

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 942 OF 2015

- 1] Rajhans @ Nana Suklal Suryawanshi,
Age : 50 years, Occu:
R/o. Jalgaon, Taluka and District Jalgaon.
- 2] Pawan s/o Rajhans Suryawanshi,
Age : 23 years, Occu:
R/o. Jalgaon, Taluka and District Jalgaon.
- 3] Amar s/o Ashok Sonawane,
Age : 22 years, Occu:
R/o. Jalgaon, Taluka and District Jalgaon. ...Appellants

VERSUS

The State Of Maharashtra

...Respondent

...

Appearance :

Mr. Sanjeev B. Deshpande, Sr. Advocate a/w Mr. Chetan B. Chaudhari
i/b Mr. Ankush N. Nagargoje – Advocate for the Appellants
Mrs. V. S. Chaudhari – APP for respondent/State

...

WITH
CRIMINAL REVISION APPLICATION NO. 53 OF 2023

Shivaji s/o Chudaman Patil,
Age : 56 years, Occu. Agril.,
R/o. Shiv Colony, Gat No. 53,
Plot No. 88, Jalgaon, Dist. Jalgaon.

...Applicant

Versus

- 1] Rajhans alias Nana Suklal Suryawanshi,
Age : 50 years, Occu. Nil,
R/o. Shiv Colony, Gat No. 54,
Plot No. E/1-B, Jalgaon, Dist. Jalgaon.
- 2] Pawan Rajhans Suryawanshi,
Age : 24 years, Occu. Nil,
R/o. Shiv Colony, Gat No. 54,
Plot No. E/1-B, Jalgaon, Dist. Jalgaon.

- 3] Amar Ashok Sonawane,
Age : 23 years, Occu. Nil,
R/o. Shiv Colony, Gat No. 54,
Plot No. E/1-B, Jalgaon,
Dist. Jalgaon.

- 4] The State of Maharashtra

...Respondents

...

Appearance :

Mrs. Rashmi S. Kulkarni – Advocate for the Applicant

Mr. Sanjeev B. Deshpande, Sr. Advocate a/w Mr. Chetan B. Chaudhari
i/b Mr. Ankush N. Nagargoje – Advocate for the respondent nos.1 to 3

Mrs. V. S. Chaudhari – APP for respondent no.4/State

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**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

DATE OF RESERVING THE JUDGMENT : 29.01.2024

DATE OF PRONOUNCING THE JUDGMENT : 14.03.2024

JUDGMENT [Per : Neeraj P. Dhote, J.] : -

1. This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and Order dated 05.12.2015 passed by the learned Sessions Judge, Jalgaon in Sessions Case No. 96 of 2013, convicting Appellant Nos. 1 and 2 for the offence punishable under Section 302 r/w 34, 120B of the Indian Penal Code [for short 'IPC'] and Appellant No. 3 for the offence punishable under Section 302 r/w 114, Section 302 r/w 109 of the IPC and sentencing them as detailed in the operative order of the impugned Judgment.

2. Criminal Revision Application No. 53 of 2023 is filed by the Informant under Section 401 r/w 397 of the Code of Criminal Procedure for enhancement of punishment to the Appellants from life imprisonment to death penalty.

3. The prosecution's case as revealed from the police report is as under : -

3.1. Informant - PW2 - Shivaji Chudaman Patil was looking after the official / social affairs of deceased Vinayak Sonawane, who was the Corporator at the relevant time i.e. 18.12.2012 (on the date of incident). On 18.12.2012, the informant went to the house of the deceased. Deceased received phone call from one Mr. Gangurde from District Industrial Centre informing him to send someone for collecting the voters list from him. Deceased asked the informant to collect the voters list. Accordingly, the informant accompanied by one Prashant Patil, proceeded on motorcycle to collect the voters list. They collected the voters list and while proceeding towards the Municipal Corporation, Mayur Patil stopped them and informed that Vinayak Sonawane was assaulted on the I.M.R. College road. They all proceeded towards the said spot. They saw the motorcycle of Vinayak Sonawane had fallen down in the middle of the road and Vinayak Sonawane lying in an injured condition by the side of the road. There were severe injuries on

the head and waist of Vinayak Sonawane and he was lying inert. Informant asked PW1 - Nilesh Garbad Bhole, Bhikan Hiwarale, Mayur Patil, Pravin Palve and Shrikant Patil to take Vinayak Sonawane to the hospital of Dr. Bhangale. They took Vinayak Sonawane to the hospital in auto rickshaw and the informant proceeded to Zilla Peth Police Station along with Pravin Palve. The informant informed the Police Station Officer that Vinayak Sonawane was assaulted. Thereafter, the informant proceeded towards the hospital. Dr. Bhangale advised them to take Vinayak Sonawane to the Civil Hospital, Jalgaon. Accordingly, Vinayak Sonawane was taken to the Civil Hospital where Doctor declared him dead. PW1 – Nilesh Garbad Bhole, who witnessed the incident, told the informant that the Appellant Nos. 1 and 2 assaulted Vinayak Sonawane by sickle and knife. The informant lodged the report with the Police. The Motive behind the assault was an incident six to seven months prior, in which Harshal, the son of Appellant No. 1, was assaulted by Vinayak Sonawane and his associates.

4. On the report lodged by the informant PW2 – Shivaji Chudaman Patil at Exh. 54, Crime No. 339 of 2012 came to be registered against Appellant Nos. 1 and 2 for the offence punishable under Sections 302 r/w 34 of the IPC and 4/25 of the Arms Act. In the meanwhile, the Appellant Nos. 1 and 2 surrendered to the police with the weapons of assault. It was revealed that after assaulting deceased

Vinayak, Appellant No. 3 carried Appellant Nos. 1 and 2 on his motorcycle to Zilla Peth Police Station. The spot panchanama, inquest and *post mortem* were done. The statement of witnesses were recorded. The Appellant No. 3 came to be arrested. The clothes of the deceased and the accused were seized. Muddemal articles were sent to the Chemical Analyser for examination and analysis. On completion of the investigation, the Appellants came to be charge-sheeted.

5. The learned trial Court framed the Charge against the Appellants at Exh. 41, to which the Appellants pleaded not guilty and claimed to be tried.

6. To prove the Charge, the prosecution examined in all thirty (30) witnesses and brought on record certain documents. After the prosecution closed its evidence, the learned trial Court recorded the statement of the Appellants under Section 313(1)(b) of the Cr.P.C. The Appellants denied the case and evidence of the prosecution. The Appellant No.1 submitted his written statement at Exh. 176. The additional defence of Appellant Nos. 1 and 2 was that when Appellant No. 1 was going in his auto rickshaw towards Railway Station, he saw Vinayak Sonawane lying on the ground with serious injuries. He stopped the Auto and called his son i.e. Appellant No. 2. They thought that shifting the deceased to the hospital would be risky as he had suffered

serious injuries. The Appellant Nos. 1 and 2, therefore, went to the Police Station and informed the Police. However, the police restrained Appellant Nos. 1 and 2 from leaving the Police Station and detained them and the police held discussions with the relatives and persons acquainted with Vinayak Sonawane and registered false report against them. False evidence was created under political pressure by citing the witnesses, who were residing in the vicinity of the house of the deceased. On appreciating the evidence and after hearing both the sides, the learned trial Court passed the impugned Judgment.

7. Heard learned advocate for the Appellants, learned APP for the State and the learned advocate for the Informant/Revisionist.

8. It is submitted by the learned advocate for the Appellants that though the incident took place in the afternoon, the report was lodged at 05:00 p.m. There is delay in recording the statements of the eye-witnesses which creates doubt whether they were the eye-witnesses. There are omissions and contradictions in the evidence of the eye-witnesses. Though according to the prosecution Appellant Nos. 1 and 2 surrendered to the police, they were not arrested. There is no evidence against Appellant No. 3. From the evidence of Medical Officer, who conducted the *post mortem*, the prosecution's case about the time of death does not get corroboration. The evidence on record does not

establish the Charge. The Appellants are liable to be acquitted. He cited judgments in support of his submissions, which would be considered in later part of the judgment.

9. It is submitted by learned APP that the case is based on testimony of eye-witnesses and they have deposed about the incident and their testimony remained unaffected in the cross-examination. The delay in recording the statement of eye-witnesses has been properly explained. After the incident, Appellant Nos. 1 and 2 surrendered to the police with weapons and there is station diary entry to that effect. This conduct fortifies the case of prosecution. The evidence available on record established the Charge and learned trial Court has properly appreciated the evidence on record and passed the impugned Judgment. The impugned Judgment does not call for any interference and hence Appeal be dismissed.

10. It is submitted by learned advocate for the informant / revisionist that considering the nature of injuries on the person of the deceased which have been inflicted by the Appellant Nos. 1 and 2 and the previous enmity, makes this case rarest of rare. It is submitted that the learned trial Court ought to have considered these aspects and awarded maximum punishment provided for the offences which are proved against the Appellants. The learned advocate for the informant

relied on several judgments in support of her submissions, which shall be considered in the later part of the Judgment.

HOMICIDAL DEATH : -

11. One of the Charges and Conviction against the Appellants is for the offence of Murder punishable under Section 302 of the IPC. To prove the homicidal death of Vinayak Sonawane, the evidence of the informant PW 2 – Shivaji Chudaman Patil, PW4 – Liladhar Pralhad Vispute, who acted as panch to the inquest, PW29 – Dr. Girish Vasudeo Patil, Medical Officer who performed the *post mortem* and PW30 – Police Inspector - Y. D. Patil, the Investigating Officer is relevant.

12. The evidence of PW2 – Shivaji Chudaman Patil show that he was the resident of same area where the deceased was residing. In the morning of 18.12.2012 i.e. the date of incident, he had gone to the house of deceased at about 08:30 a.m. and on instructions of deceased, he went to the District Industrial Centre (DIC) between 12:15 and 12:20 p.m. to collect the voters list. He collected the voters list and while on his way, he was intercepted by one Mayur Patil who informed that Vinayak Sonawane was assaulted on the I.M.R. College road. He along with others went to the spot and saw Vinayak Sonawane in an injured condition lying on the road. They immediately shifted Vinayak Sonawane to the hospital and he proceeded towards the Zilla Peth Police Station with one Pravin Palve and informed the incident to the police.

His further evidence show that after the Doctor declared Vinayak Sonawane dead in the hospital, he again went to the Police Station and his report was taken and FIR [Exh. 54] was lodged. He accompanied the Police to the spot of incident where the spot panchanama was carried out.

13. Though PW2 – Shivaji Chudaman Patil is cross-examined, his evidence of reaching on the spot, shifting Vinayak Sonawane to the hospital and his informing the police, remained unshaken. The improvements/omissions as brought on record in the cross-examination do not affect his above discussed evidence.

14. The evidence of PW4 – Liladhar Pralhad Vispute show that he was plying auto rickshaw and on 18.12.2012, when he reached Dikshit Wadi beside the Civil Hospital, Jalgaon for dropping the passenger, he noticed crowd at the Civil Hospital. He parked the auto rickshaw and went inside the premises of the Civil Hospital where he learnt that Vinayak Sonawane was murdered. On inquiry from the police, he showed willingness to act as panch. He was taken to the *post mortem* room where the dead body of Vinayak Sonawane was kept. He saw five to six injuries on the head, injury on the left forehead, injury beside nose and right cheek, injury on the right side of the chest, 17 to 18 stab injuries on the left side above the waist, injury below the left

elbow, abrasion on the left shoulder, palm and on knees. Inquest at Exh. 61 was prepared upon which he put his signature.

15. The further evidence of PW4 – Liladhar Pralhad Vispute show that he along with the police went on the spot of incident which was on the Baheti College North South road where the spot panchanama was done. During the spot panchanama, the articles i.e. Footwears, Motorcycle bearing No. MH-19/BB-7707, one bicycle having name Namrata Cycle Mart, etc. came to be seized under the spot panchanama Exh. 62.

16. Non-mentioning in the inquest and spot panchanama that the photographs were taken, will not affect the evidentiary value of the said document. His not asking the police officer to mention about the photographs in the panchanama is inconsequential.

17. The evidence of PW29 – Dr. Girish Vasudeo Patil show that since June-2012, he was the Medical Officer at Civil Hospital at Jalgaon. On 18.12.2012, the Zilla Peth Police referred the dead body of Vinayak Sonawane for *post mortem* with copy of Inquest. He performed the autopsy from 06:00 p.m. to 07:30 p.m. Condition of body was well nourished and cold. *Rigor mortis* was well marked in extremities and slight in trunk and neck. There were marks of blood on head, face,

neck, left upper extremities and abdomen. He noticed the following external injuries.

I] Plain incised wounds.-

- (i) On left frontoparietal area size 8 cm x 2 cm., bone deep, direction was oblique.
- (ii) On right temperoparietal area size 10 cm x 3 cm., bone deep transverse right temporal bone and palpable fracture at base of wound. Size of fracture was 2 ½ cm x 1 cm. Periosteum fracture.
- (iii) On right temperoparietal area below injury No. ii) size 8 cm x 2 cm bone deep and transverse.
- (iv) Plain incised wound on right zygomatic eminence extending towards right temperoparietal bone incising upper part of ear pinna size was 16 cm x 2 cm., bone deep and transverse.
- (v) On occipital area, size 6 cm x 3 cm bone deep and transverse.
- (vi) Upper lip extending towards right cheek, size 6 cm x 2 cm oral cavity deep, oblique in direction upper teeth were exposed upper right first and second and left first incisor were cut at crown level and seen attached to cut lip segment.
- (vii) Right clavicular area extending towards sternum, size 4 cm x 2 cm muscle deep and oblique in direction.
- (viii) 18 plain incised stab wounds on left flank and left para spinal area. The large measured 5.2 cm, 7 measured 4 cm x 2 cm. 3 measured 4 cm x 3 cm, 7 measured 4 cm x 2½ cm. Directions of 4 transverse, 5 vertical and 9 oblique. All were elliptical in shape (i.e. spindle shaped), one is fat deep and 17 peritoneal cavity deep. All plain incised wounds

mentioned above were bright red in colour.

II] **Contused lacerated wounds.-**

- (i) Right shoulder laterally oblique, size 3 cm x ½ cm, muscle deep.
- (ii) Right shoulder top, oblique size 4 cm x 2 cm, muscle deep.
- (iii) Medial to left shoulder anteriorly, size 6 cm x ½ cm, vertical in direction, skin deep.
- (iv) Left forearm dorsum, upper 1/3rd, size 3 cm x 2 cm, muscle deep. All above CLWs were bright red in colour.

III] **Abrasions.-**

- (i) Right knee anteriorly, size 2 ½ cm x 1 ½ cm, vertical and bright red.
- (ii) Left knee anteriorly, size 2 cm x 2 cm, bright red.

Age of these injuries was within 8 hours.

Plain incised wounds were possible by hard, sharp and narrow object like knife, Chaku-Sura. Contused lacerated wound and abrasions might be due to hard and blunt object.

18. The evidence of PW29 – Dr. Girish Vasudeo Patil show that the injuries mentioned above were sufficient in the ordinary course of nature to cause death. The cause of death is deposed as “**Hemorrhagic shock due to stab injuries to left kidney, spleen and bowel with head injury**”. The *post mortem* report is brought on record at Exh. 149.

19. The cross-examination of said Medical Officer is on the

aspects of rigor mortis, haemorrhagic shock and nature of injuries. The said evidence of the Medical Officer establishes that the injuries on the deceased Vinayak could be caused by the aforesaid articles i.e. Knife (Article 'A') and Sickie (Article 'B').

20. The evidence of PW30 – Police Inspector Mr. Y. D. Patil show that after registration of FIR at the instance of the PW2 – Shivaji Chudaman Patil, he went to the Civil Hospital with PW25 – Jamil Rahim Shaikh and PW2 - Shivaji Chudaman Patil and carried the inquest in the presence of panchas. His evidence further show that he went to the spot of incident which was the road going from Law College to Baheti College and carried out the spot panchanama. His evidence corroborate the testimony of PW4 – Liladhar Pralhad Vispute.

21. The above discussed evidence clearly establishes that in the afternoon of 18.12.2012, Vinayak Sonawane was found in severely injured condition on the I.M.R. College road, Jalgaon and he was shifted to the hospital where he was declared dead. It further establishes the nature of injuries and the cause of his death. The Homicidal death of Vinayak Sonawane is not in dispute. In any case the Homicidal death of Vinayak Sonawane is established by the prosecution.

EYE WITNESSES : -

22. The prosecution has examined PW1 – Nilesh Garbad Bhole and PW3 – Nitin Nanasaheb Patil as the eye-witnesses to the incident. Their evidence show that on 18.12.2012, when they were going by the Baheti College road, they noticed scuffle between Appellant No. 1 and the deceased. In the meanwhile, Appellant No. 2 came on the spot. Both the Appellants assaulted the deceased with the weapons like sickle and knife due to which the deceased fell down and the Appellants fled from the spot. Though both these witnesses have given more or less similar account of the incident, the statement of PW1 – Nilesh Garbad Bhole was recorded on 22.12.2012 and the statement of PW3 – Nitin Nanasaheb Patil was recorded on 27.12.2012. Thus, it is clear that the statement of PW1 – Nilesh Garbad Bhole was recorded on the fourth (4th) day from the incident and the statement of PW3 – Nitin Nanasaheb Patil was recorded on the ninth (9th) day from the incident. According to PW3 – Nitin Nanasaheb Patil, he had gone to Tirupati immediately after the incident. According to PW1 – Nilesh Garbad Bhole, he was available in the town for a week after the incident.

23. There is no explanation in the evidence of PW1 – Nilesh Garbad Bhole about delay in recording his statement when he was available in the town and had also taken the injured to the hospital. What is seen from the evidence of PW1 – Nilesh Garbad Bhole is that he

himself approached the police on fourth (4th) day. It is true that the clothes of Appellant No. 1 – Rajhans were stained with blood and they were seized under the panchanama at Exh. 71, which is brought on record in the evidence of PW6 – Ravindra Dilip Nikam, that itself will not be sufficient to accept his evidence about witnessing the actual incident for the reason that, his further evidence show that after the assailants ran away, he went to the Shiv Colony on one motorcycle and informed the people of that colony and again he came on the spot of the incident and thereafter they had shifted the deceased to the hospital.

24. Further, the evidence of PW2 – Shivaji Chudaman Patil show that he did not state before the police about the presence of PW1 – Nilesh Garbad Bhole and PW3 – Nitin Nanasaheb Patil. In the First Information Report, though PW2 – Shivaji Chudaman Patil names the persons who carried injured to a hospital, the names of these two eye-witnesses are conspicuously absent. Thus, the evidence of PW1 – Nilesh Garbad Bhole and PW3 – Nitin Nanasaheb Patil in respect of witnessing the incident is required to be seen with doubt and therefore their said part of testimony is kept out of consideration.

**SURRENDER OF APPELLANT NO. 1 AND APPELLANT NO. 2 TO THE
POLICE WITH WEAPONS AFTER THE INCIDENT : -**

25. PW25 – Jamil Rahim Shaikh was attached to the Zilla Peth Police Station, Jalgaon from 03.08.2012 to 31.05.2014. On 18.12.2012,

he was in the Police Station. He was directed to be in the Police Station since Police Inspector – Yadavrao Damu Patil had gone to the Collector Office as there was a *Morcha*. He deposed that at about 13:10 hrs., Appellant No. 1 and Appellant No. 2 came to the Police Station with Sickie (Article ‘B’) in the hand of Appellant No. 1 and Knife (Article ‘A’) in the hand of Appellant No. 2 and they surrendered themselves for the murder of Vinayak Sonawane. He took the custody of the weapons and gave the custody of the Appellants to the Sentry-guard Nerkar. He immediately informed Police Inspector – Mr. Y. D. Patil, who directed him to make the Station Diary Entry. Accordingly, he made Station Diary Entry at Sr. No. 29, the copy of which is brought on record at Exh. 127. His evidence show that he had brought with him the original Station Diary at the time of his evidence.

26. The cross-examination of PW25 – Jamil Rahim Shaikh show that the Station Diary Entry was in his hand-writing. His cross-examination show that the Station Diary Entry was made immediately after the Appellant Nos. 1 and 2 surrendered. Non-mentioning of the blood stained clothes of the Appellants in the Station Diary Entry will not affect his evidence nor would it affect the veracity of the said Station Diary Entry. His cross-examination do not affect his evidence.

27. One of the judgments relied upon by the learned advocate

for the Appellants is in the case of **Aghnoo Nagesia Versus State of Bihar**, 1966 AIR (SC) 119, wherein it is observed that except as provided by Section 27 of the Indian Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of the Indian Evidence Act and if it is made in the course of investigation, it is also protected by Section 162 of the Code of Criminal Procedure and a confession to any other person made by him while in custody of police officer is protected by Section 26, unless it is made in the immediate presence of a magistrate. It is further observed that if the First Information Report (FIR) is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

28. Another judgment relied upon by the learned advocate for the Appellants is in the case of **Khatri Hemraj Amulakh Versus State of Gujarat**, 1972 (3) SCC 671, wherein it is observed that the confessional statement which was made by the accused to Sub Inspector Rojia and which formed the basis of the first information report was not admissible in evidence as in the case of Aghnoo (supra), this Court held that no part of the first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a

confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.

29. Another judgment relied upon by the learned advocate for the Appellants is in the case of **Mohd. Abdul Hafeez Vs. State of Andhra Pradesh**, AIR 1983 SC 367, wherein it is observed that, if evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the investigating officer to state and record who gave the information; when, he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person.

30. Another judgment relied upon by the learned advocate for the Appellants is in the case of **Rajesh and Ors. Vs. The State of Madhya Pradesh**, AIR 2023 SC 4759, wherein it has been observed in paragraph nos. 29, 30, 37 and 39 as follows : -

“29. Recently, in *Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh*¹³, a 3-Judge Bench of this Court observed that the

requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchnama and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchnama. It was further observed that it is only if the Investigating Officer has successfully proved the contents of the discovery panchnama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022 = 2022 SCC OnLine SC 1396 Court may also accept the same. It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchnama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

30. In *Khet Singh vs. Union of India* 14, this Court held that even if there is a procedural illegality in conducting the search and seizure, the evidence collected thereby would not become inadmissible and the Court would consider all the circumstances to find out whether any serious prejudice has been caused to the accused. However, this Court pointed out that if the search and seizure were in complete defiance of the law and procedure and there was any possibility of the evidence collected having been tampered with or interpolated during the course of such search and seizure, then that evidence could not be admitted. Though these observations were made in the context of a search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985, they would have relevance generally.
37. Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S.Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus:

'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth.The standard of police investigation in India remains poor and there is considerable

room for improvement. The Bihar Police Commission (1961) noted with dismay that “during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation”. Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases.....’

39. It is indeed perplexing that, despite the innumerable weak links and loopholes in the prosecution’s case, the Trial Court as well as the High Court were not only inclined to accept the same at face value but went to the extent of imposing and sustaining capital punishment on Rajesh Yadav and Raja Yadav. No valid and acceptable reasons were put forth as to why this case qualified as the ‘rarest of rare cases’, warranting such drastic punishment. Per contra, we find that the yawning infirmities and gaps in the chain of circumstantial evidence in this case warrant acquittal of the appellants by giving them the benefit of doubt. The degree of proof required to hold them guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established.”

31. There is no quarrel in respect of the ratio of the aforementioned judgments. In **Perumal Raja alias Perumal Versus State, Rep. By Inspector of Police**, 2024 SCC OnLine SC 12, the Hon’ble Supreme Court of India considered the provisions of Sections 25 to 27 of the Indian Evidence Act and also considered the aforementioned Judgment in the case of Aghnoo (supra). The relevant observations are produced as follows : -

27. Elaborating on this aspect, a three judge Bench of this Court in Aghnoo Nagesia v. State of Bihar¹⁶ has held that if the FIR is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence, except to the extent that the ban is lifted by Section 27 of the Evidence Act. While dealing with the admission of part of confession report dealing with motive, subsequent conduct and opportunity, this Court rejected the severability test adopted by some High Courts. The statement can, however, be relied upon and admitted to identify the accused as the maker, and the portion within the purview of Section 27 of the Evidence Act is admissible. Aghnoo Nagesia

(supra) has been applied and followed by this Court in *Khatri Hemraj Amulakh v. State of Gujarat*.

28. The words “person accused of an offence” and the words “in the custody of a police officer” in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term “police custody” is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in “custody” within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression “custody” has been held, as earlier observed, to include surveillance, restriction or restraint by the police.
29. This Court in *Deoman Upadhyay (supra)*, while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the “custody” of the police officer. Reference can also be made to decision of this Court in *Vikram Singh and Ors. v. State of Punjab*, which discusses and applies *Deoman Upadhyay (supra)*, to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in *Dharam Deo Yadav v. State of Uttar Pradesh*, has held that the expression “custody” in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar vide Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in *State of A.P v. Gangul Satya Murthy and A.N.Vekatesh and Anr. v. State of Karnataka*.
30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

32. Coming to the case in hand, though the defence of the

Appellant Nos. 1 and 2 is that of denial, the Appellant No. 1 submitted his written statement that Exh. 176 wherein he has stated that the deceased Vinayak was the Corporator and since he was in the politics from last so many years, he was having many enemies. On 04.02.2012, the incident of assault had taken place in Shiv Colony. The son of Appellant No. 1, by name, Harshal lodged report in the Police Station against the deceased Vinayak Sonawane and others and the Criminal Case in that regard for the offence punishable under Section 325, 504, 506 r/w 34 of the IPC was pending in the court of learned Magistrate. Therefore, he had no reason to take revenge. It is further stated in the said statement that on the date of incident he i.e. Appellant No. 1 was travelling in the Rickshaw towards the station. He noticed that Vinayak Sonawane was lying seriously injured near Satyavallabh hall. As Vinayak Sonawane was the Corporator of their area and also belonging to his caste, he stopped and called his son i.e. Appellant No. 2. Vinayak Sonawane was injured to such an extent that he thought that it would be dangerous for his health if he was shifted. They suspected that it was the case of assault and so while going to the station, Appellant Nos. 1 and 2 went to the Zilla Parishad Police Station and informed the policemen present over there that Vinayak Sonawane was assaulted and he was lying in an injured condition near the Law College. When the Appellant Nos. 1 and 2 were about to leave the Police Station, police asked them to stop on the pretext that their report was to be taken and

they were apprehended. At that time there were no weapons in their hand nor their clothes were stained with blood. They both were made to sit in the Police Station till 04:30 p.m. and thereafter discussion took place between the relatives of Vinayak Sonawane and the persons of his acquaintance and false report was lodged against them. Since the deceased was the sitting Corporator, the police had to arrest someone for the said incident. On the date of incident, programme was going on in Satyawar Hall, which was near the spot of incident and there were number of people present over there. However, no witness from the said spot was available to the police.

32.1. Admittedly the FIR is not based on the statements/information given by Appellants No. 1 and 2. Here, immediately after the Appellant Nos. 1 and 2 surrendered to the police with the weapons, the Station Diary Entry was made to that effect. Admittedly, the time of the said Station Diary Entry is 13:10 hrs., which is after the incident as is clear from the evidence of PW2 - informant wherein he deposed that he learnt about the incident in the noon at about 12:15 to 12:20 p.m. and he went on the spot of incident where Vinayak Sonawane was lying in an injured condition. The said Station Diary Entry becomes relevant pursuant to the provisions of Section 35 of the Indian Evidence Act, which reads as under : -

S.35 - Relevancy of entry in public ³⁴[record or an electronic record] made in performance of duty. - An entry in any public or other official

book, **register** or ³⁴[record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or ³⁴[record or an electronic record] is kept, is itself a relevant fact.

33. From the evidence of PW25 – Jamil Rahim Shaikh corroborated by the Station Diary Entry, it is clearly established that the Appellant Nos. 1 and 2 surrendered to the Police on 18.12.2012 with the weapons after the incident and Station Diary Entry in that regard was made. The said evidence is corroborated by the evidence of PW30 – Police Inspector Mr. Y. D. Patil of the Zilla Peth Police Station, Jalgaon. The said defence put forth by Appellant No. 1 is clearly an afterthought defence and not possible to accept. The said story put forth by the defence that they did not think it fit to move deceased Vinayak Sonawane is improbable. The natural conduct would have been to seek help of the public as he was lying on the public road and shift the injured to the hospital. Thus, the said contention of Appellant No. 1 is unworthy of acceptance. By the said defence, the presence of Appellants No. 1 and 2 on the spot of incident is established.

34. Considering the legal position as observed in the aforementioned judgment in the case of Perumal (supra), the act of Appellant Nos. 1 and 2 surrendering to the police with the weapons

voluntarily and disclosing the spot of incident would fall within the ambit of Section 27 of the Indian Evidence Act. The said evidence on record clearly establishes the discovery of weapons Article 'A' - Knife and Article 'B' - Sickle and the spot of incident at the instance of Appellant Nos. 1 and 2. The further evidence of PW25 – Jamil Rahim Shaikh show that after making the said station diary entry, he visited the spot of incident and thereafter to the Hospital where deceased was taken. This confirms the discovery at the instance of Appellant Nos. 1 and 2. Thus, it becomes relevant by virtue of Section 27 of the Indian Evidence Act.

INJURIES ON APPELLANT NOS. 1 AND 2 : -

35. The evidence of PW25 – Jamil Rahim Shaikh, who was present in the Police Station when Appellant Nos. 1 and 2 surrendered with weapons, show that there was injury on the face of Appellant No. 1 and injury on right hand of Appellant No. 2.

36. The evidence of PW30 – Police Inspector Mr. Y. D. Patil show that after lodging of the FIR at the instance of PW2 – Shivaji Chudaman Patil, he started the investigation. His evidence show that he arrested Appellant Nos. 1 and 2 and seized the weapons produced by them and their clothes before the panch. The arrest panchanamas were at Exhs. 65 and 66. The said panchanamas are brought on record in the evidence of PW5 – Prashant Shantaram Patil, who was one of the panch

for their arrest. In his evidence, PW5 – Prashant deposed about the injuries on the person of Appellant Nos. 1 and 2.

37. The evidence of PW30 – Police Inspector Mr. Y. D. Patil show that he referred Appellant Nos. 1 and 2 for medical examination vide letter at Exh. 111. His evidence show that, to avoid the law and order problem, the Doctor was called at the Police Station instead of sending the Appellants to the hospital.

38. The evidence of PW20 – Dr. Pravin Ramchandra Patil show that he was the Medical Officer in the Civil Hospital at Jalgaon on 18.12.2012. He received request letter from the Zilla Peth Police Station for examination of the accused persons in the Police Station. He examined Appellant Nos. 1 and 2.

38.1. His evidence show that, he found the following injuries on the person of Appellant No. 1 :-

- [i] Scratch abrasion on the right side of occipital parietal region of 0.1 x 0.2 cms.
- [ii] Abrasion over right upper lip approximately 0.3 x 0.2 cms.

38.2. His evidence show that he found following injuries on the person of Appellant No.2.

- [i] Abrasion over right palm at the base of thumb approximately 3 x 0.2 x 1 cms.
- [ii] Incised wound over right middle thumb at the base of finger approximately .5 x .2 x .2 cms.
- [iii] Abrasion over right hand at the base of ring finger approximately .2 x .2 cms.

38.3. His evidence further show that injuries to Appellant No. 1 could be caused due to fall and because of fist blow, and injury no. [ii] on the person of Appellant No. 2 could be be caused while holding knife [Article 'A']. Injury nos. [i] and [iii] caused to Appellant No. 2 could be caused if while an assault by him by knife is given resistance.

39. The evidence of PW20 – Dr. Pravin Ramchandra Patil show that the age of injuries of Appellant Nos. 1 and 2 were within 12 hours. The evidence show that the injuries on Appellant No. 1 – Rajhans, and injuries no. [i] and [iii] on Appellant No. 2 – Pawan could be caused by hard and blunt weapon and injury no. [ii] on Appellant No. 2 – Pawan could be caused by a sharp weapon. The medical papers [MLC] regarding the examination of Appellant Nos. 1 and 2 are brought on record in the evidence of this witness at Exh. 112/1 and 112/2. His evidence further show that he provided the first aid and medicines to both the Appellants.

40. Non-attestation of thumb impression on the Appellants

MLCs will not affect the veracity of the said MLCs and the evidence of this witness that he medically examined Appellant Nos. 1 and 2 and found the aforesaid injuries on their person. Non-performing of the test for want of facilities to ascertain histochemical timings and biochemical timings of the wounds can be no reason to discard the testimony of this witness. Though there is cross-examination of this witness in respect of the age of injuries as the colour of injuries was not mentioned in the MLCs, his evidence is well corroborated with the said MLCs which firmly establishes that he examined Appellant Nos. 1 and 2 on 18.12.2012 at 18:15 hrs. and found the above injuries on their person.

41. The contention of learned advocate for the Appellants that such injuries can also be caused either in self-defence during the incident or due to assault by Appellants when they went to the Police Station. Learned advocate for the Appellant cited the judgment in the case of **Ramanand vs. State of U.P.**, MANU/SC/1324/2020 in support of his arguments that the law is well settled that the prosecution has to prove the injuries on the body of the accused.

42. In the case in hand, nothing is brought in the evidence of PW20 - Dr. Pravin Ramchandra Patil that the injuries could be possible due to beating by Police. There is no suggestion in the evidence of PW30 – Police Inspector – Mr. Y. D. Patil that Appellant Nos. 1 and 2

were subjected to assault in the police Station. The Record and Proceedings show that when the Appellant Nos. 1 and 2 were produced before the concerned Magistrate for remand, they did not complain about any harassment to them by the Police as is clear from the orders passed on the remand applications. Therefore, the said contention of learned advocate for the Appellants melts down.

42.1. While discussing the evidence of surrender of Appellant Nos. 1 and 2 to the police with the weapons after the incident, the defence taken by the Appellant No. 1 in his written statement at Exh. 176 is considered which established the presence of Appellant Nos. 1 and 2 on the spot of incident. The prosecution has discharged its burden and proved the injuries on the person of Appellant Nos. 1 and 2. There is no explanation by the defence / Appellant Nos. 1 and 2 about the injuries found on their body. Considering the above referred medical evidence, the injuries on the person of Appellant Nos. 1 and 2 is an incriminating circumstance.

**CYCLE HIRED BY APPELLANT NO. 1 BEFORE THE INCIDENT WAS
FOUND ON THE SPOT OF INCIDENT : -**

43. Evidence of Informant PW2 – Shivaji Chudaman Patil show that during the spot panchanama conducted by the police, a bicycle having no. 12 of Namrata Cycle Mart with blood on the handle and seat was found on the spot of the incident. The evidence of PW4 – Liladhar

Pralhad Vispute show that the spot panchanama at Exh. 62 was carried out in his presence and from the spot, bicycle no. 12 of Namrata Cycle Mart with blood stains on the handle and seat, and other articles was seized during the spot panchanama. The evidence of PW30 – Police Inspector Mr. Y. D. Patil corroborate the evidence of the said witnesses regarding seizure of cycle having no. 12 with blood stains on the right side handle and seat of bicycle.

44. The evidence of PW11 - Prakash Bhika Dhangar show that he was the owner of Namrata Cycle Mart, which was near the bus stand at Jalgaon. He would give the bicycles on rent by maintaining the record to that effect. He deposed that, on 18.12.2012, it was Tuesday and the Appellant No. 1 came to his shop for hiring bicycle and he gave him bicycle no. 12 on rent to Appellant No. 1 by taking entry in the register. The Appellant No. 1 left with the said bicycle. His evidence show that he knew Appellant No. 1 since last ten (10) to twelve (12) years. His evidence show that Policemen had come to his shop for inquiry on 19.12.2012. His evidence show that the extract from the register was brought on record at Exh. 84. The said entry was in his handwriting showing the name of Appellant No. 1 and time was 13:10 p.m. His cross-examination show that there may be many persons by name Nana. His cross-examination show that he knew Appellant No. 1 by name 'Nanabhau'. He denied the suggestion that the word 'Nana' in

the said register does not refer to Appellant No. 1 and the Appellant No. 1 did not hire the bicycle from his shop. The cross-examination by no means affect the testimony of this PW11 - Prakash Bhika Dhangar.

45. There is evidence of PW12 – Mahendra Devidas Sonawane in whose presence the Register of Cycle Mart produced by PW11 – Prakash Bhika Dhangar was produced. The panchanama to that effect was at Exh. 86. The correction in the time mentioned in the said Register do not affect the evidence of prosecution.

46. From the above referred evidence, it is established by the prosecution that on the date of incident, Appellant No. 1 hired the bicycle No. 12 from his shop and left with that bicycle which was found on the spot of incident and was seized by the police.

BLOOD STAINS ON THE ARTICLES SUCH AS CLOTHES OF APPELLANT NOS. 1 AND 2 AND WEAPONS : -

47. PW5 – Prashant Shantaram Patil is the witness, who was accompanying the informant. His evidence show that he along with Hemant Rajput went to Zilla Peth Police Station between 04:30 p.m. and 04:45 p.m. after they learnt that Appellant Nos. 1 and 2 surrendered to the police. He expressed willingness to act as panch. Appellant Nos. 1 and 2 were brought before him. Appellant Nos. 1 and 2

came to be arrested under Panchanama at Exh. 65 and 66. The clothes of both the Appellants were stained with blood. Appellant No. 1 was wearing grayish T-shirt and black trouser and Appellant No. 2 was wearing full sleeved sky-blue shirt and a black pant. The said clothes were seized by the police. The Appellant Nos. 1 and 2 were allowed to wear the clothes brought from their house. The further evidence of PW5 – Prashant Shantaram Patil show that one iron sickle (Article 'B') with round handle and iron knife (Article 'A') having handle of fish shape were produced by Assistant Police Inspector - Jamil Rahim Shaikh [PW25], which were also stained with blood. As discussed earlier while considering the point of surrender of Appellant Nos. 1 and 2, PW25 – Jamil Rahim Shaikh had taken the custody of the weapons which were handed over / produced by the Appellant Nos. 1 and 2. His evidence show that the seizure panchanama to that effect was prepared at Exh.67.

48. The evidence of PW5 – Prashant Shantaram Patil show that the clothes of Appellant Nos. 1 and 2 were packed and sealed under their signatures and were kept in different packets. In his evidence, he identified the clothes at Articles 'G', 'H', 'I', J and 'Q'. In his evidence, he gave the descriptions of the weapons. His evidence show that, both the weapons were packed in a transparent polythene bag and sealed under his signature. In his evidence, he was shown the said weapons and he

identified the Articles 'A' and 'B' as the same weapons i.e. Knife and Sickle. He identified the Appellant Nos. 1 and 2 as, the accused persons who were arrested before him and whose clothes were seized and also the weapons.

49. Non-giving of his address where he was residing is not sufficient to discard the testimony of said panch witness. He denies the suggestion that no clothes and weapons were seized in his presence. His evidence is corroborated by PW30 – Police Inspector Mr. Y. D. Patil. The evidence of PW30 – Police Inspector Mr. Y. D. Patil show that the weapons which were seized were deposited with the Muddemal Clerk vide receipt at Exh. 159. The evidence of PW16 – Harun Rafioddin Bagwan and PW18 – Ravindra Kadu Patil, who were the Policemen attached to the Zilla Peth Police Station, Jalgaon show that they carried the muddemal to the office of Chemical Analyzer. The evidence of PW18 – Ravindra Kadu Patil went unchallenged, whereas; the cross-examination of PW16 – Harun Rafioddin Bagwan show that he did not verify the contents by showing the packets. The said cross-examination nowhere affects his evidence.

50. The prosecution has brought on record the reports of Chemical Analyzer from Exh. 151 to 156. It is true that the result of analysis of the blood group of the Appellants and deceased was

inconclusive. The report at Exh. 156 show presence of human blood on all the articles except Article No. 3 (Earth). From the above discussed evidence, it is firmly established that human blood was found on the clothes of Appellant Nos. 1 and 2 which were on their person and the weapons which were produced by them at the time of their surrender.

MEDICAL EVIDENCE ON THE ASPECT OF INJURIES ON THE DECEASED BY KNIFE [ARTICLE 'A'] AND SICKLE [ARTICLE 'B'] : -

51. The evidence of PW29 - Dr. Girish Vasudeo Patil, Medical Officer of Civil Hospital, Jalgaon, who carried out the post mortem on the dead body of Vinayak Sonawane, show that during the course of investigation, PW30 – Police Inspector Mr. Y. D. Patil sought his opinion vide letter dated 20.12.2012 seeking opinion as to whether the injuries found on deceased Vinayak Sonawane could be caused by Knife [Article 'A'] and Sickle [Article 'B'] and he replied vide letter at Exh. 150 that the injuries on the deceased can be caused by the said weapons. His evidence further show that during his evidence, Knife (Article 'A') and Sickle (Article 'B') were shown to him and he deposed that the injuries which were shown by him in the *post mortem* report can be caused by the said weapons. It has come in his evidence that the injuries particularly on stomach, liver and spleen can be caused by Knife [Article 'A'] and the injuries on the skull and face can be caused by Sickle [Article 'B'].

52. It has come in his cross-examination that the stab injury is possible only by a peculiar type of weapon and injuries mentioned in Column No. 17 of the report were not possible by single type of weapon. As discussed earlier, two (2) types of weapons are seized at the instance of Appellant Nos. 1 and 2. In cross, it is clarified that while seeking his opinion the seized weapons were physically shown to him. Though it has come in his cross-examination that he was unable to tell whether the weapons were again sealed in his office after showing him, the CA reports which are at Exh. 151 to 156 show that articles received were in sealed packets / parcels.

53. The above discussed evidence established that the injuries on the deceased Vinayak Sonawane were possible by the Articles 'A' and 'B' weapons.

MOTIVE : -

54. The evidence on record i.e. the evidence of PW2 – Shivaji Chudaman Patil (informant) show that, six to seven months prior to the incident in question, deceased Vinayak Sonawane and his associates had a quarrel with Harshal, who was the elder son of Appellant No. 1 and in that quarrel, Harshal lost his one eye. The evidence of PW5 – Prashant Shantaram Patil show that, seven to eight months prior to the incident, dispute had taken place between Harshal, son of Appellant No. 1 and Rohit Bhombe. The evidence of PW30 – Police Inspector Mr. Y. D. Patil

show that during the investigation he collected the papers of Crime No. 42/2012 which was registered against the deceased Vinayak Sonawane at the behest of Harshal, who was the son of Appellant No. 1. His evidence further show that during investigation he found that in the said Crime, Harshal, son of Appellant No. 1 had lost his left eye. Even in the written statement at Exh. 176, which has been considered above, Appellant No. 1 referred about the incident in which he has referred about the criminal case registered against deceased Vinayak Sonawane and his associates at the instance of his son Harshal and the matter was *sub judiced*. From this evidence on record, it is established that the Appellant Nos. 1 and 2 had the Motive to eliminate Vinayak Sonawane.

55. The another point of argument is that the prosecution suppressed the evidence of material witnesses. It was open for the defence to lead evidence, however, they did not do so. It is for the prosecution to examine the witnesses in support of their Charge. Therefor, the said contention has no merits.

56. One of the contentions is that, the learned trial Court did not provide effective hearing on the sentence to the Appellants at the relevant stage which was their right under Section 235(2) of the Cr.P.C. The impugned judgment show that the learned trial Court heard the Appellants and their advocates and learned APP on the point of

sentence. The learned trial Court has considered that it was not the rarest of rare case and awarded the sentence as detailed in the operative part of Judgment. Thus, there is no merit in the said contention that no effective hearing was provided before sentencing the Appellants.

57. The learned advocate for the appellant cited the judgment in the case of **Subhan Usman Shaikh Vs. The State of Maharashtra**, MANU/MH/0811/2022, wherein it is observed as follows : -

28. In so far as when medical evidence would prevail over the ocular evidence is concerned, the learned counsel appearing for the Appellant relied upon the judgment of the Supreme Court in Abdul Sayeed's case. She invited our attention to paragraph 39 of the said judgment wherein the Supreme Court has held as under :-

"39 Thus, the position of law in cases where there is contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

As already observed herein above, in the present case, the autopsy surgeon (PW-12) stated that the fatal blow injury suffered by the deceased was a stab injury which could not have been caused by the axe and the other contusion lacerated wounds (CLWs) suffered by the deceased could not have been caused by sharp side of axe but only by blunt side. It is therefore evident that the injuries suffered by the deceased were not caused by the sharp side of an axe. Therefore the medical evidence on record completely rules out all possibility of ocular evidence being true.

For the same aforesaid proposition i.e. the medical evidence completely rules out all possibility of the ocular evidence being true and therefore ocular evidence may be disbelieved, the learned counsel appearing for the Appellant has also relied upon the other judgments in the case of Mahavir Singh v. State of Madhya Pradesh, Mahadeo Kundalik Vaidya v. State of Maharashtra and Ganga Prasad v. State of UP.

58. Coming to the case in hand, the testimony of the eye-witnesses are kept aside, therefore, there is no question of variance or contradiction between the ocular evidence and the medical evidence. The medical evidence has amply established the injuries on the deceased as deposed by the Medical Officer and corroborated by the *post mortem* report. Thus, the reliance on the aforesaid authority is of no assistance for the Appellants.

59. One of the contentions of learned advocate for the Appellants is that there is delay in lodging an FIR. The said contention, in our considered view, has no merits for the reason that the evidence on record show that after informant/witness learnt about the deceased Vinayak Sonawane was lying in a serious injured condition on the road, he reached there, he asked the other witnesses to shift him to the hospital, thereafter, he went to the concerned Police Station and gave the information. Thereafter, he went to the hospital where the Doctor declared Vinayak Sonawane dead. Thereafter, the informant / witness went to the Police Station and his report came to be written down. As seen from the printed FIR at Exh. 54A, the date and time of incident is mentioned as 18.12.2012 at 12:45 p.m., respectively and the column for receipt of information shows the date 18.12.2012 and the time as 14:30 hrs.

60. The evidence discussed above has established : - That Vinayak Sonawane died a homicidal death. The Appellant Nos. 1 and 2 surrendered with weapons to the concerned Police Station after the incident. There were injuries on the person of Appellant Nos. 1 and 2. There were human blood stains on the clothes of Appellants No. 1 and 2 and on the weapons i.e. Knife (Article 'A') and Sickle (Article 'B'), which they were carrying with them at the time of surrender. The bicycle hired by Appellant No. 1 before the incident was found on the spot of incident and Appellant Nos. 1 and 2 had the Motive to commit murder.

61. The proved circumstances unerringly point towards the involvement of Appellant Nos. 1 and 2 in causing the homicidal death of Vinayak Sonawane. The Motive behind the Crime is also established. The proved circumstances completely rules out the hypothesis of involvement of any other person in the Crime. The learned trial Court has, therefore, rightly convicted Appellant Nos. 1 and 2.

EVIDENCE AGAINST APPELLANT NO. 3 : -

62. So far as Appellant No. 3 is concerned, there is evidence of PW15 – Kalpesh Chandulal Agrawal, who was the panch to the panchanama at Exh. 94 for seizure of motorcycle bearing no. MH-

19/4244 having the number plate inversely fixed from the house of Sonu Pawar. The other evidence is that of PW19 – Sagar Digambar Pathak, who was the panch to the arrest panchanama of Appellant No. 3, which was at Exh. 109. The other evidence is that of PW21 – Gajanan Laxman Hire, who acted as panch for seizure of knife from the drawer of one house which was locked. His evidence show that the police had come with Appellant No. 3 to him and the lock was opened by means of grinder. The other evidence is that of PW22 – Swati Sonu Pawar, who was the sister of Appellant No. 3, which show that Appellant No. 3 had come to her house four (4) to five (5) days prior to recording her statement by police and he told her that he got job at Surat and would leave his motorcycle at her house and accordingly he left his motorcycle at her house and left. Her evidence show that since she did not support the prosecution, she was cross-examined by the learned APP. The other evidence is that of PW24 – Mayur Madhukar Chavan, who was the friend of Appellant No. 3, who deposed that on 18.12.2012, he and Appellant No. 3 were sitting outside their home at 08:00 a.m. and thereafter they dispersed. His further evidence show that at 11:15 a.m., accused no. 3 was in hurry and he asked their friend Kushal to drop him at some distance and accordingly he was dropped. His further evidence show that since he did not support the prosecution, learned APP cross-examined him. The other evidence is that of PW30 – Police Inspector Mr. Y. D. Patil which show that he collected the CDRs of cell number of

Appellant No. 3 and effected his arrest. His evidence show that, on 25.12.2012, the Appellant No. 3 informed him that the bag having sickle and mobile handset was given by the wife of Appellant No. 1, which is inadmissible evidence. Lastly, there is no reference of Appellant No. 3 in the FIR.

63. The evidence of aforesaid witnesses examined by the prosecution to show the involvement of the Appellant No. 3 does not take the case of prosecution any further to prove the Charge against Appellant No. 3. Their evidence by no stretch of imagination prove the involvement of Appellant no. 3 in the Crime. Mere suspicion is not sufficient. The prosecution has utterly failed to prove the Charge against Appellant No. 3.

64. Insofar as the Revision Application filed by the Informant is concerned, the learned advocate for the Applicant cited the following judgments in support of her contention for enhancement of punishment from life imprisonment to death penalty.

- [i] Simon and others Versus State of Karnataka,
(2004) 2 SCC 694
- [ii] Machhi Singh and others vs State Of Punjab,
AIR 1983 SC 957
- [iii] Bachan Singh vs State Of Punjab,
(1982)3SCC24
- [iv] State of Rajasthan v Kheja Ram,
(2003) 8 SCC 224

[v] State of Madhya Pradesh v. Ghanshyam Singh
AIR 2003 SC 3191

65. The law laid down in the above referred judgment is well settled. It is needless to state that the minimum punishment for the offence of murder is imprisonment for life and the maximum punishment is death penalty. Considering the law laid down in the aforementioned judgments, the offence in the case in hand does not fall within the category of rarest of rare case. Appellant Nos. 1 and 2 had the Motive to commit Crime as the son of Appellant No. 1, who was also the brother of Appellant No. 2, lost his left eye in the incident in which deceased Vinayak Sonawane was involved. It is not the case that Appellant Nos. 1 and 2 were/are the threats to the society at large and punishment of imprisonment for life imposed by the trial Court was inadequate punishment. Thus, we do not find any fault with the sentence awarded by the learned trial Court to the Appellant Nos. 1 and 2. Resultantly, the prayer for enhancement of punishment is liable to be rejected and is, thus, rejected.

66. Though the learned advocate for the Applicant/Revisionist has cited fourteen (14) more judgments, we do not find it necessary to refer them as the evidence available on record establishes the Charge against the Appellant Nos. 1 and 2 and the evidence available on record do not establish the Charge against Appellant No. 3.

67. In view of the above discussion, the Appeal to the extent of Appellant Nos. 1 and 2 is liable to be dismissed. The Appeal to the extent of Appellant No. 3 deserves to be allowed. The Revision Application for enhancement of punishment is liable to be rejected. Hence, we proceed to pass the following order : -

ORDER

- [i] The Appeal to the extent of Appellant Nos. 1 and 2 is dismissed.
- [ii] The Appeal to the extent of Appellant No. 3 is allowed.
- [iii] The conviction and sentence awarded by the learned trial Court against the Appellant No. 3 for the offence punishable under Section 302 r/w 114, Section 302 r/w 109 of the IPC and sentencing him for life imprisonment and fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for six months, is quashed and set aside.
- [iv] The Appellant No. 3 is acquitted of the offences punishable under Sections 302 r/w 114, Section 302 r/w 109 of the IPC.
- [v] The Appellant No. 3 is already released on bail. His bail bonds stand cancelled.
- [vi] The fine amount, if paid by the Appellant no. 3, be refunded to him.
- [vii] The Criminal Revision Application stands rejected.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE