

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

**CRIMINAL APPEAL NO. 43 OF 2021  
WITH  
INTERIM APPLICATION NO. 1071 OF 2022  
WITH  
INTERIM APPLICATION NO. 1282 OF 2020  
WITH  
INTERIM APPLICATION NO. 958 OF 2019  
WITH  
INTERIM APPLICATION NO. 1283 OF 2020  
IN  
CRIMINAL APPEAL NO. 43 OF 2021**

Rupesh Tukaram Kumbhar,  
Age : 40 Years, Occu : Service,  
R/o. Velamb, Taluka – Guhagar,  
District : Ratnagiri ...Appellant

Versus

The State of Maharashtra,  
Through Guhagar Police Station,  
C.R. No.I-05/2006 ...Respondent

Mr. Dheeraj Panchange, Advocate appointed for Appellant.

Ms. S.D. Shinde, APP for the Respondent–State.

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

**RESERVED ON : 30<sup>th</sup> NOVEMBER, 2022.**

**PRONOUNCED ON : 8<sup>th</sup> MARCH, 2023.**

**JUDGMENT – (PER : PRAKASH D. NAIK, J.) :-**

1. This is an appeal under Section 374 of Code of Criminal Procedure challenging the Judgment and Order dated 10<sup>th</sup> October, 2008 passed by Additional Sessions Judge, Khed in Sessions Case No.14 of 2006 convicting the Appellant (Accused No.2) for offence

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under Section 302 r/w 34 of Indian Penal Code (for short 'IPC') and sentencing him to suffer imprisonment for life.

2. The case of the prosecution is that deceased Yashwant Chavan was missing. His son Vishal Chavan lodged the missing complaint with Ratnagiri Rural Police Station on 11<sup>th</sup> January, 2006. Yashwant Chavan was a rickshaw driver. He was plying rickshaw from Nivali rickshaw stand. On 10<sup>th</sup> January, 2006, he left the house with rickshaw and did not return home. His family members tried to locate him but could not succeed. Person named Shitap had disclosed that, he met Yashwant Chavan at Sambre Phata and he had informed him that, he is going towards Jakadevi. Attempt was made to trace him at Jakadevi but he could not be found. Police tried to search him. On 21<sup>st</sup> January, 2006, the brother of the deceased Dattaram Shivram Chavan learnt that, the rickshaw belonging to Yashwant Chavan is recovered by Police. Hence, he visited Ratnagiri City Police Station. Accused Pravin Kumbhar was in custody of Police. It was revealed that, Accused Pravin Kumbhar and his brother Rupesh Kumbhar (Appellant) has committed murder of Yashwant Chavan near Kapsi river. The Police team proceeded to river Kapsi. Dead body of Yashwant Chavan was located. On the basis of documents found on his person identity of deceased was confirmed. It was noted that, the head and face of

the deceased was smashed with stones. The body was decomposed. FIR was lodged vide C.R. No.5 of 2006. Investigation was conducted by Police Sub-Inspector Vilas Deshmukh. Inquest Panchanama was prepared. Driving licence was found in the pocket of deceased. The dead body was handed over to family members. Spot Panchanama was recorded. Stones filled with blood were recovered. Photographs of spot were clicked. Pant of the deceased was recovered. Documents relating to auto rickshaw of deceased were called from the office of R.T.O. Pravin Kumbhar was arrested. On his disclosure statement number plates of rickshaw were recovered from Parshuram Ghat. Test identification parade of Pravin Kumbhar was conducted by Special Executive Magistrate. Charge-sheet was filed against Pravin Kumbhar. After the period about eight to ten months Rupesh Kumbhar (Appellant) was arrested. On the basis of statement made by Appellant/Accused wrist watch of deceased was recovered on the banks of river Kapsi. Test identification parade for identifying the Appellant/Accused was conducted. Charge-sheet was filed against Appellant.

3. Charge was framed on 8<sup>th</sup> September, 2006 against Accused No.1 Pravin Kumbhar. Subsequently, joint charge was framed against Accused No.1 and Appellant for offences under Sections 364 r/w 34 of IPC, 394 r/w 397 of IPC and 302 r/w 34 of

IPC on 10<sup>th</sup> July, 2007. Both Accused were convicted for offence under Section 302 r/w 34 of IPC and acquitted for offences under Sections 364 r/w 34 of IPC and 394 r/w 397 of IPC.

4. Accused No.1 Pravin Tukaram Kumbhar challenged the Judgment of conviction by preferring Criminal Appeal No.875 of 2009. Appellant did not prefer an appeal at that point of time. The said appeal was heard by the Division Bench of this Court and vide Judgment and Order dated 20<sup>th</sup> August, 2014, the appeal was dismissed.

5. Accused No.1 Pravin Kumbhar challenged the Judgment of the trial Court and this Court by preferring Special Leave Petition No.5076 of 2020 before Hon'ble Supreme Court. The said petition was dismissed vide Order dated 2<sup>nd</sup> March, 2020.

6. Appellant preferred present appeal. Considering the fact that, Appellant was in custody for substantial period of time and the appeal preferred by the co-accused was dismissed by this Court, it was directed that this appeal be listed for final hearing.

7. Learned Advocate Mr. Dheeraj Panchange appointed by Legal-Aid Committee to represent Appellant has submitted that, there is no evidence to convict the Appellant for the offence under Section 302 of IPC. The appeal preferred by Accused No.1 has been dismissed on the basis of evidence against him. The case is

based on circumstantial evidence as there is no eye witness to the incident. The case of Appellant can be distinguished from Accused No.1. The dead body was discovered at the instance of Accused No.1. The auto rickshaw was discovered at the instance of Accused No.1. The only evidence against Appellant is recovery of wrist watch and circumstances of last seen together with deceased. Both the circumstances are not strong enough to convict the Appellant. The complainant had not stated before Police that, the deceased was wearing wrist watch. Identity of deceased is doubtful. The prosecution has failed to prove that, Appellant was involved in commission of offence. Madhukar Ramchandra Salunke (PW-6) did not identify the Appellant. The test identification parade was defective. The evidence of identification parade has been discarded by the trial Court. Pramod Dhondiraj Damle and Subhash Ramchandra Jadhav were not examine. Appellant was allegedly identified by Police Constable Sankarshan Dhondu Ambre. At the time of test identification parade policeman was present in identification parade room. The guidelines to conduct the parade were not followed. The identity of Appellant as a person who was in company of the deceased is not established. The case would not fall under Section 302 of IPC. The incident is without premeditation. The evidence of witnesses do not inspire

confidence. Benefit of doubt has to be given to the Appellant.

8. Learned APP submitted that, both Accused are brothers. Although the case is based on circumstantial evidence, the prosecution has brought on record strong circumstances to establish the involvement of Appellant and the co-accused in the crime. Appellant was last seen with deceased by the witness whose evidence cannot be discarded. There is recovery of wrist watch at the instance of Appellant. The wrist watch belongs to deceased. The appeal preferred by Accused No.1 has been dismissed by this Court and the said Order is confirmed by Apex Court. The prosecution has examined sixteen witnesses to prove its case. The defense could not demolish the prosecution case. The trial Court has analyzed the evidence and convicted the Accused by assigning cogent reasons. There is no reason to disturb the findings of trial Court. The victim was brutally killed by Accused. Appellant was absconding. The prosecution has proved its case beyond reasonable doubts.

9. The trial Court has observed that, there is defect in the test identification parade of Pravin Kumbhar and Rupesh Kumbhar since one official was present in the parade room at the time of test identification parade.

10. In Paragraph No.16 of the Judgment and Order dated 20<sup>th</sup> August, 2014 convicting Accused No.1 the Division Bench of this Court has dealt with the submission of the learned Advocate for Appellant that, the discovery of wrist watch at the behest of Accused No.2 is extremely belated and therefore, no reliance at all can be placed. It was observed that, Accused No.2 was absconding and arrested after nearly ten to eleven months of the arrest of Accused No.1. The wrist watch has been identified by PW-1 Vishal as a wrist watch belonging to his father. Omission to state in the missing report at Exh.36 that deceased Yashwant Chavan was wearing a wrist watch would not affect the identification of wrist watch. In Paragraph No.17 of the said decision it was observed that, even if the test identification parade is left out of consideration, PW-5 Madhukar had ample opportunity of observing Accused and infact Accused No.1 was arrested by Police while attempting to remove the auto rickshaw. The evidence against Accused therefore is conclusive and proves the offence beyond reasonable doubt. Failure of the prosecution to prove motive would not be fatal in each and every case. Particularly when there is overwhelming evidence which establishes the culpability of Accused. The decision of this Court was challenged before the Apex Court and the petition challenging the said decision was

dismissed by the Apex Court.

11. Although the appeal preferred by Accused No.1 has been dismissed by this Court vide Judgment and Order dated 20<sup>th</sup> August, 2014 and the said Order is confirmed by the Apex Court, we have scrutinized and independently examined the nature of evidence against Appellant while adjudicating the present appeal.

12. The prosecution has examined sixteen witnesses. PW-1 Vishal Yashwant Chavan is the son of deceased. He filed missing report. PW-2 Dattaram Chavan is the informant and elder brother of deceased. PW-3 Rajendra Ramesh Sawant is the Panch for seizure of auto rickshaw. PW-4 Suresh Gopinath Khadpe is the Panch for seizure of clothes of Appellant and recovery of number plate of rickshaw. PW-5 Dilip Pandurang Salvi is the Panch witness of seizure of auto rickshaw. PW-6 Mahdhukar Ramchandra Salunke is the person near whose house the auto rickshaw was parked by Accused. PW-7 Sankarshan Dhondur Ambre is the Police Constable whose duty was to check the auto rickshaw on the road. PW-8 Dr. Vinod Sadashiv Sangvikar is the Medical Officer who conducted postmortem. PW-9 Dilawar Mehmood Khan is the owner of Dhaba. PW-10 Chandrakant Moreshwar Phatak is Panch for test identification. PW-11 Anilkumar Shamrao Valiv is the Deputy R.T.O. PW-12 Deepak Ganpati Madhale is the P.S.I. attached to Ratnagiri



Police Station. PW-13 Vijay Damodhar Ranade is Tahesildar and Executive Magistrate. PW-14 Ashok Dhondiba Naik is Tahesildar and Executive Magistrate. PW-15 Sanjivan Rajaram Bhosale is Panch witness during seizure of wrist watch and spot of incident. PW-16 Vilas Deshmukh is the Police Sub-Inspector posted at Guhagar Police Station, he is the Investigating Officer.

13. The defence of Accused No.1 Pravin Kumbhar is that, Police have filed a false case against him. Witnesses are deposing at the instance of Police. There was liquor business of his uncle, hence Police were on inimical terms. Accused No.2 (Appellant) in his statement under Section 313 of Cr.P.C. has pleaded similar defence.

14. We have scrutinized the evidence of witnesses minutely. We are conscious of the fact that, there is no eye witness to the incident and the case is based on circumstantial evidence. The law relating to circumstantial evidence is no more *res integra*. In the cases based on circumstantial evidence, there must be chain of evidence so complete not to leave any reasonable ground for conclusion consistent with the innocence of Accused and must show that, in all human probability the act must have been committed by Accused.

15. PW-1 Vishal Yashwant Chavan has stated that his father was driving auto rickshaw. The Rickshaw No.MH-08-E-4700 was owned by him. He left the house on 10<sup>th</sup> January, 2006. There was gold chain on his person. He was wearing wrist watch on his wrist. It was of Titan company having black dial. His father used to return home at 8:30 p.m. He did not return home. On 11<sup>th</sup> January, 2006 his mother came to Ratnagiri and informed him that his father did not return home on the night of 10<sup>th</sup> January, 2006. He made inquiry at Nivali Phata where his father used to halt his rickshaw. He was informed that his father carried passengers in his rickshaw at about 4:30 p.m. and he had gone towards Ganpati Pule. He made inquiries. He could not get any information about where about of is father. One Shitap told him that he met his father on 10<sup>th</sup> January, 2006 at 5:30 p.m. near Chambrewadi Phata. He also told that, two persons were sitting in the auto rickshaw. His father had disclosed that, he is going to Jakadevi. He lodged missing report. Dead body of his father was traced. He identified dead body of his father. He identified wrist watch used by his father. He identified the pieces of bush shirt of his father and the pant on the person of his father. He was cross-examined by Accused. He stated that, in the missing report and in the statement he did not state that his father was using Titan company wrist

watch. He cannot assign any reason why Police have not written the color of the shirt on the person of the deceased in the missing report. Except the omission as above the cross-examination at the instance of Accused could not affect the version of this witness. PW-2 Dattaram Chavan has deposed that, on 10<sup>th</sup> January, 2006 his brother Yashwant Chavan had gone with his auto rickshaw and did not return home. On 21<sup>st</sup> January, 2006, he came to know that the auto rickshaw of his brother was recovered and Police have arrested Pravin Tukaram Kumbhar. The arrested Accused had shown the spot near Kapsi river where dead body of Yashwant Chavan was found. It was in decomposed condition. Driving license of the deceased was found in the pocket of the pant. The dead body was identified. He lodged the complaint with the Police. It was marked at Exh.38. The driving license was exhibited in evidence. In the cross-examination it is stated that, the body of the deceased was in decomposed condition. There is nothing in the cross-examination to doubt the version of PW-2 about the complaint lodged by him or identity of the victim. PW-3 Rajendra Sawant has deposed that, he was called at Ratnagiri City Police Station to act as Panch witness. Auto rickshaw bearing no. MH-08-E-4700 was stationed near one house. The inmates of the house informed that, two persons have kept the auto rickshaw by stating that, the petrol

tank is empty and they would return after purchasing petrol. The Police waited at spot to trap the Accused. One person came there and he was filling the petrol in the petrol tank of rickshaw. Police caught him. Due to lapse of time he is unable to identify that person. Police inquired with that person about the possession of auto rickshaw and whereabouts of owner. He disclosed that, the rickshaw was taken from Nevali Phata. He also disclosed that, one person was killed near river. Police seized the auto rickshaw. Accused showed the river. Police seized the chain of yellow metal at the spot. At the instance of Accused No.1 dead body was traced. It was in decomposed condition. Panchanama was prepared. Learned APP was permitted to put leading questions to the witness. The witness stated that, the person was asked to disclose his name and he disclosed his name as Pravin Tukaram Kumbhar. That person also stated that, he and his brother has committed murder of the said person near Kapasi river. He cannot identified Pravin Kumbhar. He was cross-examined at the instance of Accused. The defence could not elicit any admission from the witness to disbelieve him. It is pertinent to note that there was a gap between the incident and deposition and merely on the ground that, the Panch witness could not identify the Accused No.1, the witness should not be disbelieved. PW-4 Suresh Khadpe is the Panch witness. According

to him, he was called at Guhagar Police Station on 28<sup>th</sup> January, 2006. Accused present at the Police Station gave his name as Pravin Tukaram Kumbhar. He produced full pant and full shirt. He identified the clothes. The clothes were marked as Articles 12 and 13. He was again called at Guhagar Police Station on 30<sup>th</sup> January, 2006. Accused No.1 disclosed that, he took out the front and rear side number plate of auto rickshaw and hidden them at Parshuram Ghat. He volunteered to disclose the spot and produce the number plates. Accused produced the number plates from bushes. The Articles were seized. Panchanama was recorded on 4<sup>th</sup> November, 2006. He was again called by the Police at Guhagar Police Station. Accused No.2 (Appellant) was present at Police Station. Police took his personal search and seized one wrist watch and cash amount. He was arrested. He denied the suggestions of the defence. There is no reason to doubt his version. PW-5 Dilip Pandurang Salvi is the Panch witness. He referred to seizure of auto rickshaw. He referred to arrest of Accused No.1 who came near the auto rickshaw and filling the petrol. He could not identify Accused in the Court. He also referred to recovery of gold chain near the spot of incident. He was cross-examined. The cross-examination is not effective to discard his evidence. PW-6 Madhukar Salunke is the resident of Patan, Dist. Satara. He stated that, on 12<sup>th</sup> January, 2006 auto

rickshaw was stopped near his house. Two persons aged about 24 to 25 years came near the compound of his house. They told him that, the petrol tank of rickshaw is empty and they would halt the rickshaw near his house. They would purchase the petrol and return to spot. They kept the rickshaw at that spot and left the place. He identified those two persons in the Court as Accused Nos. 1 and 2. He identified auto rickshaw parked by the said Accused. On 19<sup>th</sup> January, 2006 one person came near the auto rickshaw. He was one of those two persons who had kept the rickshaw near his house. He identified Accused No.1. He identified that person as Rupesh Kumbhar. The witness told him that, he cannot take rickshaw and he should visit Koyna Nagar Police Station. The said person disclosed his name as Rupesh Kamble. On 21<sup>st</sup> January, 2016, Police came to the spot and inquired about the auto rickshaw. The Accused No.1 came to the spot, he was caught by Police. He was identified as of of the two persons present in the Court. He identified Accused Pravin Kumbhar in the parade. He identified Rupesh Kumbhar in the identification parade. He was cross-examined by the defence. He stated that, there is always traffic for 24 hours on Chiplun Karhad Road. If any vehicle stops near the road they do not make inquiry with the person who stopped the vehicle. The rickshaw was parked outside the

compound wall. We do not find anything in the cross-examination to disbelieve the said witness. PW-7 Sankarshan Ambre was attached to Guhagar Police Station. He used to check the vehicles which were passing from the road. According to him one rickshaw came on 10<sup>th</sup> January, 2006 from Ratnagiri side. It was bearing registration No. MH-08-E-4700. Yashwant Shivram Chavan was the driver of that rickshaw. He told him that he will drop the passengers and return again. Two passengers were sitting on the back seat. Those persons were culprits on the record of Police Station. They were Pravin Tukaram Kumbhar and Rupesh Tukaram Kumbhar. He identified them in the Court. Yashwant Chavan went towards Sawarde side. He did not return. He was called for identification parade at Ratnagiri Special Prison. He identified Accused No.1 in the parade. He was again called for parade on 16<sup>th</sup> January, 2007. He identified Accused No.2. He also identified both the Accused in the Court. In the cross-examination by defense, he stated that, he has not taken the entry of rickshaw MH-08-E-4700 in register. The statement was recorded by Police on 28<sup>th</sup> January, 2006. He referred to the procedure adopted during identification parade. It is pertinent to note that, this witness has deposed that, both the Accused were culprits on the record of Police Station. Thus assuming that there is defect in the test identification parade, there

is no reason to discard the evidence of this witness or doubt the identity of Accused. Apart from that the witness had sufficient opportunity to witness the Accused who sitting in the auto rickshaw. It is relevant to note that the witness was a policeman and his work was to make a note of auto rickshaw's passing through the road. He has identified Accused in the Court. This is a strong circumstance against Appellant having seen him in the company of the deceased before he went missing and found dead.

16. PW-8 Dr. Vinod Sangvikar conducted postmortem. He referred to injuries on the person of the deceased. He noticed external injuries mentioned by him in the postmortem report such as Split laceration over right side of back extending from right side of thoracic vertebra to right maxilla, right scapula is visible. Ribs were visible, maxilla was fractured and separated out from base of skull, Mandible was fractured at the level of neck and separated, Dislocation of right shoulder, Posterior compartments were exposed. The injuries were possible by hard and blunt object like stone. The injuries in Column No.17 and the injuries Nos. 1, 2, 3 and 4 were ante-mortem and injuries nos. 5 and 6 were postmortem. The injuries mentioned in Column No.17 can be termed as homicide and death of a person due to such injuries is possible. He also noticed internal injuries. He opined that the death



of person had occurred due to shock due to hemorrhage. He was cross-examined. He stated that, ante-mortem and postmortem injuries can be identified from the color of injuries. There were animal bite marks on the body of deceased. He conducted postmortem at the spot where dead body was found on account decomposition of body. Thus, the evidence of this witness discloses that the death was homicidal. The cause of death is established. It is also disclosed that the injuries are possible due to stone. PW-9 Dilawar Khan has stated that, he is conducting hotel business. On 30<sup>th</sup> January, 2006, Accused took out two number plates from bushes. He identified the Accused. He gave his name as Pravin Tukaram Kumbhar. The number plates were bearing number as MH-08-E-4700. He identified the number plates. There was nothing in the cross-examination to ignore his evidence. PW-10 Chandrakant Pathak conducted identification parade. He stated that, the parade was conducted in jail. Witnesses Ambre and Salunke were called for the parade. Both of them identified Accused No.1 in the parade. Panchanama was written by Executive Magistrate. At the time of parade no police official were present there. Before identification parade Accused No.1 was not shown to the witnesses. The persons in the parade were of same constitution. Due to old age, he cannot remember the accused Pravin earlier and

told a name as Rupesh, due to loss of memory he has stated that, Police were present instead of Executive Magistrate. In the cross-examination he deposed that, he do not remember the name of police official who called him for parade. It is pertinent to note that, witness is aged around 74 years at the time of his deposition. PW-11 Anilkumar Valiv is attached to R.T.O. office Ratnagiri. The office gave necessary information in respect of vehicle MH-08-E-4700 to Guhagar Police. He admitted the contents of the information in the Court. The registered owner of the rickshaw was Yashwant Shivram Chavan. Thus, the identity of the rickshaw is established and it is also proved that it belonged to the deceased Yashwant Chavan. PW-12 Dipak Madhale was attached to Ratnagiri Police Station. He stated that, on 21<sup>st</sup> January, 2006 information was received that the auto rickshaw was located at Marul Tarphe Patan. He went to the spot alongwith other officers. They found auto rickshaw MH-08-E-4700 by the side of one house. The house owner told them that on 12<sup>th</sup> January, 2006 two persons aged 25 years come to him and they parked the rickshaw by stating that there was no petrol in the rickshaw. They saw one person. The witness saw one person going towards rickshaw. He was caught. He gave his name as Pravin Kumbhar. Accused No.1 was identified in Court. Inquiry was made with Accused No.1 about owner of

rickshaw. The vehicle was seized. Accused gave evasive answers. Accused thereafter disclosed that, he killed the rickshaw driver alongwith his brother. Accused No.1 showed the dead body of rickshaw owner. He took them near Kapsi river. Dead body was traced. One chain of yellow metal was found. The driving license was found on the person of the deceased. Panchnama was recorded. Inquest Panchanama was prepared. The witness was cross-examined by the Advocate for Accused. He stated that, he did not inquire with Ratnagiri Rural Police Station regarding missing of auto rickshaw. The complaint of missing rickshaw was filed with Ratnagiri Rural Police Station. PW-13 Vijay Ranade was working at Tahesildar at Guhagar. He was instructed to conduct test identification parade. It was arranged on 13<sup>th</sup> February, 2006. Accused No.1 was put up in the parade. No police official was present at the spot. No chance was given to witnesses, to see the Accused. Witness Ambre identified Pravin Kumbhar by touching him. Witness Salunke identified Accused No.1. Witness Pramod Damle could not identify the Accused. In the cross-examination he stated that, the witness did not meet him prior to the parade. He was not knowing the Panch witnesses. He did not meet the witnesses prior to the parade. He denied that, the Guhagar Police were present in the premises of jail at the time of identification

parade. PW-14 was serving as Tahesildar and Executive Magistrate. He was instructed to parade. Madhukar Salunke could not identify Accused No.2. Witness Ambre identified Accused No.2. In the cross-examination by the Advocate for Accused he stated that, he took dummy persons from the campus of jail. He did not ask the jail Superintendent to secure the presence of dummy persons. PW-15 Sanjivan Bhosale was called by the Police at Guhagar Police Station. Accused No.2 was present at the Police Station. He pointed out at the Accused No.2 in the Court. He stated that, Accused No.2 made a statement that he is ready to show the spot where the wrist watch of the deceased has been kept by him. Accused No.2 took the Police to the spot where watch was recovered. It was seized by the Police. He was cross-examined. He denied the suggestion that, the wrist watch was not recovered at the instance of Accused No.2. PW-16 Vilas Deshmukh was the Police Sub-Inspector. He went to spot where the dead body was found. He issued letter to Medical Officer to conduct postmortem at the spot. Dead body was handed over to the relatives of deceased. He obtained photographs of the spot. He collected documents from R.T.O. He issued directions for conducting test identification parade. Investigation was conducted. Various Panchanama were recorded. Charge-sheet was filed. In the cross-examination several

questions were put to him which did not shake his evidence.

17. On analyzing the evidence of aforesaid witnesses we are of the considered opinion that, there are strong circumstances against Appellant which establishes his involvement in the crime with Accused No.1. The trial Court has rightly convicted Appellant for the offence under Section 302 r/w 34 of IPC. The prosecution has been able to prove that, the deceased was the owner of the subject auto rickshaw. It was boarded by both Accused. The deceased was last seen in the company of Accused. The witness Ambre had seen both Accused in the company of deceased. The said witness could identify the Appellant and co-accused. The rickshaw driver thereafter went missing his body was recovered at the instance of Accused No.1. The identity of deceased was established. It is proved that the auto rickshaw belongs to deceased. The wrist watch belonging to the deceased was recovered at the instance of Appellant. The witness Ambre was knowing Accused as culprits on record of Police Station. After the incident Appellant was absconding. He was apprehended after about ten to eleven months from the date of arrest of Accused No.1. The auto rickshaw was parked in front of the house of witness by Accused. Accused parked the auto rickshaw. Initially Accused No.2 tried to take away the auto rickshaw from the spot. Thereafter, Accused No.1 went to the

spot. He was apprehended by the Police while filling the petrol in the auto rickshaw. Human blood was found on the clothes of the accused, recovered during the investigation. There is no reason to disbelieve the version of witnesses. The involvement of Appellant is proved beyond doubt. Hence, the appeal is devoid of merits and deserves to be dismissed.

**ORDER**

- i. Criminal Appeal No.43 of 2021 is dismissed.
- ii. The Impugned Judgment and Order dated 10<sup>th</sup> October, 2008 passed by Additional Sessions Judge, Khed in Sessions Case No.14 of 2006 convicting Appellant for offence under Section 302 r/w 34 of IPC is confirmed.
- iii. Interim Application Nos.1071 of 2022, 1282 of 2020, 958 of 2019 and 1283 of 2020 are accordingly disposed off.

**[PRAKASH D. NAIK, J.]**

**[A.S. GADKARI, J.]**