

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.37 OF 2020

Hari @ Harihar Udaybhanji Waghade, aged about 39 years, occupation : agriculture, r/o Pulai tahsil, Wardha, district Wardha. At present, detained at C-10503, Central Prison, Nagpur. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Through: Police Officer,
Police Station, Kharangana,
Tahsil and district Wardha. **Respondent.**

=====

Shri D.V.Chauhan, Counsel Appointed for the Appellant.
Shri T.A.Mirza, Additional Public Prosecutor for the Respondent/State.

=====

CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 23/12/2022

PRONOUNCED ON : 17/04/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By this appeal, the appellant (accused) challenges judgment and order of conviction and sentence dated 30.9.2019 passed by learned Additional Sessions Judge, Wardha in Sessions Case No.09/2018 whereby learned Judge of the trial court convicted the accused for offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine Rs.1000/- and in default of payment of the fine amount to suffer rigorous imprisonment for three months. Learned

.....2/-

2

Judge of the trial court also given the accused set-off under Section 428 of the Code of Criminal Procedure since the accused was in jail.

2. Facts of the case in a nutshell are as under:

Informant Dinesh Champatrao Nagose, has lodged report approaching Kharangana Police Station, district Wardha on 19.9.2017 on allegations that Champatrao Nagose (the deceased) is his father and was working in agricultural field of Ramesh Daburkar. On 19.9.2017 also, at about 6:00 am, his father went in the agricultural field for doing labour work. He is a auto-rickshaw driver and, therefore, he also left the house along with his auto-rickshaw at S.T.Stand. At about 11:00 am, he learnt that an old person is lying in a dead condition in an agricultural field of Vijay Jagtap and, therefore, he immediately proceeded towards the agricultural field whereat his father was working. On the way, he met one Dilip Chaphale who informed him that his father went to home. At the relevant time, he received a phone call of Vinod Masram who disclosed that his father is lying in a dead condition in the agricultural field of Vijay Jagtap. He immediately went at the

3

spot and saw that his father was lying in a dead condition in the field of cotton crops who had sustained the head injury and injuries on his person. He further observed that an axe was lying at some distance from his dead body. He suspected that villager Hari Waghade was suspecting that his father is doing witchcraft and on that suspicion said Hari Waghade has committed the murder of his father. On the basis of the oral report lodged by informant Dinesh, Kharangana Police registered the offence vide Crime No.392/2017 under Section 302 of the Indian Penal Code.

3. After registration of the offence, wheels of investigation started rotating. During investigation, the Investigating Officer has visited the alleged spot of the incident and drawn spot panchanama. Prior to lodging of the report, the police have received a phone call of one Amit Jagtap who informed that an old man is lying dead in his field. During spot panchanama, the police have seized an axe, a stick, hairs in the hands of the deceased, chappal, simple soil, blood stained soil, one bluish colour button, white colour dupatta, cotton plant having blood stains and cotton swab stained with the blood from the spot of the incident. Inquest

4

panchanama was also drawn during the investigation by noting the injuries on the person of the deceased. The accused was arrested. During the investigation, the accused made a memorandum statement that he will produce the shirt and the pant which were on his person at the time of the incident. The accused led them towards his village and produced the clothes. The clothes were having stains of mud and blood. On the basis of the statement of the accused, a sickle and a catlee, used in the commission of the crime, were seized. All the incriminating articles are forwarded to the Chemical Analyzer. The Medical Officer opined that the death of the deceased is caused due to strangulation. The Investigating Officer has obtained the opinion by referring the incriminating articles as well as the cotton plants to ascertain that whether strangulation is possible by the stems of cotton plants. After completion of the investigation, the Investigating Officer has filed chargesheet against the accused.

4. As the offence punishable under Section 302 of the Indian Penal Code was triable by the Court of Sessions, the case was committed to the Court of Sessions. The charge was

5

framed vide Exhibit-4. The accused pleaded not guilty and claimed to be tried.

5. To substantiate the charge, the prosecution has examined in all 13 witnesses, as follows:

PW1 Dinesh Champatrao Nagose Exhibit-8, the informant and the son of the deceased;

PW2 Bandu alias Ravindra Vinayakrao Deshmukh Exhibit-15, who witnessed the accused along with the weapons;

PW3 Vinod Rambhauji Poyam Exhibit-17, pancha on memorandum statement and discovery panchanama, house search panchanama;

PW4 Vijay Ramchandra Kamble Exhibit-22, Talathi and pancha on spot;

PW5 Ranjit Goverdhan Patankar Exhibit-31, pancha on seizure of clothes of the deceased, pancha on seizure of samples;

PW6 Aspak Sheikh Exhibit36, Police Constable, who carried the samples to the Chemical Analyzer;

PW7 Rameshwar Sitaram Ade Exhibit-38, Police Constable, who carried the samples to the Chemical Analyzer;

PW8 Mangal Zibal Sukhdeve Exhibit-49, who saw the accused at the spot with weapons and extra judicial confession;

PW9 Vijay Girdharrao Jagtap Exhibit-50, the owner of the field wherein the dead was found;

6

PW10 Robin Ravindra Kamble Exhibit-53, the Medical Officer;

PW11 Dr.Indrajit Laxmanrao Khandekar Exhibit-55, the Medical Officer;

PW12 Subhash Keshavrao Bhoyar Exhibit-62, the Investigating Officer, and

PW13 Nishikant Surendra Ramteke Exhibit-65, the Investigating Officer.

6. Besides the oral evidence, the prosecution placed reliance on following documents:

- (1) the oral report Exhibit-9;
- (2) First Information Report Exhibit-10;
- (3) memorandum statement of the accused Exhibit-18;
- (4) discovery panchanama Exhibit-19;
- (5) house search panchanama Exhibit-20;
- (6) letter to pancha Exhibit-21;
- (7) letter to the Circle Inspector to call two employees as panchas Exhibit-23;
- (8) letter by the Circle Inspector to the Investigating Officer Exhibit-24;
- (9) spot panchanama Exhibit-26;
- (10) inquest panchanama Exhibit-27;

7

(11) seizure memo of samples of the deceased Exhibit-32;

(12) seizure memo of blood samples of the accused Exhibit-33;

(13) 7/12 extract Exhibit-51;

(14) letter to the Medical Officer Exhibit-54;

(15) postmortem report Exhibit-56;

(16) query report Exhibit-58;

(17) map Exhibit-60;

(18) extract of log-book Exhibit-69;

(19) letters to the Chemical Analyzer Exhibits-72 to 79;

(20) query report Exhibits-80 and 82;

(21) opinion Exhibit-82;

(22) the Chemical Analyzer's Reports Exhibits-84 to 88, and

(23) N.C.Report dated 5.5.2011 against the accused by the deceased Exhibit-89.

7. After recording the evidence, the incriminating evidence is put to the accused for seeking his explanation. The defence of the accused is of total denial and was of false implication on a suspicion. Accordingly, his statement was recorded under Section 313 of the Code of Criminal Procedure.

8

As some incriminating evidence, regarding the blood stains appearing on the clothes of the accused were not put by the trial court to the accused, an additional statement under Section 313 was recorded by us by passing separate order.

8. After hearing both the sides and appreciating the evidence on the record, learned Judge of the trial court was pleased to convict the accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced him as mentioned above.

9. Being aggrieved and dissatisfied with the judgment and the order of the sentence, the present appeal is preferred on the ground that the accused is implicated merely on suspicion. There is neither direct nor circumstantial evidence to connect the accused with the alleged offence. There were four weapons shown to be used in the incident and all the weapons are seized by the police. After considering the evidence regarding the recovery of the weapons, it is highly improbable that one person would use such weapons at the same time. Further ground raised is that learned Judge of the trial court placed reliable on an extra judicial confession which

9

is a weak type of evidence. The evidence of PW8 Mangal Sukhdev is also not cogent and reliable being she is a chance witness and, therefore, the conviction and the sentence deserve to be quashed and set aside.

10. Heard learned counsel Shri D.V.Chauhan appointed for the appellant/accused and learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State.

11. Learned counsel Shri D.V.Chauhan appointed for the appellant/accused submitted that the entire case is based on the evidence of PW8 Mangal Sukhdev who claims that she witnessed the accused at the spot of the incident along with the weapons axe and stick. PW8 Mangal is a chance witness. In cross-examination, her evidence is shattered. There is no reason to the accused to disclose her the incident by making extra-judicial confession. The conduct of PW8 Mangal is also not a natural conduct as she has not disclosed the incident to anybody, till next day. The motive is also missing. Thus, the entire evidence of the prosecution is not sufficient to warrant the conviction. During the memorandum statement, the accused has not stated the place from which the recovery was

10

shown. Thus, the entire evidence of the prosecution is suffering from omissions and conjectures. The prosecution failed to prove the case beyond reasonable doubt. Hence, the conviction and the sentence deserve to be set aside.

12. *Per contra*, learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State submitted that PW8 Mangal approached the spot of the incident by hearing the shouts of the deceased. She is a natural witness. Merely because she has not narrated the incident to anybody, her evidence cannot be discarded. Every person reacts differently in similar situation. Her evidence is cogent, reliable, and corroborated by the circumstantial evidence like recovery of the weapons at the instance of the accused, blood stained clothes of the accused seized at his instance, discovery of the weapons, the medical evidence and the Chemical Analyzer's Reports showing the blood stained clothes of the accused of blood group of the deceased etc.. Thus, the prosecution has proved the case beyond reasonable doubt and no interference is warranted.

11

13. Having heard both the sides and perused the evidence adduced, it has to be seen, whether the prosecution succeeded in proving homicidal death of the deceased.

14. To prove the homicidal death, the prosecution mainly placed reliance on the inquest panchanama Exhibit-27 which is admitted by the defence. The spot panchanama shows that there were several injuries on the person of the deceased. The dead body of the deceased was forwarded to postmortem examination. PW11 Dr.Indrajit Laxmanrao Khandekar, examined vide Exhibit-55, deposed that upon examination of the deceased, he noted following injuries on his person:

"1. incised wound of size 4 cms x 0.5 x 0.5 cm is present on left high parietal area of scalp, vertically placed, margins are clean out, reddish in colour.

2. chop wound of size 5 cms x 0.2 cm x 0.2 cm is present on left ear, extending through the atehelix of left ear upto the lobule of left ear and extending inwards upto the tragus, the chopped segment is absent from the ear, vertically placed, margins are clean cut, reddish in colour.

3. lacerated wound of size 7 cms x 2 cms x 1 cm is present between the left ring finger and left small in inter digital fold extending upto the dorsal

12

aspect of left hand, vertically placed, margins are irregular, reddish in colour.

4. incised wound of size 3 cms x 0.5 cm 0.5 cm is present on the dorsal aspect of left hand in middle, horizontally placed, margins are clean cut, reddish in colour.

5. contused abrasion of size 2 cms x 4 cms is present on posterior aspect of left forearm, 5 cms before left elbow joint, reddish black in colour, vertically placed.

6. multiple superficial abrasions of size ranging from size 2 cms x 1 cm upto 1 cm x 2 cms is present on the anterior aspect of neck in supra sternal notch at the base of neck, vertically placed, reddish black in colour."

On internal examination, he found green colour branch of cotton plant with fruits and leaves used as ligature material. It encircles the neck completely with noose and a simple knot present on the back side of the neck before the occipital region. The branches also consist of small twigs which are not in a direct contact with the surface of the neck. The circumference of the branch is 1.5 cm. The total length of branch is 130 cms. The circumference of the ligature portion is 31 cms and diameter of branch is 0.6 cm. He seized and sealed the branch and handed it over to the police. On external examination of the neck, he found total neck

13

circumference was 33 cms and length of ligature mark was 18 cms and width of ligature mark was 2cms. Abrasions were present as the same are described in postmortem notes on the anterior aspect of the neck. There is a single faint ligature mark present on the anterior aspect of the neck below thyroid cartilage begins about 10 cms below the chin and midline, horizontally encircling the neck, ending about 7 cms below the angle of mandible on both the sides of neck. The posterior aspect of the neck does not show any ligature mark. The width of the ligature mark is the same through out the surface.

His evidence further reveals that the neck is dissected by giving "V" shaped incision on the anterior aspect. Extensive extravasation of blood (contusions) present at lower half of the neck that corresponds to ligature mark externally. The neck muscles show extensive extravasation at the lower half of the neck that also corresponds to the ligature mark externally. On dissection of carotid arteries showing rupture and injuries. The hyoid bone is fractured at the junction between the left greater cornus and the body of the hyoid bone of thyroid cartilage is broken. Extravasation of blood of

14

local tissue is seen. On dissecting the esophagus and trachea from posterior aspect, esophagus does not show any injury while the inner aspect of larynx shows the congestion and patchial haemorrhages or a mucosa. All the extravasated areas are reddish brown in colour. All the injuries were antemortem in nature. He collected the samples, viscera, blood for chemical analyzer and blood for DNA, and hair for DNA.

On the basis of his examination, he opined that the cause of the death of the deceased was asphyxial due to strangulation. Accordingly, he prepared the postmortem notes Exhibit-56.

He further deposed that he had received a query letter dated 30.10.2017 from Kharangana Police Station, district Wardha. Along with the said letter, he received three sealed weapons axe, sickle, and a branch of cotton plant. It was enquired by the police that whether the injuries seen on the body of the deceased, mentioned in the postmortem report, are possible with the seized axe. He replied that injury No.2 is possible by the axe and injury Nos.3, 5, 6, and 7 are

15

possible by blunt portion of the axe. It was further enquired whether the injuries, mentioned in column No.17 of the postmortem report, are possible with the seized sickle. He replied that injury Nos.1 and 4 are possible with the blade of sickle. However, injury Nos.5,6, and 7 are possible by the blunt portion of the said weapon including its handle. A query was further made, whether the injuries present on the body of the deceased, mentioned in column No.17, are possible with the seized wooden circular rod (branch of a tree) to which he replied that injury Nos.3, 5, 6, and 7 are possible by the said branch of tree. He further opined that weapon No.1 axe and No.2 sickle can cause injuries which can endanger life of a person. Thus, after examination of those weapons, he opined as the aforesaid. His evidence further discloses that after examination of those weapons, those weapons were sealed labeled by their signatures. The query report is at Exhibit-58. He further opined that the internal neck injury along with external neck injuries is sufficient to cause death. During his cross-examination, it was suggested that he has not taken the notes while conducting the postmortem examination, to which

16

he answered the same affirmatively. The rest of the cross-examination is in the denial form.

15. Thus, the evidence of the medical officer shows that he has witnessed in all seven external injuries on the person of the deceased. He had also observed ligature marks and opined that ligature material was green colour branch of cotton plant with fruits and leaves. It encircles the neck completely with the noose and the simple knot present on the back side of the neck before the occipital region. He has also dissected the neck and found that hyoid bone was fractured at the junction between the left greater cornus and the body of hyoid bone of thyroid cartilage is broken. He further observed that extravasation of blood of local tissues and opined that the death of the deceased was due to strangulation. Though he is cross-examined, nothing was suggested to him to rule out the possibility of strangulation.

16. As per the medical jurisprudence, in a case of strangulation, ligature usually found completely encircles the neck horizontally below thyroid cartilage. There may be more than one turn of ligature and there is always some damage to

17

skin underneath. The abrasions and bruises around ligature mark are common. The fracture of hyoid bone is not rare in the strangulation. Injuries to carotid arteries are also common.

17. The strangulation can be effected by hand or by any soft article like nylon rope and cotton clothes etc.. In case of strangulation, autopsy appearances may be divided into external appearances, injuries on the neck and, internal appearances. The extent and character of these signs will depend in large measure upon the pace and course of the asphyxial process. Signs of asphyxia may be very slight if death has supervened quickly from cardiac inhibition due to pressure on carotid sinus or vagus nerve. When the constricting force has been considerable, the signs are well marked. In addition, tongue may be bruised, bitten by teeth, and protruding. There may be injuries on the face, chest, etc, indicating a struggle. The face and eyes may show multiple petechial haemorrhages. The situation and extent of bruised area on neck will depend upon the relative position of the assailant and victim, manner of grasping the neck, and amount of pressure exercised on the throat. The bruises

18

(ecchymoses) are often found on the front or sides of the neck, chiefly about the larynx, and above it. The conformation of neck injuries indicate the way in which the hands have been applied to the neck. When only one hand is used to throttle, there may be a single bruise on one side due to pressure of the thumb and obliquely directed multiple bruises, one below the other, on the opposite side, due to pressure of finger pads or finger tips. Their shape may be oval or round depending upon the size of the finger tips but continued bleeding into the contused area usually increases the size, merging the bruises together. When both hands are used, the bruising pattern depends upon the relative position of thumbs and fingers, and the degree of pressure applied to the throat. Strangulation is defined as a form of violent asphyxia caused by constricting the neck by some means other than body weight. The means used may be a ligature, the hand (throttling), the elbow (mugging or choke-hold), or some hard object, such as a stick. In ligature strangulation, injuries to deeper tissues of neck are more common than in hanging, as a result of considerable force which is used. Homicidal strangulation is a common form of murder. In fact, strangling

19

should be assumed to be homicidal until the contrary is proven to be more likely under circumstances. A suspicion of homicide should arise when knot is tied on the back of neck, mouth is gagged, limbs are tied, other injuries are found on the body, and signs of struggle are present. Homicidal strangulation may be committed with such silence that even persons in close vicinity may not be aware of the act since sudden and violent compression of windpipe renders a person powerless to raise an alarm or call for assistance.

18. In the light of the above condition laid down by the medical jurisprudence, in the present case, the medical officer has observed the external injuries which are corresponded by the internal injuries. The medical evidence shows that the ligature marks encircle the neck completely and even a knot was observed on the back side of the neck before occipital region. The medical officer has explained the circumference of the branch as 1.5 cms and the circumference of the ligature portion is 31 cms. The total length of branch was 130 cms. The diameter of branch was 0.6 cm. He further narrated total neck circumference was 33 cms and length of ligature mark was 18 cms. He has observed

20

abrasions above on the anterior aspect of the neck. The faint ligature mark was also observed on the anterior aspect of the neck below the thyroid cartilage begins about 10 cms below the chin midline, horizontally encircling the neck.

19. Thus, the characteristics of the strangulation that ligature encircling the neck horizontally below thyroid cartilage is observed by the medical officer. It is corresponding to the proposition laid down in the medical jurisprudence to ascertain the case of strangulation.

20. Now, it is well settled that the evidence of PW11 Dr.Indrajit Laxmanrao Khandekar is not only the opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see the injuries on the person of the deceased.

21. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1 wherein the Honourable

21

Apex Court observed that “the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.” Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

22. In the recent judgment also, the Honourable Apex Court in the case of Anuj Singh @ Ramanuj Singh @ Seth Singh vs. The State of Bihar, reported in 2022 Live Law (SC) 402 dealt with the evidentiary value of the medical evidence and observed that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also

22

independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

23. In the case at hand, the evidence of PW11 Dr.Indrajit Laxmanrao Khandekar clearly shows that the death of the deceased is caused due to the strangulation. He had also observed the injuries which can be caused by weapons like axe and sickle. Thus, the prosecution has proved that the death of the deceased is homicidal one.

24. The entire case of the prosecution is based on the evidence of PW8 Mangal Zibal Sukhdeve, examined vide Exhibit-49, who had seen the accused at the spot with the weapons. As per her evidence, the accused gave an extrajudicial confession that he had killed the deceased as the deceased had made witchcraft to him. The sum and substance of the evidence of PW8 Mangal is that on the day of the incident, at about 9:00 am to 9:30 am, she was proceeding to the field of her maternal aunt. She has to

23

proceed from the field of Vijay Jagtap. She heard the noise and, therefore, she went there. At that time, she found the accused was in possession of the axe and the stick in his hands. The shirt of the accused was in a torn condition and the deceased was lying and the blood was oozing from his head. So, she enquired with the accused, why he had assaulted the deceased and the accused told her that the deceased has made witchcraft to him and, therefore, he had assaulted him. She further disclosed that the accused also threatened her that he will kill her family if she discloses the incident to anybody. The accused put the axe and the stick at the said place and left the field. She also left the field. Due to fear, she did not disclose about the incident to anybody. During her cross-examination, she admitted that on the day of the incident, she neither approached to the police station for giving statement nor she disclosed the incident to the son of the deceased on that day. She had not brought any person to help the deceased. She admitted that if any person meets with an accident or sustain injury, the said person is to be taken to hospital. However, she denied that she had not witnessed the incident. The further cross-examination is on

24

the aspect of relations between the villagers with each other. She admitted that she was having good relations with the deceased. However, she denied that there was some disputes with the accused. Thus, the suggestion of the defence, that PW8 Mangal was having dispute with the accused, was denied by her. No specific instances are put to the said witness to show enmity between her and the accused. The omission to the extent that she has not stated that the shirt of the accused was in a torn condition was brought on record. Regarding refreshing of memory prior to her deposition is also denied by her.

25. To corroborate the prosecution story, the prosecution further examined PW1 Dinesh Champatrao Nagose vide Exhibit-8, the son of the deceased, who is not the eyewitness. His evidence is only to the extent that there was previous dispute between the deceased and the accused from the year 2011. During the cross-examination also, he admitted that there was quarrel between his father i.e. the deceased and the accused in the year 2011 on the allegation of witchcraft.

25

26. PW2 Bandu alias Ravindra Vinayakrao Deshmukh is examined vide Exhibit-15. His evidence is only to the extent that on 19.9.2017, at about 8:30 am, he met the accused at Tukdoji Maharaj Square holding one sickle and cattley with him. There was strained relations between the accused and the deceased on account suspicion of witchcraft. He admitted that the accused was doing the work of cutting of grass and the accused used to carry the sickle always with him. He further admitted that there was no quarrel between the accused and the deceased on account of witchcraft since two three months prior to the incident.

Thus, the evidence of PW2 Bandu shows that the accused used to carry the sickle always with him as he was doing the work of cutting of grass.

27. PW9 Vijay Girdharrao Jagtap, examined vide Exhibit-50, is the witness only on the fact that the dead body of the deceased was found in his agricultural field. His evidence shows that he witnessed that the blood was oozing from the head of the deceased.

26

Thus, PW9 Vijay is not the witness of the incident either on circumstantial evidence or on the direct evidence.

28. Besides the oral evidence of these witnesses, the prosecution relied upon various panchanamas to prove the circumstances against the accused.

29. PW3 Vinod Rambhauji Poyam has acted as a pancha on the memorandum statement of the accused on the basis of which the blood stained clothes of the accused are seized. He also acted as a pancha on the seizure of the weapon sickle from the house of the accused during the house search panchanama. His evidence is only to the extent that the accused gave memorandum statement and agreed to produce the blood stained clothes. Accordingly, memorandum statement recorded is at Exhibit-18. The accused took them at his house at Pulai and produced his shirt and pant concealed by him in a "chapari". Accordingly, panchanama Exhibit-19 was drawn by seizure of the said clothes.

Investigating Officer PW13 Nishikant Surendra Ramteke, is also examined to prove the said panchanamas. He is examined vide Exhibit-65. His evidence also shows that

27

in the presence of panchas, he had recorded the confessional statement of the accused. As per the confessional statement, the accused has shown his readiness to produce his clothes and accordingly he took them at Pulai and produced his shirt and the pant from the kitchen of his house before them.

Both these witnesses are cross-examined. The cross-examination regarding the memorandum statement is only in the denial form. Only suggestions are given to Investigating Officer PW13 Nishikant Ramteke Officer regarding the memorandum statement of the accused.

The prosecution further placed reliance on Exhibit-69, the extract of the log-book showing that the vehicle was used on 21.9.2017 for discovery of the articles by visiting at village Pulai along with the accused. PW3 Vinod Poyam is also a witness on the house search panchanama by which one cattley and one sickle were seized from the house of the accused.

30. PW4 Vijay Ramchandra Kamble, examined vide Exhibit-22, was also acted as a pancha on the spot. There is no dispute regarding the alleged spot of the incident. PW4

28

Vijay and Investigating Officer PW12 Subhash Keshavrao Bhoyar, both have deposed that the alleged spot of the incident is situated in the field of Amit Jagtap. Said Amit Jagtap has shown the spot of the incident. The dead body of the deceased was lying in the field of cotton. The axe, stick, and chappal were lying on some distance of the dead body of the deceased. One sky blue colour button was also seized from the spot. The axe was stained with the blood. The cotton and cotton plants were also stained with the blood. They have also witnessed some hairs in the right hand fist of the deceased which they have seized. PW4 Vijay Kamble was serving as a Talathi at the time of drawing of panchanama. His evidence shows that he received a letter from the Circle Inspector to act as a pancha. The said letter is at Exhibit-24. Notice by the police to act as a pancha is at Exhibit-25 and the spot panchanama is at Exhibit-26. Though he is cross-examined at length, nothing incriminating is brought on record. He had identified all the articles that is axe, Article-A5, stick Article-A6, one set of foot wear Article-A7, bunch of human hair Article-A8, leave of cotton crop Article-A9, one blue colour button Article-A10, one white colour dupatta

29

Article-A11, and election card of the deceased Article-A12. He also identified labels having his signatures which were marked as Article-13.

31. PW5 Ranjit Goverdhan Patankar, is examined vide Exhibit-31 to prove the seizure of the blood stained clothes of the deceased. As per his evidence, the blood stained clothes of the deceased that is dhoti, kurta, and his blood samples are seized in his presence by drawing panchanama Exhibit-32. In his presence, the blood samples of the accused and nail clippings are also seized by drawing panchanama Exhibit-33. During the cross examination of this witness also, nothing incriminating affecting the prosecution case is brought on record.

32. The evidence of Police Constables PW6 Aspak Sheikh and PW7 Rameshwar Sitaram Ade, examined vide Exhibits-36 and 38, is formal in nature as they acted as a carrier. Their evidence is only to the extent that they have handed over the samples and the articles to the Forensic Science Laboratory.

30

33. PW10 Dr.Robin Ravindra Kamble, is examined vide Exhibit-53 to prove the fact that the blood samples of the accused for chemical analysis for DNA was obtained. He testified that he was working as a Medical Officer in Primary Health Centre, Kharangana, district Wardha. The accused was referred to him and he obtained his plain blood samples, blood samples in E.D.T.A. format, scalp hair for DNA test and sample of nail. During his cross-examination, he admitted that there is no entry in Primary Health Centre of Kharangana for taking samples of the accused. He further admitted that there is no request for taking samples of the blood and the other samples of the accused in the letter Exhibit-54. Though he has admitted that there was no request for taking samples, Exhibit-54 shows that by referring the accused, the request was made to obtain not only his blood samples but also samples in E.D.T.A. format, hair samples for DNA and nail clippings.

34. PW12 Subhash Keshavrao Bhoyar and PW13 Nishikant Surendra Ramteke, both are Investigating Officers, who narrated about the investigation carried out by them. Exhibits-70 and 79 are the letters addressed to the Forensic

31

Science Laboratory forwarding the samples for chemical analysis. The Chemical Analyzer's Reports are received which are at Exhibits-84 to 88. Exhibit-84 is the report in respect of the various analyzed articles. The analysis shows that Exhibit-2 earth is mixed with the blood; Exhibit-3 tree leaves; Exhibit-5 cotton swabs; Exhibit-6 button; Exhibit-11 plant twigs (root soil and leaves are stained with blood); Exhibit-4 dupatta; Exhibit-9 full shirt of the accused; Exhibit-10 full pant of the accused; Exhibit-12 dhoti, and Exhibit-13 kurta of the deceased are stained with the blood. The blood stains found on Article-2 earth; Article-5 cotton swab; Article-9 full shirt of the accused; Article-10 full pant of the accused; Article-11 plant twigs, and Article-13 Kurta of the deceased are stained with blood of Blood Group "A".

35. As per Exhibit-85 wooden stick, the axe, iron blade, and knife are examined and Exhibit-1 stick is stained with the Blood Group "A". As per Exhibit-87, the Blood Group of the deceased was "A". Admittedly, the blood group of the accused was not brought on record.

32

36. After appreciating the evidence on record, the entire prosecution case revolves around the evidence of PW8 Mangal, who alleged to be witnessed the accused at the spot of the incident.

37. Learned counsel Shri D.V.Chauhan for the appellant/accused vehemently submitted that PW8 Mangal is a chance witness and her evidence requires to be appreciated with caution and close scrutiny. She must explain her presence at the place of the occurrence. Her conduct subsequent to the incident may also be taken into consideration, particularly as to whether she has informed the incident to anybody.

38. In support of his contentions, learned counsel Shri D.V.Chauhan for the accused placed reliance on the decision of the Honourable Apex Court in the case of Jarnail Singh and others vs. State of Punjab, reported in (2009)9 SCC 719 wherein it has been held that a chance witness could not explain under what circumstances he was present at the bus stand at the said time. The Honourable Apex Court has referred its earlier judgment in the case of Sachchey Lal

33

Tiwari vs. State of U.P., reported in **(2004)11 SCC 410** wherein the Honourable Apex Court, while considering evidentiary value of chance witness, in a case of murder, which had taken place in a street, and a passerby had deposed that he had witnessed the incident and observed as under, *"if the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there."* The Honourable Apex Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people less formal and more casual, at any rate in the matter of explaining their presence.

He further placed reliance on the decision of the Honourable Apex Court in the case of **Shivasharanappa and others vs. State of Karnataka**, reported in **(2013)5 SCC 705** wherein also the Honourable Apex Court held that the

34

behaviour of witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic but the court cannot be oblivious of the fact that even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing the variations. If the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance.

He further placed reliance on the decision of the Honourable Apex Court in the case of Vijay Shankar vs. State of Haryana, reported in (2015)12 SCC 644 wherein the case was based on circumstantial evidence. The prosecution relied upon circumstances like motive, last seen theory, extrajudicial confession, recovery of blood stained clothes, and knife. The circumstances not proved beyond reasonable doubt and the conviction reversed.

39. Learned counsel Shri D.V.Chauhan for the accused further submitted that the evidence, regarding the recovery of

35

the blood stained clothes, is also not acceptable as first condition, necessary for bringing Section 27 of the Indian Evidence Act into operation, is the discovery of fact in consequence of the information received from accused of an offence. The second condition is that discovery of such fact must be deposed to. The third condition is that at the time of receipt of information the accused must be in police custody. The last but the most important condition is that only so much of information as relates distinctly to the facts thereby discovered is admissible which is absent in the case. He placed reliance on the decision of the Honourable Apex Court in the case of Anter Singh vs. State of Rajasthan, reported in (2004)10 SCC 657. He submitted that in the present case the evidence of PW8 Mangal is not cogent and reliable. The circumstances, like discovery of the blood stained clothes, is also not proved and, therefore, the prosecution miserably failed to prove the charges levelled against the accused.

40. On the other hand, learned Additional Public Prosecutor Shri T.A.Mirza for the State submitted that nothing is on record to show that PW8 Mangal is an interested witness. Her evidence is corroborated by the circumstances like

36

discovery of clothes. The incriminating circumstances, that the blood stains are found on the person of the accused, are not explained by the accused. The evidence of PW8 Mangal is not shattered during her cross-examination. The recovery of the blood stained clothes is duly proved. He placed reliance on the decision of this Court in the case of Kamru vs. State of Maharashtra, reported in 2015 SCC OnLine Bom 6215 wherein it has been held that the only requirement of Section 27 of the Indian Evidence Act is that the discovery of some facts should be consequent to the information given by the accused. What is essential, therefore, is that discovery of some facts, in this case the knives should be pursuant of the information given by the accused or as actually shown by him. In other words, the fact discovered must be one which was not within the knowledge of the police and knowledge of the fact was for the first time derived from the information given by the accused. Section 27 of the Indian Evidence Act does not state expressly or otherwise that in his statement made before the police and panchas at police station, the accused should state the place from where he was going to produce the article. What is essential is that his information is led to

37

the discovery of the fact, which is the direct outcome of such information. He submitted that the prosecution has proved the involvement of the accused on the basis of the evidence of PW8 Mangal corroborated by the circumstantial evidence.

41. After appreciating the evidence on record and the defence raised by the accused of total denial, the evidence of PW8 Mangal shows that when she was proceeding towards the agricultural field of her aunt, she heard the shouts and, therefore, she entered in the field of Vijay Jagtap. After hearing the noise, she went there and saw the accused in possession of the axe and the stick in his hands. Thus, her evidence is to the extent that she witnessed the accused at the spot of the incident holding the weapons in his hands and the deceased was lying in an injured condition. She admitted that she has not narrated the incident to anybody as she was threatened by the accused. It is well settled that different persons act differently. The alleged incident has occurred on 19.9.2017 and her statement was recorded on 20.9.2017. Her cross-examination shows that she has not approached the police on the day of the incident. However, subsequently she went to the police station. She had also explained the reason

38

behind her presence at the spot of the incident. Though she is cross-examined, nothing was suggested to her to show that the agricultural field of her maternal aunt is not situated near the agricultural field where the alleged incident has taken place. She denied that she used to look after her agricultural field and used to look after the field of her maternal aunt. Her contention, that she was proceeding to visit the field of her maternal aunt, is not unnatural as the agriculturists often visit the agricultural fields of their relatives to assist each other. So far as her conduct is concerned, she narrated that she was threatened by the accused. It is also settled that different persons may react in different way. Merely because she has not reacted in a particular way is not sufficient to show that her evidence is totally unnatural. Though we are staying in a civilized society, people are still afraid of involving themselves to be witnesses of such incidents as they are scared of harassment at the hands of investigating agencies. Admittedly, she has not narrated the incident on 19.9.2017, but on the next day she visited the police station and her statement was recorded. In the light of the above facts, her

39

evidence is not totally unnatural. The Investigating Officer is not cross-examined on delayed statement of the witnesses.

As observed by the Honourable Apex Court in the case of Sachchey Lal Tiwari vs. State of U.P. cited *supra*, that if the offence is committed in a street, only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

42. Here in the present case, PW8 Mangal has explained her presence at the spot of the incident and her evidence is not shattered during the cross-examination.

43. Though some omissions are brought on record, the said omissions are not fatal to the prosecution as it does not affect the root of the case. Insofar as the contention of the defence is concerned that PW8 Mangal is the chance witness, the same is not acceptable as she has explained the reason behind her presence at the spot of the incident.

40

44. The law is a well settled that while appreciating the evidence of witnesses, approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed then undoubtedly it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether earlier evaluation of evidence is shaken as to render it unworthy of behalf. The material thing which is to be seen whether those inconsistencies go to the root of the matter. While appreciating evidence of relatives, great weightage is to be given to them on the principle that there is no reason for them not to speak the truth and shield the real culprit.

45. The Honourable Apex Court in the case of **Masalti vs. State of U.P.**, reported in **AIR 1965 SC 202** has ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention names of other persons as responsible for causing injuries to deceased.

41

46. A three-Judge bench of the Honourable Apex Court in the case of Hari Obula Reddy and others vs, The State Of Andhra Pradesh, reported in AIR 1981 SC 82 has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting the evidence of relatives. It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that evidence should be subjected to careful scrutiny and accepted with caution.

47. The Honourable Apex Court in the case of Pulicherla Nagaraju @ Nagaraja Reddy vs. State of A.P. reported in (2006)11 SCC 444 while dealing with liability of interested witnesses, who are relatives, has observed that it is a well settled that evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to deceased, if it is otherwise found to be trustworthy. The said evidence only requires scrutiny with more care and caution.

42

48. The Honourable Apex Court in the case of Pulicherla Nagaraju @ Nagaraja Reddy vs. State of A.P. reported in (2006)11 SCC 444 while dealing with liability of interested witnesses, who are relatives, has observed that it is a well settled that evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to deceased, if it is otherwise found to be trustworthy. The said evidence only requires scrutiny with more care and caution.

49. Testing on the anvil and touchstone of the aforesaid principles laid down by the Honourable Apex Court, we find that the presence of PW8 Mangal at the spot of the incident is a natural and there is nothing on record to doubt her version regarding the evidence that she has witnessed the accused at the place of the incident. Her evidence further is on the aspect of extrajudicial confession made by the accused to her. Her evidence is to the extent that she has seen the accused at the spot of the incident and enquired with the accused regarding the alleged incident and the accused disclosed her that he has killed the deceased as he was

43

suspecting that the deceased was involved in witchcraft on him.

50. There is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence. The evidence of extrajudicial confession is a weak piece of evidence. If evidence of extrajudicial confession comes from the mouth of witness/witnesses, who appear/s to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have motive for attributing and untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility if it passes the test, the extrajudicial confession can be accepted and can be the basis of conviction.

44

51. The Honourable Apex Court in the case of State of U.P. vs. M.K.Anthony, reported in AIR 1985 SC 48 in paragraph No.15 held that there is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence.

52. This Court also in the case of Pundlik Basu Chavan vs. State of Maharashtra in Criminal Appeal No.1424/2011 decided on 5.1.2017 held that the evidentiary value of an extra judicial confession depends on the reliability of the witness, who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. Needless to state, it would depend on the nature of circumstances, the time when the confession was made and the credibility of the witness, who speaks of such a confession. An extra judicial confession can be relied upon and conviction can be founded thereon, if the evidence comes from the mouth of the witness who is unbiased, not even remotely inimical to the accused and in respect of whom, nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to

45

the accused. The words spoken by the witness are to be clear, unambiguous and should convey that the accused is a perpetrator of the crime. Thus, subjecting the evidence of such a witness to a rigorous test, on the touchstone of credibility, an extra judicial confession can be accepted and can be the basis of conviction.

53. Admittedly, there is no evidence that PW8 Mangal was in an inimical terms with the accused. Her evidence is unbiased. She specifically stated that the accused told her that the deceased made witchcraft to him and, therefore, he has assaulted him. Thus, her evidence is clear and unambiguous which can be accepted. The words spoken and heard by her, that the accused has assaulted the deceased, are unambiguous. As regards the extrajudicial confession, it is not necessary that the witness should speak the exact words, but there cannot be vital and material difference. There should not be any ambiguity.

54. The Honourable Apex Court in the case of **Ajay Singh vs. State of Maharashtra**, reported in **AIR 2007 SC 2188** observed that the expression 'confession' is not defined in the

46

Indian Evidence Act, 'Confession' is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. The dictionary meaning of the word 'statement' is "act of stating; that which is stated; a formal account, declaration of facts etc." The word 'statement' includes both oral and written statement.

55. In the present case, admittedly, PW8 Mangal is an independent witness and not having inimical terms and is not biased against the accused. The accused made a voluntary statement in her presence. She heard the same and the prosecution has proved the same through her mouth and, therefore, there is no reason to reject the version of PW8 Mangal. Thus, the prosecution case is also corroborated by the evidence by way of extrajudicial confession of the accused.

56. Besides the direct evidence of PW8 Mangal, the prosecution has also adduced the evidence by examining PW3 Vinod Rambhauji Poyam who acted as a pancha on memorandum statement of the accused. The blood stained

47

clothes of the accused are seized on the basis of the said memorandum statement. PW3 Vinod Poyam has stated that the accused gave a memorandum statement in his presence. The evidence of Investigating Officer PW13 Nishikant Surendra Ramteke shows that as the accused has shown the readiness to make a statement, he called two panchas and the accused made a memorandum statement that he is ready to produce his clothes which were on his person at the time of the incident. The evidence is to the extent that he has recorded the confessional statement of the accused. As per the confessional statement, the accused was ready to produce his clothes. Thus, the evidence of the Investigating Officer shows that the accused made a voluntary statement and produced the clothes. The evidence of PW3 Vinod Poyam shows that the accused produced the shirt and the pant concealed by him in chapari (small shed or hut). Thus, the fact that the accused made a voluntary statement when he was in the police custody about the fact which was not within the knowledge of the Investigating Officer and in pursuance of the said statement the articles were recovered.

48

57. The doctrine underlined under Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

58. Section 27 of the Indian Evidence Act is interpreted by the Honourable Apex Court in the case of **Subramanya vs. State of Karnataka**, reported at **2022 LiveLaw (SC) 887** and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

49

It is further held by the Honourable Apex Court that what is admissible is the information and the same has to be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused, while in custody, which led to recovery of the articles, has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is a made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. It is further held by the Honourable Apex Court that mere statement that the accused led the Police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

50

59. Thus, the prosecution has proved that the blood stained clothes are recovered at the instance of the accused. The articles that is blood stained clothes of the deceased and the accused are forwarded to the Chemical Analyzer. The Chemical Analyzer's Report shows that the blood stains of Blood Group "A" were found on the full shirt as well as full pant of the accused. Admittedly, the said incriminating evidence was not put to the accused during his statement under Section 313 of the Code of Criminal Procedure and, therefore, we have called the accused during the hearing of this appeal and an opportunity was granted to the accused to explain the said circumstance. Though the opportunity was granted to the accused, the accused has only stated that these clothes do not belong to him. There is no other explanation by the accused.

60. Learned Judge of the trial court ought to have put specific incriminating circumstance to the accused to obtain his explanation. The recording of the statement under Section 313(1) of the Code is obligatory on the court and it should be complied with by granting an opportunity to the accused to explain the circumstances. The object of examination of the

51

accused under Section 313 of the Code is explained by Section 313 of the Code itself which declares that "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him." Thus, it is well settled that the provision is mainly intended to afford an opportunity to the accused to explain the circumstances. It is not a mere formality. By recording his additional statement under Section 313 of the Code, in the present appeal, the said opportunity was granted and no plausible explanation was given by the accused regarding the said incriminating circumstances. Not only on the clothes of the accused but also stains of the Blood Group "A" were found on the wooden stick which was seized from the spot of the incident.

61. The evidence of PW8 Mangal shows that she has seen the accused holding the stick and the axe in his hands. Her evidence further shows that the accused left the place by keeping the said axe and stick at the spot of the incident. Her evidence is corroborated by PW4 Vijay Kamble, the pancha, who testified that the axe and the stick both are found at the spot while drawing the spot panchanama. The Chemical

52

Analyzer's Report shows the blood stains of Blood Group "A" on the said stick. Thus, the evidence of PW8 Mangal not only corroborated by PW4 Vijay Kamble but also corroborates by the scientific evidence that is Chemical Analyzer's Report Exhibit-85. Thus, the evidence of PW8 Mangal shows that she had witnessed the accused holding the stick and axe in his hands. She has witnessed the deceased lying in an injured condition. The said evidence is corroborated by the medical evidence which shows that PW11 Dr.Indrajit Laxmanrao Khandekar witnessed the various injuries on the person of the deceased including incised wound, chock wound, contusions, and abrasions and opined that the death of the deceased is due to strangulation. He further deposed that he found ligature material which is a green colour branch of cotton plant. Admittedly, the alleged incident has occurred in the agricultural field wherein the cotton crops were standing. The Investigating Officer forwarded the weapons to the medical officer along with the branch of cotton plants and the medical officer opined that the injuries found on the neck are possible by a wooden circular rod that is branch of tree.

53

62. Thus, the oral evidence is also corroborated by the medical evidence.

63. The prosecution has further proved the circumstance of seizure of the blood stained clothes at the instance of the accused. The said incriminating circumstance is not explained by the accused.

64. Thus, the prosecution has proved the charges levelled against the accused on the basis of the direct as well as the circumstantial evidence.

65. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. Proof beyond reasonable doubt does not mean proof beyond any doubt. It cannot be considered as if a mathematical formula. The phrase 'beyond reasonable doubt' has been often referred to and is well understood.

66. Learned author Glanville Williams in his book 'The Proof of Guilt' wrote 'to say that burden of proving a crime is generally on the prosecution does not conclude all questions. What degree of quantum of proof is needed is mere likelihood

54

or certainty, or something in between these two extremes? This question in turn raises a fundamental issue of penal policy.”

67. The proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. If the evidence is so strong against a man as to leave only, a remote possibility in his favour which can be dismissed with the sentence -- ‘of course, it is possible, but not in the least probable, the case is proved beyond reasonable doubt.

68. In the present case, the prosecution has adduced the evidence to show that it is the accused who has committed the crime. Thus, the prosecution has proved the circumstances which show that it was the accused who has committed the crime. The evidence adduced is cogent and consistent and does not affect the case of the prosecution.

69. In the result, since we find no merit in the appeal, the appeal deserves to be dismissed and the same is **dismissed.**

55

70. We place on record our deep appreciation for the valuable assistance rendered by learned counsel Shri D.V.Chauhan for the appellant/accused. Fees of learned counsel Shri D.V.Chauhan are quantified and it be paid as per rules. However, learned counsel Shri D.V.Chauhan graciously submitted that the fees quantified to be paid to him be deposited to the High Court Bar Association at Nagpur. So, the fees be deposited to the High Court Bar Association at Nagpur.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

...../-