.

3. The case was committed to the Additional Sessions Judge, Pune. Charge was framed against Appellant under above referred offences. He pleaded not guilty and claimed to be tried. The prosecution has examined in all 13 witnesses. the statement of the Appellant under Section 313 of the Code of Criminal Procedure 1973 (for short "Cr.PC.") has been recorded. It is defence of Appellant that, he has been falsely implicated in this case.

4. Considering the evidence on record and submissions of both learned counsel, the learned Trial Court has convicted Appellant.

5. Heard Mr. Mohit Salvi, learned counsel for Appellant and Mrs. M. M. Deshmukh, learned APP for the State.

6. It is contention of learned counsel for Appellant that, the prosecution case is based on circumstantial evidence. The prosecution failed to prove the involvement of Appellant in the said crime but the Trial Court has erroneously convicted Appellant. Learned counsel further submitted that, the dead body of the deceased was found in the hall and there were no blood stains in any other rooms. Blood stains were found on the brassiere of PW-2 Shilpa, daughter of deceased. She has not given any explanation about it. PW-2 did not state anything about the illicit relations of her mother with Appellant. PW-3 Shubham, son of deceased, has stated that on 12th October 2020, he left home. His father and sister were at home

and he does not know who came to the house. He also stated that, his sister was under pressure and frightened when he met her on 12th October 2010. PW-5 Ramesh Bhati (the panch witness), in whose presence the amount of Rs.98,000/- was found in the pant pockets of Appellant, was not able to identify Appellant in the Court.

Learned counsel further submitted that, panch witness, PW-6 Ravindra Kashinath Yadav was regular panch and he had acted as a panch in several matters. This panch witness has stated that, they had gone to Pimple Gurav and Williamnagar area on 23rd October 2010, but in cross-examination, he admitted that except Williamnagar they did not go to any other place. However, the amount is alleged to have been recovered at the instance of Appellant, which creates doubt about recovery of amount.

Learned counsel further submitted that, the amount of Rs.7,00,000/- is recovered on the disclosure statement of Appellant in the presence of panch witness, PW-7 Santosh Pagare, but this witness stated that police only counted currency notes but they did not note down the numbers on the currency notes. This witness further stated that, the currency notes had bank slips. The bank slips have not been mentioned in the panchanama, nor presented in the Court.

Learned counsel further submitted that, PW-8 Rajendra Girigosavi, landlord of the house at Swapanapark, Katepuram, has stated that the son (PW-3) and daughter (PW-2) of deceased were residing at Swapanapark from 7th October 2010 to 15th October 2010. The statement of this witness is

contradictory to the statement of PW-2 Shilpa and PW-3 Shubham who stated that, they were living in Williamnagar house till 12th October 2015. In postmortem report, only one injury was found on the forehead of deceased. Learned counsel further submitted that, PW-13 Shantaram Tayde, Investigating Officer, has stated that the children of the deceased i.e. PW-2 and PW-3 were residing at Swapanapark. They had no reason to go to Williamnagar. This witness has admitted that, fingerprints were obtained from the spot, however, the report of fingerprint expert is not filed on record because expert has not received any fingerprints.

Learned counsel further submitted that, the evidence produced by the prosecution before the Trial Court, does not prove the involvement of Appellant in the crime. In the alternative, learned counsel for Appellant submitted that, deceased had only one injury on his forehead. It shows that the intention was not to commit murder of the deceased. Therefore, the case can be of culpable homicide not amounting to murder and not of murder.

7. Learned APP submitted that, from the evidence on record it proves that, the author of the crime is Appellant and he murdered deceased Sudhakar between 12th October 2010 to 15th October 2010. Learned APP further submitted that, Appellant and deceased knew each other. To repay the loan, deceased Sudhakar had sold the flat at Sukhwani Residency for Rs.19,00,000/-, which is proved by the evidence of PW-2, PW-3 and PW-4. PW-3 Shilpa, daughter of deceased stated that, her father had

withdrawn Rs.13,00,000/- from the bank and kept it in house at Williamnagar. After the murder of her father, during search of Williamnagar house, the said amount was not found in house. Learned APP further submitted that, PW-2 and PW-3 have stated that it was farce created by Appellant that accident of their mother took place at Panvel on 12th October 2010, thereafter Appellant handed over the keys of flat at Swapanapark to PW-2 and told PW-2 and PW-3 to stay there. Learned APP further submitted that, PW-3 Shubham has stated in his evidence that on 12th October 2010, when he returned from school and went to Williamnagar house, his father opened the door, but Appellant prevented PW-3 Shubham from entering the house. Appellant visited Swapanapark flat on 12th October 2010 and when PW-3 wished to speak with his father, Appellant prevented him from speaking to his father. That, on 15th October 2010, dead body of deceased -Sudhakar was found in Williamnagar house, the door of the said house was locked from outside. This fact is proved by spot panchanama. During the course of investigation under disclosure statement of Appellant Rs.7,00,000/- and Rs.2,52,000/- were recovered. The cause of death of deceased was head injury. PW -12 Doctor who conducted postmortem also opined that due to hammer, the said injury is possible. The said hammer was seized from the spot with blood stains. In chemical analysis report, human blood was found on the hammer. Learned APP further submitted that, PW-3 Shubham saw his deceased father along with Appellant at 2:45 pm on 12th October 2010 at

Williamnagar house and from same place, the dead body of his father was found on 15th October 2010. Therefore, last seen together proves against Appellant. After commission of offence, Appellant had given extra judicial confession to PW-9 Shanta Suryawanshi that, he assaulted one person with hammer. Learned APP further submits that, considering evidence on record, it proves that Appellant murdered deceased Sudhakar. The Judgment and Order of the Trial Court is legal and valid, and no interference is required in it.

8. We have heard submissions of both learned counsel, perused entire record and the Judgment and Order passed by the learned Trial Court.

9. There is no dispute about the homicidal death of Sudhakar as dead body of Sudhakar was found at Williamnagar house with one injury on his forehead. PW-12 Dr. Subhash Madane at 'Exhibit-46' who conducted postmortem on dead body of deceased has stated that, cause of death was head injury. Appellant has not disputed about homicidal death of the deceased. Considering the evidence on record, it proves the death of deceased - Sudhakar was homicidal death.

10. Prosecution case is based on circumstantial evidence. The prosecution led evidence to establish three links of the chain viz. (i) Motive; (ii) Last seen together and (iii) Recovery of amount at the instance of Appellant.

We would consider the evidence led by prosecution before Trial Court as per above three links.

(i) Motive and Recovery of amount :

These two circumstances are interlinked. Hence, we are discussing it together.

11. It is the contention of learned APP that, Appellant assaulted Sudhakar with hammer to rob the amount which he had kept in his house and to remove his hurdle as Appellant had love affair with the wife of deceased Sudhakar. From evidence on record, it appears that Appellant and deceased – Sudhakar were known to each other and Sudhakar was deeply in debt. To repay the loan, deceased – Sudhakar sold his flat at Sukhwani Residency for Rs.19,00,000/-. This fact is supported by prosecution-witness PW-2 Shilpa, daughter of the deceased and PW-3 Subham, son of the deceased. PW-2 Shilpa has stated that, her father had purchased the flat by obtaining loan from the Bank. For repayment of loan, her father sold flat and Alto car. After sale of flat, they went to reside at Williamnagar in rented house of one – Shri Shivanand Kale. Her father took voluntary retirement and after retirement her father was not doing any job. Appellant used to come to their house on every Sunday, thereafter, occasionally he used to come to their house. She further stated that, the said flat at Sukhwani Residency was sold to Shri Sanjay Bangar for Rs.19,00,000/-. The earnest amount of Rs.2,00,000/- was paid to her father and her father had given the said amount to Appellant. A cheque of remaining amount of Rs.17,00,000/- was given to her father. It was deposited by her father in the bank for encashment. Out of that amount, Rs.13,00,000/- was credited in

the bank account of her father. The said amount was brought to the house at Williamnagar by her father and after death of her father, the said amount was not found in the house, when police took search of the house. This witness came to know that, the police seized Rs.11,00,000/- from Appellant. There is no cross-examination to this witness in respect of the amount recovered from Appellant nor about sale of flat by her father..

12. To corroborate the evidence of this witness, the prosecution examined PW-3-Shubham Tribhuvan, son of deceased at 'Exhibit-29'. He has stated that, his father sold the flat at Sukhwani Residency for Rs.19,00,000/-. Out of this amount, Rs.2,00,000/- was given to Appellant by his father. Shri Bangar had issued cheque for remaining amount of Rs.17,00,000/-. The cheque was presented in the bank account of his father and the amount was credited in the account of his father. Out of the said amount, Rs.13,00,000/- was withdrawn by his father and kept in the house at William Nagar. The said amount was not found in the house after death of his father. After arrest of Appellant, the police seized Rs.11,63,000/- from Appellant's house. In cross-examination, suggestion was given to this witness that, his father did not withdraw the amount of Rs.13,00,000/- from the account, the said suggestion was denied by this witness.

From the evidence of these witnesses it reveals that, their father had sold the flat, out of sale amount, Rs.13,00,000/- was withdrawn from the Bank. The said amount was kept at Williamnagar house but after murder

of their father, the said amount was not found in the house. After the arrest of Appellant, the police seized the amount of Rs.11,63,000/- from Appellant.

13. PW-5 Ramesh Bhati at 'Exhibit-31' has stated that, on 21st October 2010, he was called by Police in Sangvi Police Station for panchanama. another panch, Amrutlal was there. From Sangvi Police Station, they went to Dhankawadi at Gulabnagar in one bungalow. There was steel grill safety door at the entrance of the bungalow. After opening the door, they entered into bungalow. There was a hall. After going to East-side from hall, there was a bedroom on South-side. One woman and man aged about 23 years old were present in that room. Police caught hold of that man and took his search and in his pant pockets, Rs.98,000/- was found in search. Some amount approximately around Rs.5,000/- to Rs.6,000/- was found in his shirt pocket. There were three mobiles in his possession. Police took the amount and mobiles and put it in the bag and wrapped it in paper. Police prepared panchanama of it. This witness signed the panchanama. The panchanama is at 'Exhibit-32'. This witness identified Appellant present in Court from whose possession mobiles and amount were seized.

In cross-examination, this witness admitted that he does not know the name and address of the person who was taken in custody by the police. He does not know the description of seized articles. The number of currency notes were not written in the panchanama. There is no cross-

examination to this witness on the point of seizure of amount from the possession of Appellant.

14. PW-6 Ravindra Yadav at 'Exhibit -33' has stated that, on 23rd October 2010, he was called by Sangvi Police in police station for panchanama. Another panch – Ganesh was there. Appellant was present in the police station. Appellant gave information to this witness and other panch that, he had kept the amount of Rs.2,52,000/- in tin shed at Gulab Kate Chawl, Dapodi. The information given by Appellant was reduced into writing by the police. This witness and other panch signed on it. The panchanama is at 'Exhibit-34'. Thereafter, this witness and other panch along with police went to the place shown by Appellant in police jeep. Appellant took all of them towards the tin shed. The shed was closed, it was opened by the police. There was a steel-cupboard in that shed. On the top rack of that cupboard, there was a suitcase. Appellant took out that suitcase. In that suitcase, there was a plastic bag and in that bag, there were currency notes of Rs.2,52,500/-. The police seized the currency notes and sealed them. The police prepared panchanama. This witness and other panchas signed on that panchanama. The panchanama is at 'Exhibit-35'.

This witness identified Appellant present in the Court as the person who gave the amount from the suitcase. In cross-examination, this witness has stated that he cannot state why the police has not mentioned in the memorandum statement that Appellant stated that he kept the amount of Rs.2,52,000/- at Gulab Kate Chawl, Dapodi. This witness further admitted

that, on that day i.e. 23rd October 2010, they went in Pimple Gurav and Williamnagar and except Williamnagar, they did not go to any other place with police. This witness further stated that, he cannot state whether the police has mentioned the description of currency notes in the panchanama. This witness denied the suggestion that, panchanama was not prepared in the presence of this witness.

15. To prove the recovery of the amount from Appellant of Rs.7,00,000/-, the prosecution examined PW-7 Santosh Pagare, Panch Witness, at 'Exhibit-36'. This witness has stated that, on 21st October 2010, he was called by Sangvi Police for panchanama. Khan was another panch. Appellant and police staff were present in police station. Appellant informed in their presence that, out of the amount which he brought from the house of deceased - Sudhakar, he had spent some amount and some amount was kept in the house at Laxminagar and he is ready to produce that amount. The police reduced his statement into writing. It was read over to all of them. This witness and other panchas signed on that memorandum statement. It is at 'Exhibit-37'. Thereafter, police staff, Appellant, this witness and other pancha by Government vehicle went towards Laxminagar. Appellant took them to Galli No.4 to the last end of the lane. There Appellant got down from the jeep. The house owner was standing there. The house owner opened the door with the help of key, which was with him. Appellant entered in the house. This witness and others followed him. Appellant went in kitchen and from the loft, he took out a brown

colour bag. Appellant opened the chain of that bag. There were 1400 currency notes of Rs.500/- denomination. The police seized and sealed the bag along with the currency notes and prepared panchanama. This witness and other panch signed the panchanama. It is at 'Exhibit-38'.

In cross-examination, this witness stated that, he cannot assign any reason as to why the Police has not mentioned in memorandum statement that Appellant had kept the amount in the house at Laxminagar. This witness further stated that, the police only counted the currency notes but did not note down the numbers of the currency notes. The currency notes were having bank slips. This witness does not remember whether the police wrote down the description of the bank slips in the panchanama.

16. To corroborate the evidence of panch witnesses, the prosecution has examined PW-13 Shantaram Tayade, Investigating Officer at 'Exhibit-51'. He has stated that after registration of crime, the investigation was handed over to him. He recorded statement of Shri Bangar who had purchased the house of deceased for Rs.19,00,000/-. On 21st October 2010, he arrested Appellant. He prepared the arrest panchanama and seized cash of Rs.98545/- from his personal search. When Appellant was in custody on 21st October 2010, he gave memorandum statement in the presence of panchas that, the amount taken by him from the house of deceased was concealed by him and he is ready to produce it. His statement was reduced in writing. The panchanama is at 'Exhibit-37. Thereafter, as per the instance of Appellant, the amount of Rs.7,00,000/- was seized from the room at

Laxminagar. The panchanama is at 'Exhibit-38'. On 23rd October 2010, in presence of this witness clothes of Appellant were seized under seizure panchanama and on that day, Appellant gave memorandum statement that out the amount taken from the house of deceased, he had concealed some amount at Dapodi and he is ready to show that place. The memorandum statement is at 'Exhibit-34'. The amount of Rs.2,52,500/- was seized in the presence of panchas as per the statement of Appellant. The panchanama is at 'Exhibit-35'. On 26th October 2010, Prakash Gaikwad, brother of Appellant told this witness that Appellant had purchased motor-cycle from the said amount. This witness seized the motor-cycle under panchanama which is at 'Exhibit-54'. Nothing elicited in cross-examination of this witness to disbelieve the evidence regarding seizure of huge amount more than Rs.11,00,000/- from Appellant. It is prosecution's case that, out of amount from house of deceased Sudhakar, Appellant had purchased Hero Honda motor cycle, to prove it, prosecution has examined PW-11 Mahadeo Kachi, who acted as a panch in seizure of Hero Honda motor cycle but this witness did not support prosecution case, nor anything came on record in his cross-examination by learned APP that said motor-cycle was purchased out of the amount taken from house of deceased.

17. From the evidence of these witnesses, it reveals that the amount of more than Rs.9,52,000/- was seized as per the disclosure statement of Appellant. Amount of Rs.98,545/- was seized in personal search of Appellant. It is the contention of learned counsel for Appellant that, there is

doubt about preparing panchanamas and seizure of amount. As on 21st October 2010, Appellant was arrested and the amount of Rs.98,545/- and amount of Rs.7,00,000/- was seized within a gap of half an hour. The place from where the said amounts are seized are at long distance. So it creates doubt about the seizure of these amounts.

18. In our view, on 21st October 2010, in presence of panchas, the police arrested Appellant and in his personal search police seized the amount of Rs.98,545/- and on the same day, on disclosure statement of Appellant, the amount of Rs.7,00,000/- was seized from house of Appellant at Laxmi Nagar. Appellant has not given any explanation about these seized amounts nor Appellant has stated that these amounts were not belonging to him. While answering to questions about seizure of these amounts under Section 313 of the Criminal Procedure Code, Appellant has answered that it is false. Appellant could have explained about the possession of these amounts. Though the houses are at long distance, it does not mean that the seizure amounts and panchanamas prepared by the police are false. Pancha witnesses have categorically stated about the seizure of amounts as per the disclosure statement of Appellant and in their cross-examination, nothing has come on record to disbelieve their evidence.

19. It has come in the evidence of PW-1 Asit Kamble, who was panch witness on spot panchanama that he knows Appellant since long as they were in same school. Appellant wanted to purchase the house at Pimple Gurav, therefore, he telephoned this witness who was doing the work of

estate agent. This witness showed him two to four houses. Thereafter, Appellant told this witness that he wants a house on rent basis. This witness arranged for a rented house at Laxminagar. Nothing elicited in cross-examination of this witness. Police has seized amount of Rs.7,00,000/- from Laxminagar house of Appellant, which strengthens the prosecution case.

20. Appellant was aware that deceased had kept huge amount in his house at Williamnagar. From the evidence on record, it proves that out of the amount of Rs.13,00,000/- which was kept by deceased in his house at Williamnagar, an amount of more than Rs.11,00,000/- was recovered from the possession of Appellant and it proves one of the motives of Appellant was to rob the amount. It is the contention of learned APP that, another motive of Appellant was to remove deceased from his way as he had illicit relations with Smt. Jyoti, wife of deceased Sudhakar. It appears from the evidence of prosecution witnesses that wife of deceased was not staying with her family at the time of incident of murder of her husband nor she was present at the time of funeral of her husband Sudhakar. PW-2 Shilpa has stated that, her maternal uncle - Mr. Yogesh Borade resides at Panvel. Her mother had gone to Panvel to see the new born child of her maternal uncle and was staying at Panvel prior to 2 to 3 months of incident. During that period, only once this witness talked to her mother over the phone.

In cross-examination, this witness stated that, her mother went to Panvel in the month of September 2010 to see new born child of her

maternal uncle. This witness further stated that, since then her mother did not return to Pune and they did not receive any information or well-being of her mother. She further stated that, she felt that she should make enquiry about her mother why she was not coming to Pune. On 21st October 2010, for the first time, she met her mother after the incident in police station. She was not aware where was her mother during that period. This witness asked her mother about it, but she was unable to state.

21. From the evidence of this witness, it reveals that her mother Jyoti had gone to her maternal uncle's house at Panvel to see his new born child but from prosecution evidence, it reveals that she never went to Panvel. PW-4 Sanjay Borade at 'Exhibit-30' has stated that Jyoti Tribhuvan was his younger sister and deceased Sudhakar was his brother-in-law. On 15th October 2010, he came to know about the incident from his younger brother - Yogesh Borade. Wife of his brother-Yogesh delivered a child six months prior to the incident. At that time, Jyoti and Sudhakar did not come to see the baby. His sister-Jyoti had not come to Panvel during the said six months. Thereafter, he had no contact with Jyoti and Sudhakar except this witness talked with them on phone twice. This witness and Yogesh are residing jointly at Panvel.

In cross-examination, this witness stated that, on 21st October 2010, he came to Pune along with Yogesh as police called them. His sister (Jyoti) was in police custody. Jyoti told this witness that, as per instructions of Appellant, she was residing separately for performing puja. This witness

further stated that, at the time of funeral of Sudhakar, Jyoti was not present.

22. PW-3 Shubham at 'Exhibit-29' has stated the same facts stated by PW-2 Shilpa that Only once, this witness talked with his mother on phone. In cross-examination, he stated that his mother was not present at the time of funeral of his father. When police arrested Appellant for murder of his father, at that time for the first time, he met his mother. This witness admitted that, police has taken custody of his mother and Appellant.

23. From the evidence of these witnesses, it reveals that the mother of PW-2 and PW-3 had left the house to go to Panvel to see new born baby of her brother - Yogesh, but she did not go there and she was residing with Appellant. She had left the house prior to one or two months of the incident. Even she did not attend the funeral of her husband. It has come in the evidence of PW-5 Ramesh Bhati, who is panch witness of arrest panchanama of Appellant that, Appellant was arrested with one woman from his house at Dhankawadi. It has come in evidence of PW-10 Manik Rasal that, Appellant and one lady had gone to his house on 14th October 2010 for enquiry of room on rent. Appellant had given Rs.15,000/- as a deposit to this witness. In complaint at 'Exhibit-28', Shilpa has stated that Appellant and her mother Jyoti had close relationship. To remove obstacle of her father from their relationship, Appellant had killed his father but in evidence before Trial Court, she has not stated about close relationship between Appellant and her mother.

24. From the evidence of PW-4 Sanjay Borade, brother of Jyoti, it reveals that Jyoti had told him that as per instructions of Appellant, she was residing separately for performing puja. It has come on record that at the time of arrest of Appellant, one lady was with him i.e. on 21st October 2010. PW-2 Shilpa and PW-3 Shubham have stated that they met their mother Jyoti on 21st October 2010, for first time after murder of their father. It shows that lady who was present with Appellant was Jyoti. From the evidence of prosecution witnesses and conduct of the wife of deceased as she did not go to Panvel nor attended funeral of her husband but she was staying with Appellant during this period, it proves that Appellant and wife of deceased had close relationship and to remove the deceased from their way, Appellant killed the deceased. The evidence produced on record establishes the motive of Appellant i.e. to rob the money of deceased and to remove him from their relations.

Last Seen together:

25. It is the contention of learned counsel for Appellant that, no one saw the Appellant with the deceased before his murder and as per prosecution's case, Appellant had met PW-2 Shilpa and PW-3 Shubham on 12th October 2010, whereas dead body of deceased was found on 15th October 2010. There is a gap of three days. The prosecution has failed to prove the last seen together but this fact is not considered by the Trial Court.

26. To prove the last seen together theory, prosecution has examined PW-2 Shilpa and PW-3 Shubham. PW-3 Shilpa has stated that, on 12th

October 2010 at about 1.30 pm while returning from her college to house i.e. at Williamnagar, she received a phone call from his father on mobile, stating that accident of her mother took place at Panvel and he intends to go to Panvel. When this witness got down from bus at Ramkrishna Mangal Karyalaya, she received phone call from Appellant stating that her father had gone to Panvel due to the accident of her mother. Appellant told this witness that her father had locked the house at Williamnagar, so she should go to stay at Swapanapark. Father of this witness had told her that Appellant will give key of the flat at Swapanapark and money. This witness was knowing about flat at Swapanapark as she was previously residing there. Appellant came at Swapanapark flat and handed over the keys of flat and some food for eating. Her brother Shubham (PW-3) also came at Swapanapark flat after school time was over. On 15th October 2010, this witness came to know that murder of her father took place in their house at Williamnagar.

In cross-examination, this witness admitted that on 12th October 2010, when she left house at 7.00 to 7.30 am for college, at that time, her father was alone in the house at Williamnagar. This witness further admitted that, on 13th and 14th October, they did not contact to their father on phone. On 15th October 2010, police informed her about the incident on phone in the evening. Then, this witness went to Williamnagar house. From evidence of this witness, it reveals that on 12th October 2010, her father informed her about the accident of her mother at Panvel and

thereafter, Appellant informed her on mobile phone that her father had gone to Panvel to see her mother. Appellant arranged her stay at Swapnapark Residency and gave this witness some food and key of that flat.

27. To corroborate the evidence of this witness, prosecution has examined PW-3 Shubham, he has stated that on 12th October 2010, as usual he had gone to his school in the morning and returned to house at Williamnagar at 2.45 pm. His father opened the door. Appellant was also present in the house. This witness was intending to enter into the house but Appellant did not allow this witness to enter into the house. Appellant handed over laptop to this witness and asked him to go to Swapnapark, Kate Puram. Accordingly, this witness went to Swapnapark on his bicycle. His sister-Shipa was there. She informed this witness that, she had received phone call at 1.30 p.m. from Appellant and Appellant told her that her mother met with an accident and her father had gone to see her mother at Panvel. This witness further stated that, on that day, at about 7.00 to 7.30 pm, Appellant came to the flat at Swapnapark. Appellant talked with this witness. At that time, father of this witness was not with him. This witness and Appellant went to market and brought some eatables. Thereafter, the Appellant gave this witness Rs.100/-. This witness further stated that, Appellant told this witness that there is no need to go to college from tomorrow. Sister of this witness i.e. PW-2 was intending to talk with their father, so she contacted Appellant about talking with their father but

Appellant prevented his sister from talking with his father. On next day, this witness was in need of mobile charger, so he contacted Appellant for charger. Appellant told this witness to purchase the charger from the money given by him. This witness further stated that, on 14th October 2010, Ashit Kamble, an estate agent came to their house at about 7.00 p.m.. He handed over Rs.500/- to this witness and his sister and told them that this amount was send by Appellant. Thereafter, Ashit talked with Appellant on his mobile and handed over mobile to this witness to confirm that he had given Rs.500/- to this witness. This witness asked Appellant where is he, Appellant told him that he was admitted in hospital and disconnected the call. On 15th October 2010, this witness received phone from police about the death of his father. In cross-examination this witness admitted that, after leaving Sukwani Residency, they first started residing at Williamnagar and then went to Swapanapark, Katepuram. This witness admitted that on 12th October 2010, when he left house for college in morning, his father and sister were in the house at Williamnagar and when he returned from school at Swapanapark flat, his sister was under pressure and frightened. This witness stated that, during 12th October 2010 to 15th October 2010, this witness and his sister tried to contact their father and mother on their mobile but they were not reachable. This witness denied the suggestion that, he is deposing falsely that, on 12th October 2010 when he went to the house at Williamnagar his father opened the door, Appellant was there and he prevented this witness from entereing the

house. From the evidence of this witness, it reveals that he had seen Appellant and his father together on 12th October 2010 before the death of his father when this witness had been to his house at Williamnagar.

28. From the evidence of PW-2 Shilpa and PW-3 Shubham, it reveals that, Appellant had falsely stated to them that their father had gone to Panvel to see their mother. Appellant also arranged flat for them at Swapanapark, Kate Puram. It has come in the evidence of PW-8 Rajendra Girigosavi, owner of Swapanapark flat that in the month of October, it was taken on rent by Prakash Gaikwad. It appears from record that, he is brother of Appellant. It shows that said flat was taken on rent by Appellant. He gave key of that flat to PW-2 Shilpa. It appears from record that, Appellant did not allow PW-3 Shubham to take mobile charger from his Williamnagar house and asked him to purchase new charger. On 14th October 2010, Appellant sent Asit Kamble with Rs.500/- to give to PW-2 Shilpa and PW-3 Shubham. It shows that Appellant did not want PW-2 Shilpa and PW-3 Shubham to go to their Williamnagar house. Even Appellant prevented PW-2 Shilpa and PW-3 Shubham from speaking with their father on phone. Dead body of deceased was found on 15th October 2010. PW-3 Shubham, on 12th October 2010, had seen Appellant with his father at Williamnagar house. Whereas, Appellant had told PW-2 Shilpa that her father had gone to Panvel. It proves from the evidence of these witnesses that, Appellant was last seen with their father during 12th October to 14th October 2010. Appellant was in contact with PW-2 Shilpa and PW-3

Shubham. Appellant prevented these witnesses to go to Williamnagar house and to speak with their father. It proves involvement of Appellant in the crime. Prosecution has examined PW-9 Smt. Shanta Suryawanshi to prove extra-judicial confession made by Appellant before her stating that he has assaulted one person by hammer. This witness has not stated on which date Appellant met her. Hence, we are not finding any substance in evidence of this witness.

29. It is the contention of learned counsel for Appellant that, it has come in the evidence of PW-8 Rajendra Girigosavi, who was landlord of flat at Swapanapark that PW-2 Shilpa and PW-3 Shubham were residing in flat at Swapanapark from 7th to 15th October 2010. The statement of this witness contradicts with the statement of PW-2 Shilpa and PW-3 Shubham that they went to stay at Swapanapark on 12th October 2010. PW-8 Rajendra Girigosavi, in his examination -in-chief, has stated that during 7th October to 10th October 2010, Sudhakar Tribhuvan along with his son and daughter came to reside in that flat. Appellant was also with him. In cross-examination, this witness admitted that I cannot state names of son and daughter of Tribhuvan as they stayed from 7th October to 15th October 2010. In our view, admission of this witness regarding stay of PW-2 Shilpa and PW-3 Shubham from 7th October to 15th October 2010 would not fatal the prosecution case, as it has come in his examination-in-chief that, PW-2 and PW-3 were residing at flat of Swapanapark from 7th October to 10th October 2010. Moreover, it has come in the evidence of PW-2 Shilpa

that they were earlier staying at Swapanapark flat, it shows that, they went to reside at Swapanapark flat on 12th October 2010.

30. It is the contention of learned counsel for Appellant that, prosecution failed to prove that the murder of deceased was committed by Appellant. Murder of Sudhakar was committed by his wife, Jyoti but Appellant has falsely been implicated in this case. Though Appellant has taken oral defence that murder of deceased is committed by Jyoti, but no evidence is produced in that regard. It is significant to note that while answering questions under Section 313 of Cr.P.C., Appellant has not mentioned about this defence, only he has answered that it is false case. We do not see merit in contention of Appellant that he is falsely implicated in this case. It is contention of learned counsel for Appellant that if this Court comes to the conclusion that, Appellant committed murder of the deceased, the act of Appellant comes under 304(Part-I) of the IPC as only one blow was given on the head of deceased, Appellant did not act in cruel manner.

31. It is the contention of learned APP that, Appellant assaulted the deceased with hammer on vital part of the body i.e. forehead and he locked the door of the house, it shows cruelty.

32. Admittedly there was only one blow by hammer on the head of deceased. The said blow was on right side, frontal bone of skull, which is a vital part. PW-12 Dr Subhash Madane at 'Exhibit-46' has stated that, he conducted post-mortem on dead-body. Cause of death was head injury, lacerated wound over right forehead 3cm x 2cm by bone deep, dark

reddish brown fluid was oozing out from the edges. There was fracture of skull. This witness further stated that, the said injury is possible by hammer, which was seized from the spot. In the cross-examination, he stated that deceased could have survived had he been received immediate treatment. In our view, no doubt, there was only one injury on the head of deceased but the said blow of hammer was so powerful, due to which, there was fracture of skull and there were external and internal injuries.

33. It has come on record that, the door of the house was locked where deceased was murdered. PW-1 Asit Kamble who acted as panch on spot panchanama has stated that on 15th October 2010, Sangvi police called him for panchanama at his sister's house, another panch was there. The said house was having wooden door and safety door. Smell was coming from the house. Police broke open the lock of the house. One person was lying in the hall in pool of blood, he was dead. One hammer was on load. Police seized the hammer along with other articles. Nothing elicited in cross-examination of this witness. Admittedly, the house was locked from outside, where deceased Sudhakar was murdered. It shows that, Appellant did not want to give any medical treatment to the deceased and deceased died in the said room. Though it was a single blow but it was on vital part of the body and the said blow was given with the intention to kill the deceased, it was so powerful, it fractured skull of deceased. Thereafter, he left the deceased in unattended position and locked the door of the house.

It shows that, the act of Appellant does not fall under Section 304(Part-I) of the Indian Penal Code.

34. In view of above reasons, Appeal is dismissed.

35. In view of disposal of the Appeal, Interim Application No. 887 of 2023 does not survive and same is also disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)